

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY  
MAY 25, 2022

+ + + + +

The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened via Video Teleconference, pursuant to notice at 9:35 a.m. EDT, Lorna John, Vice Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson  
JOSEPH S. IMAMURA, Ph.D., Commissioner (AOC)  
PETER MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SARAH BAJAJ, ESQ.  
MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from the Regular Public Meeting held on May 25, 2022.

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

(9:34 a.m.)

1  
2  
3 VICE CHAIRPERSON JOHN: Good morning, Ladies and  
4 Gentlemen. The Board of Zoning Adjustments May 25th, 2022  
5 public hearing will please come to order. My name is Lorna  
6 John. I'm the Vice Chairperson of the District of Columbia  
7 Board of Zoning Adjustment. Joining me today are board  
8 members, Carl Blake and Chrishaun Smith, and Zoning  
9 Commissioners Peter May, Anthony Hood, and Dr. Imamura. I  
10 believe Commissioner May will be joining us at some point,  
11 I think.

12 Today's meeting and hearing agendas are available  
13 on the Office of Zoning's website. Please be advised that  
14 this proceeding is being recorded by a Court Reporter and is  
15 also webcast live via Webex and YouTube Live. The video of  
16 the webcast will be available on the Office of Zoning's  
17 website after today's hearing. Accordingly, everyone who is  
18 listening on Webex or by telephone will be muted during the  
19 hearing. Also please be advised that we do not take any  
20 public testimony at our decision meeting session. If you  
21 experience difficulty accessing Webex or with your telephone  
22 call-in, then please call our OZ hotline number, 202-727-5471  
23 to receive Webex login or call-in instructions.

24 At the conclusion of the decision meeting, I shall  
25 in consultation with the Office of Zoning determine whether

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

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

18 Once again, if you experience difficulty accessing  
19 Webex or with your telephone call-in or if you forgot to sign  
20 up 24 hours prior to this hearing, then please call our OZ  
21 hotline number at 202-727-5471 to sign up to testify and to  
22 receive Webex login or call-in instructions. All persons  
23 planning to testify either in favor or in opposition should  
24 have signed up in advance. They will be called by name to  
25 testify. If this is an appeal, only parties are allowed to

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1 testify. By signing up to testify, all parties completed the  
2 oath or affirmation as required by Subtitle Y, Section 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 allowed  
7 pursuant to Subtitle Y 103.13, provided that the person  
8 making the request to enter an exhibit explains how the  
9 proposed exhibit is relevant, the good cause that justifies  
10 allowing the exhibit into the record, including an  
11 explanation of why the requestor did not file the exhibit  
12 prior to the hearing pursuant to Subtitle Y, Section 206 and  
13 how the proposed exhibit would not unreasonable prejudice any  
14 party.

15           The order procedure for special exceptions and  
16 variances pursuant to Subtitle Y, Section 409 will be as  
17 follows: Preliminary and procedural matters, statement of  
18 the Applicant and the Applicant's witnesses, reported  
19 recommendation from the DC Office of Planning, reports and  
20 recommendations from other public agencies, reports and  
21 recommendations from the affected Advisory Neighborhood  
22 Commission, and the ANC's witnesses if any for the area  
23 within which the property is located.

24           Parties in support of the application:  
25 Individuals and organization representatives in support of

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1 the application. Parties in opposition to the application:  
2 Individuals and organization representatives in opposition  
3 to the application. Individuals and organization  
4 representatives who are undeclared with respect to the  
5 application. Rebuttal and closing statements by the  
6 Applicant.

7 Pursuant to Subtitle Y, Sections 408.2 and 408.3,  
8 the following time constraints shall be maintained: The  
9 Applicant, Appellant, and all parties except an affected ANC  
10 in support including witnesses exclusive of cross examination  
11 would have a maximum of 60 minutes collectively. The  
12 Appellant persons and parties, except an affected ANC in  
13 opposition including witnesses collectively have an amount  
14 of time equal to that of the Applicant and parties in  
15 support, but in no case more than 60 minutes collectively.  
16 Individuals: Maximum of three minutes. Organization  
17 representatives: Maximum of five minutes. These time  
18 constraints do not include cross examination and/or questions  
19 from the Board.

20 Cross examination of witnesses by the Applicant  
21 or parties, including the ANC is permitted. The ANC within  
22 which the property is located is automatically a party in a  
23 special exception or variance case. Nothing prohibits the  
24 Board from placing reasonable restrictions in cross  
25 examination, including the time limits and limitations and

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1 scope of cross examination pursuant to Subtitle Y, Section  
2 408.5.

3           At the conclusion of each case, an individual who  
4 wasn't able to testify because of technical issues may file  
5 a request for leave to file a written version of the planned  
6 testimony to the record within 24 hours following the  
7 conclusion of public testimony in the hearing. If additional  
8 written testimony is accepted, then parties will be allowed  
9 a reasonable time to respond as determined by the Board. The  
10 Board will then make its decision at its next meeting  
11 session, but no earlier than 48 hours after the hearing.  
12 Moreover, the Board may request additional and specific  
13 information to complete the record. The Board and the staff  
14 will specify the end of the hearing exactly what is expected  
15 and the date when persons must submit the evidence to the  
16 Office of Zoning. No other information shall be accepted by  
17 the Board.

18           Once again, after the Board adjourns the hearing,  
19 the Office of Zoning in consultation with me will determine  
20 whether a fuller summary order may issue. A full order is  
21 required when the decision it contains is adverse to a party,  
22 including an affected ANC. A full order may also be needed  
23 if the Board's decision differs from the Office of Planning's  
24 recommendation. Although the Board favors the use of summary  
25 orders whenever possible, an Applicant may not request the

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1 Board to issue such an order.

2           Finally, the District of Columbia Administrative  
3 Procedure Act requires that a public hearing on each case be  
4 held in the open before the public. However, pursuant to  
5 Sections 405B and 406 of that act, the Board may consistent  
6 with its rules of procedure and the act enter into a closed  
7 meeting on a case for purposes of seeking legal counsel on  
8 a case pursuant to DC Code Section 2575B4 and for  
9 deliberating on a case pursuant to DC Official Code Section  
10 257B13, but only after providing the necessary public notice  
11 and in the case of an emergency closed meeting after taking  
12 a roll call.

13           Mr. Secretary, do we have any preliminary matters?  
14 If not, let's proceed.

15           MR. MOY: Madam Vice Chair and the Board, I do  
16 have a brief announcement regarding certain cases that were  
17 on the hearing docket. So with your indulgence, Madam Vice  
18 Chair, the following four cases have been postponed and  
19 continued to a future hearing date. The first is Application  
20 No. 20239 of 2629 MLK, LLC rescheduled to October 19, 2022.  
21 Application No. 17429A of St. Patrick's Episcopal Church and  
22 Day School continued to September 21st, 2022. Application  
23 No. 18465A of St. Patrick's Episcopal Church and Day School,  
24 rescheduled to September 21st, 2022. And Application No.  
25 20542 of Hossein Barekataan, B-A-R-E-K-A-T-A-I-N and Fardin

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1 Foroujan, F-O-R-O-U-J-A-N, rescheduled to September 28th,  
2 2022.

3 And finally three cases have been withdrawn,  
4 Application No. 20529 of Oakwood, LLC, Application No. 20555  
5 of Odessa Ford, and Application No. 20626 of Irvin and Kathy  
6 Shapell, S-H-A-P-E-L-L. So that takes care of that. I do  
7 have some preliminary matters, but I think it would be best,  
8 Madam Vice Chair that I bring those to the Board's attention  
9 when I call the case.

10 VICE CHAIRPERSON JOHN: Thank you, Mr. Moy. And  
11 before we call the first decision case, I'd like to take a  
12 few minutes -- no more than two minutes. Thank you.

13 (Whereupon, the above-entitled matter went off the  
14 record at 9:46 a.m. and resumed at 9:48 a.m.)

15 VICE CHAIRPERSON JOHN: Okay. Please call the  
16 first decision case, Mr. Moy.

17 MR. MOY: Okay. So this would be -- and we're in  
18 the Board's public decision meeting session. The first case  
19 is Application No. 20380 of Polygon Holdings, LLC. As you  
20 recall, this is as an amended self-certified application  
21 pursuant to Subtitle X, Section 901.2 for special exceptions.  
22 Under Subtitle U, Section 421 to allow a new residential  
23 development 17-unit apartment house. And Under Subtitle F,  
24 Section 5201 from the side yard requirement, Subtitle F,  
25 Section 306.2A. This property is in the RA-1 zone at 4457

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1 through 4459 MacArthur Boulevard NW, Square 1363, Lots 57 and  
2 961.

3           This application was last heard by the Board as  
4 its public hearing on May the 11th. Participating on this  
5 decision making is Zoning Commission Chair Anthony Hood,  
6 Chairman Hill, Vice Chair John, Mr. Blake, and Mr. Smith.  
7 And I believe the only other thing I have, Madam Vice Chair,  
8 which refers to -- Well, I'm not even going to mention it  
9 because the record's closed for a decision.

10           VICE CHAIRPERSON JOHN: Okay, thank you.

11           MR. MOY: Thank you.

12           VICE CHAIRPERSON JOHN: Thank you. So are we ready  
13 to deliberate? So I'm going to start with a few comments,  
14 and please feel free to add to this. So this case was first  
15 before the Board in early 2021. And the Applicant  
16 subsequently amended the application after purchasing the  
17 adjoining property at 4459 MacArthur Boulevard. And so the  
18 Applicant now seeks relief under Subtitle U421 for a 17-unit  
19 apartment house and relief from the side yard request for two  
20 8-foot side yards, instead of the 9.7 feet required because  
21 of the increased height of the building.

22           At the last hearing, the Board closed the hearing  
23 -- the record and requested information on the Foxhall  
24 Terrace -- from Foxhall Terrace on whether it had plans to  
25 withdraw its status. And also requested application from the

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1 Applicant on the status of any agreement with the Foxhall  
2 Terrace. Both parties responded. Foxhall Terrace did not  
3 withdraw its opposition and there is no agreement.

4 (Audio interference) was the question of the  
5 easement for the 10-foot driveway. And the party in  
6 opposition contends that -- continues to oppose the project  
7 on the basis that the 10-foot easement allowing a right of  
8 way from MacArthur Boulevard to the parking lot cannot  
9 lawfully be used for this 17-unit apartment building because  
10 of the terms of the easement. The party in opposition admits  
11 that the scope of easement is ultimately a civil matter  
12 beyond the scope of the Board's authority, but (audio  
13 interference) limitations on the application -- on the  
14 Applicant's use of the easement as described on Page 3 of  
15 Exhibit 68.

16 At the hearing, Foxhall Terrace also required a  
17 survey of the driveway. In my view of the -- In my view, the  
18 precise terms of the easement --of the use of the easement  
19 are beyond the scope of this Board. Both parties agree that  
20 there is an existing 10-foot easement used previously by the  
21 two buildings on the property for ingress and egress. And  
22 so I do not recommend inclusion of the party in opposition  
23 recommended (audio interference). So I accept the  
24 Applicant's assertions that they will be able to use the  
25 driveway to access parking at the rear. And furthermore,

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1 this is a self-certified application. The Applicant has not  
2 requested parking relief and the Board is not granting such  
3 relief.

4 Except for the easement issue, the revised  
5 application and relief sought is fairly straight forward.  
6 The Applicant now seeks a nominal 1.75 foot side yard relief  
7 because of the increased height of the (audio interference)  
8 previously noted -- as previously mentioned. There is ample  
9 separation between the adjacent buildings, so there should  
10 be no impact on light and air. And also, there are no  
11 private -- there are no potential privacy impacts due to the  
12 placement of the windows on the addition.

13 The Applicant has worked with the Office of  
14 Planning to improve the design by maintaining the slope of  
15 the mansard roof and retaining the location of the front  
16 steps. I agree with OP's analysis of how the Applicant  
17 satisfies the criteria of Subtitle U421 and give great weight  
18 to OP's analysis. I also give great weight to the ANC's  
19 report, which has (audio interference). And so I will be in  
20 support of the application and I will just go around the room  
21 and ask for other comments starting with Mr. Smith.

22 MEMBER SMITH: Sure. I'll be brief Chair John  
23 because you provided a very thorough analysis of this  
24 particular case and the reasons why they have met the  
25 standards for us to support it. I do believe that the

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1 Applicant has met the standards of 5201 for us to be able to  
2 grant special exception to reduce the side yard for the same  
3 reasons that you stated. You know, this application was  
4 originally for one-half of this duplex. Then the Applicant  
5 subsequently over the past year has acquired the relating two  
6 plots from the previous party in oppositions to this case.  
7 And in doing so, it has removed some privacy concerns, some  
8 structural concerns that were raised by the party in  
9 opposition -- the previous party in opposition to the -- to  
10 the previous requests that we saw last year.

11 So I completely agree with you. There is ample  
12 space for the drive now. And to the right is a -- another  
13 single family dwelling that provides ample space for light  
14 and air to access the property. So I believe that they meet  
15 the special exception standards, as well as U421 standards  
16 for us to grant that special exception.

17 On the matter of the easement, the party in  
18 opposition is still there. I do, you know, believe that you  
19 have greatly -- I agree with your analysis on this particular  
20 case when it comes down to the party in opposition concerns  
21 about use of the easement. I think both parties agree that  
22 they have access to this easement. So the Applicant in  
23 question can access an easement for parking. Any other  
24 concern or questions that were raised by the party in  
25 opposition, I believe it should be handled as a civil matter

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1 between both of these parties.

2 I believe some of the grievances raised by the  
3 parties as you stated is beyond the purview of this Board.  
4 And you know, some of those conditions that the party in  
5 opposition is attempting for us to enact, both I think, you  
6 know, beyond the purview of the Board and also it seems to  
7 me that the Applicant is also -- I mean the party in  
8 opposition is also using the easement for those same  
9 purposes. So it seems to be a little unfair to me. But I  
10 do believe that this is a civil matter that should be (audio  
11 interference) between the two parties. So I will support the  
12 application because they have met the burden of proof for us  
13 to grant a special exception. I said I would be brief but  
14 I wasn't.

15 VICE CHAIRPERSON JOHN: Thank you, board member  
16 Smith. I always appreciate your comments. Board member  
17 Blake?

18 MEMBER BLAKE: I will say first of all that I will  
19 be voting in favor of the requested relief. I believe that  
20 the Applicant has met the burden of proof for both the side  
21 yard relief and the conditions of U421. With regard to the  
22 objectionable impact, I would agree with you -- and the  
23 easement -- I totally agree with the analysis that you made  
24 that this is largely a civil matter and that it is -- many  
25 of the conditions that the party in opposition proposed did

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1 seem to have some enforceability issues, as well as not  
2 necessarily not being within the purview of the Board.

3           That said, I will say that this is -- it is a  
4 narrow driveway. It's steep. It's not in the best shape.  
5 And it would be nice to see the neighbors work together to  
6 manage and maintain the space. You know, the additional  
7 burden placed by having five car parking in the back is only  
8 going to make probably one additional car from what has been  
9 there historically. So that alone won't be too much burden.  
10 The delivery services could be somewhat of a burden for that  
11 trash removal and things of that sort, but that stuff could  
12 be managed and brought to the curb to alleviate some of those  
13 issues. But it's a very steep incline, so there are a lot  
14 of issues that (audio interference) didn't work out. But  
15 again, I would agree that it's a civil issue. And again, I  
16 would be in favor of -- I will be voting in favor of the  
17 application.

18           VICE CHAIRPERSON JOHN: Thank you, Mr. Blake.  
19 Chairman Hood?

20           ZC CHAIR HOOD: Yeah, good morning. I believe  
21 that the relief requested in Subtitle U and Subtitle F as far  
22 as I'm concerned, the (audio interference) has been met.  
23 Also the other issues, I'm sure if they want to coexist,  
24 they'll work it out. And I will be supporting this  
25 application. And it's just unfortunate they all couldn't

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1 agree in this process. But I'm sure in the continuation of  
2 doing whatever they're doing and coexisting and living around  
3 in that area -- living together, they will make it work. So  
4 that's all I have. Thank you.

5 VICE CHAIRPERSON JOHN: Thank you, Chairman Hood.  
6 And so I will make a motion to approve Application 20380 as  
7 captioned and read by the Secretary. And ask for a second,  
8 Mr. Blake?

9 MEMBER BLAKE: Second.

10 VICE CHAIRPERSON JOHN: Thank you. Mr. Moy, would  
11 you please take the roll call?

12 MR. MOY: Thank you, Madam Vice Chair. When I  
13 call your name, would you please respond with a yes, no, or  
14 abstain to the motion made by Vice Chair John to approve the  
15 amended application for the -- to approve the application for  
16 the amended relief requested. The motion was seconded by Mr.  
17 Blake. Zoning Commission Chair Anthony Hood?

18 ZC CHAIR HOOD: Yes.

19 MR. MOY: Mr. Smith?

20 MEMBER SMITH: Yes.

21 MR. MOY: Mr. Blake?

22 MEMBER BLAKE: Yes.

23 MR. MOY: Vice Chair John?

24 VICE CHAIRPERSON JOHN: Yes.

25 MR. MOY: And we have an absentee ballot from

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1 Chairman Hill. And his absentee vote is to approve the  
2 application. So that would give a resulting vote count of  
3 5-0-0. And this is on the motion made by Vice Chair John to  
4 approve. The motion to approve was seconded by Mr. Blake.  
5 Also in support of the motion Zoning Commission Chair Anthony  
6 Hood, Mr. Smith, of course Mr. Blake, Vice Chair John, and  
7 Chairman Hill. The motion carries on a vote of 5-0-0.

8 VICE CHAIRPERSON JOHN: Thank you, Mr. Moy. And  
9 so can you call the next case please?

10 MR. MOY: All right. The next case for decision  
11 is Application No. 20666 of 1644 North Capitol, LLC. This  
12 is as amended, a self-certified application for special  
13 exception under Subtitle C, Section 1501.1D, pursuant to  
14 Subtitle X, Section 901.2, which would allow an eating and  
15 drinking establishment within a penthouse habitable space.

16 This project is located in the MU-4 zone at 1634  
17 North Capitol Street NW, Square 3101, Lot 118. As the Board  
18 will recall, you last heard this at your public hearing on  
19 April the 20th, 2022. Participating on this decision is  
20 Chairman Hill, Vice Chair John, Mr. Blake, Mr. Smith, and  
21 Zoning Commission Chair Anthony Hood.

22 The only other thing I'd like to add, Madam Vice  
23 Chair that this morning at the 12th hour, I was alerted that  
24 the SMD was going to file a document into the record. And  
25 of course as you know, the record is closed. So I only

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1 mention that for your edification, Madam Vice Chair. Thank  
2 you.

3 VICE CHAIRPERSON JOHN: Thank you. And this is  
4 from the SMD. Right, Mr. Moy?

5 MR. MOY: That's correct. I believe it's  
6 Commissioner Lewis.

7 VICE CHAIRPERSON JOHN: Okay. And there's also  
8 a response from the ANC, which is at Exhibit 29 or 30, I  
9 believe. Okay. All right, thank you.

10 So are we ready to deliberate? Yes. So I'm not  
11 inclined to hold the record open for any additional  
12 information because we have a response from the ANC that is  
13 entitled to great weight and so I'm in favor in proceeding.  
14 Does anyone have any comments? No. Okay. Does anyone with  
15 to start? And if not, I can. Okay. So -- Go ahead, Mr.  
16 Blake.

17 MEMBER BLAKE: Sure.

18 VICE CHAIRPERSON JOHN: Was your hand up?

19 MEMBER BLAKE: Yes, it will be up. I would first  
20 say I would be voting in favor of the application. I believe  
21 the Applicant has met the criteria to be granted relief under  
22 C1501.1D to allow for an eating and drinking establishment  
23 within a penthouse habitable space pursuant to X901.2. This  
24 is a relatively small 632 square foot bar restaurant in a 97-  
25 room hotel that will be open to the public. The penthouse

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1 structure meets the development requirements of the zone.  
2 I think I'm very happy to see that the Applicant was able to  
3 work out something with the ANC regarding the sound  
4 mitigating measures. And I also note that the Applicant has  
5 incorporated the exterior lighting addition specified by the  
6 Office of Planning.

7 In considering this application, I also took into  
8 consideration that the ABRA licensing process may result in  
9 further operating restrictions on noise, parking, hours of  
10 operation. Likewise, some of the concerns noted by DDOT will  
11 likely be resolved via the Public Space Committee as I'm not  
12 completely clear that a driveway is germane to the special  
13 exception for a penthouse restaurant specifically. That  
14 said, a neighborhood amenity is a plus, as is the housing  
15 fund contribution of, I think \$13,000+.

16 I believe the Applicant in our last hearing  
17 verbally agreed to the TDM plan conditions, although that TDM  
18 plan may or may not be relevant to our relief issue and could  
19 also be taken up, I believe in the Public Space Committee  
20 discussion. That said, I give great weight to the Office of  
21 Planning's recommendation for approval. And I do not note  
22 the support of ANC5E and the Bloomingdale Civic Association.  
23 And I would be prepared to support this application.

24 VICE CHAIRPERSON JOHN: Thank you, Board Member  
25 Blake. Board Member Smith?

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1           MEMBER SMITH: I'll add (audio interference), then  
2 I'll be quiet. I do agree with Mr. Blake's analysis of this  
3 particular case. I do believe they've met standards for us  
4 to be able to grant the special exception. As well as  
5 notating the fact that previously when we heard this, the ANC  
6 hadn't taken a position on, you know, some of the impacts  
7 that would result from the penthouse eating and drinking  
8 establishment. We now have those. Kudos to the Applicant  
9 for reaching back out to the ANC (audio interference) a set  
10 of conditions that I do believe is fairly reasonable.

11           You know, the only thing that I probably have to  
12 say is a very minor thing. A condition about there shall be  
13 no heavy bass. What does "heavy" mean? That may be  
14 difficult to quantify, but I'll trust that the enforcement  
15 powers of the District of Columbia will be able to decipher  
16 what that means.

17           Other than that, I do agree with Board Member  
18 Blake that the conditions that were requested by DDOT are not  
19 germane to the special exception that we have before us. So  
20 I will not recommend incorporating those conditions as well.  
21 So with that, I give OP's staff report great weight.  
22 Recognizing that the ANC is also in support of this. And I  
23 will be in support of the application as well.

24           VICE CHAIRPERSON JOHN: Thank you, Board Member  
25 Smith. Chairman Hood.

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1           ZC CHAIR HOOD: I don't have anything to add. I  
2 would agree -- I do agree with Board Member Smith about the  
3 bass. Because I don't like music without bass, but I  
4 understand this is a different issue, the boom, boom. And  
5 I'm sure they will regulate that. And I appreciate the ANC  
6 reconfirming their support. It looks like all the relief  
7 requested has been mitigated. And I would agree with the  
8 comments of both my colleagues. Thank you.

9           VICE CHAIRPERSON JOHN: Thank you. So I believe  
10 we're all in agreement that the conditions at Exhibit 29 and  
11 30 will be included in the order. There will be no DDOT  
12 conditions. And also OP proposed conditions regarding  
13 lighting. And I don't know -- I don't recall specifically  
14 if those changes were already made in the application, but  
15 I'll go ahead -- These are conditions that state that all  
16 exterior lighting on the penthouse is to be shielded and  
17 pointed downward, which would mitigate the impact of the  
18 proposal by ensuring that light is not directed towards  
19 neighboring residential properties. Decorative outdoor  
20 lighting such as string lights is excluded from this  
21 condition.

22           So I don't have a clear recollection that the  
23 Applicant stated that the -- that the Applicant was in  
24 agreement or that these changes were already made. And so  
25 out of an abundance -- out of an abundance of caution, I will

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1 adopt this condition. And does anyone have any comments on  
2 that? No. Okay.

3 So I will then go ahead and make a motion to  
4 approve Application No. 20666 as captioned and read by the  
5 Secretary with the conditions with respect to noise  
6 mitigation included at Exhibit 29 and 30. As well as OP's  
7 conditions for lighting, which are stated on Page 1 of OP's  
8 report to the extent that they have not already been  
9 included. And ask for a second, Mr. Blake.

10 MEMBER BLAKE: Second.

11 VICE CHAIRPERSON JOHN: Mr. Moy, would you please  
12 take roll call?

13 MR. MOY: When I call your name, if you would  
14 please respond with a yes, no, or abstain to the motion made  
15 by Vice Chair John to approve the application for the  
16 requested relief, including conditions as specified in her  
17 motion regarding conditions noted in Exhibits 29 and 30, as  
18 well as the condition in the OP report regarding exterior  
19 lighting. This motion was seconded by Mr. Blake. Zoning  
20 Commission Chair Anthony Hood?

21 ZC CHAIR HOOD: 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: Vice Chair John?

2 VICE CHAIRPERSON JOHN: Yes.

3 MR. MOY: And before I call the vote count, we do  
4 have an absentee ballot from Chairman Hill. And his vote is  
5 to approve the application with such conditions as the Board  
6 may impose. This would give a resulting vote of 5-0-0. And  
7 this is on the motion made by Vice Chair John. The motion  
8 to approve was seconded by Mr. Blake. Also in support of the  
9 motion to approve Mr. Smith, of course Mr. Blake, Vice Chair  
10 John, Chairman Hill, and of course Zoning Commission Chair  
11 Anthony Hood. The motion carries, ma'am.

12 VICE CHAIRPERSON JOHN: Thank you, Mr. Moy. And  
13 let's move on to the next case.

14 ZC CHAIR HOOD: Well, that's it for me. You all  
15 have a good day. Thank you.

16 VICE CHAIRPERSON JOHN: Oh thank you, Chairman  
17 Hood. Have a great day.

18 ZC CHAIR HOOD: Take care.

19 VICE CHAIRPERSON JOHN: Now we're joined by Dr.  
20 Imamura. Welcome.

21 MR. MOY: Okay. The next case for decision is  
22 Application No. 20685 of Oladapo, O-L-A-D-A-P-O Kolawole, K-  
23 O-L-A-W-O-L-E. This is a self-certified application for  
24 special exceptions pursuant to Subtitle X, Section 901.2 from  
25 the rear addition requirements of Subtitle E, Section 205.4,

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1 which is pursuant to Subtitle E, Section 205.5 and Subtitle  
2 E, Section 5201. The rooftop and upper floor requirements  
3 under Subtitle E, Section 206.1 pursuant to Subtitle E,  
4 Section 206.4 and Subtitle E, Section 5207. The property is  
5 located in the RF-1 zone at 1933 Second Street NE, Square  
6 3565, Lot 54.

7 This application was last heard by the Board at  
8 its public hearing session on May 11th. Participating on the  
9 votes is Chairman Hill, Vice Chair John, Mr. Blake, Mr.  
10 Smith, and Zoning Commissioner Dr. Imamura.

11 VICE CHAIRPERSON JOHN: Thank you. So again, I'll  
12 go around the room. Would anyone like to start or should I  
13 ask for volunteers again? Mr. Smith, would you like to  
14 start?

15 MEMBER SMITH: Sure.

16 VICE CHAIRPERSON JOHN: Okay.

17 MEMBER SMITH: So this particular case we heard  
18 on May 11th -- This particular case we heard on May 11th,  
19 involved two special exceptions. One was to -- the rear  
20 addition requirements so that they can build beyond -- 10  
21 feet beyond the rear wall of the adjoining residents property  
22 because they're proposing to construct out 20 feet. And the  
23 rooftop and upper floor requirements of Subtitle E-206.1  
24 because they're proposing to remove the existing mansard  
25 roof.

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1           The proposal as per resultant, I do believe meets  
2 the special exception requirements for both. I do believe  
3 that -- And some of the concerns that were raised were from  
4 the adjacent property owners to the -- to the left of the --  
5 of the property in question. And their concerns more so  
6 reflect concerns about the views from their property.  
7 They're concerned about how this 20 foot extension would  
8 affect light, air, and their views to the -- to the south.  
9 I will note that the zoning ordinance does not entitle a  
10 property owner to a view, but it does entitlement to light  
11 and air. I do not believe that this application in question  
12 given the orientation of the buildings there would affect the  
13 light and air to the apartment.

14           This property is on a hill, so there is a  
15 topographical difference between these buildings. And given  
16 that there is a topographical difference, I don't believe it  
17 will affect the light and air to the adjacent property -- all  
18 the adjacent properties to the left and right of the -- north  
19 and south of this building. So you know, I think it is  
20 reasonable for us to continue this case in order to receive  
21 additional feedback from the Applicant where it allows them  
22 to engage in additional discussion. But I think (audio  
23 interference) I think the final submission or discussion, I  
24 don't believe changes my position on the fact that I don't  
25 believe that it would have a negative impact on light and air

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1 to the adjacent properties.

2           So I believe that it meets all the standards for  
3 us to be able to grant the special exception -- the special  
4 exception criteria 901.2. I believe that it is largely in  
5 harmony with the joint purpose and intent of the zoning  
6 regulations. I do not believe it would adversely impact the  
7 adjacent properties even though the Applicant is proposing  
8 to remove the existing mansard roof. The proposed addition  
9 -- that additional structural height is set back at a  
10 reasonable distance from the front property line as to not  
11 affect the character of the public (audio interference).

12           And I do believe that it meets the general  
13 standards and the zoning regulations. And I do not believe  
14 that there are any special conditions that we would need to  
15 impose on this (audio interference). I will note that the  
16 ANC is also recommending approval for this fabrication. And  
17 OP is in support of this application. And I will give them  
18 great weight and will also support their position on this  
19 case (audio interference).

20           VICE CHAIRPERSON JOHN: Thank you, Board Member  
21 Smith. Can I go to you, Dr. Imamura?

22           COMMISSIONER IMAMURA: Thank you, Madam Vice  
23 Chair. I'm going to try to show some deference here and will  
24 defer to Board Member Blake and then I'll go if that's all  
25 right.

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1           VICE CHAIRPERSON JOHN: That's all right. Just  
2 let me know your preference. Board Member Blake?

3           MEMBER BLAKE: Thank you, Doc. First of all, I'll  
4 say I will be voting in favor of the requested relief based  
5 on the record, including the supplemental filings and the  
6 testimony at the hearing. I believe that the Applicant has  
7 met the criteria for special exemption relief for rear yard  
8 addition pursuant to E5201.4 and the criteria relief from the  
9 rooftop for upper floor restrictions pursuant to E5207.

10           The neighbors to the north in the adjoining  
11 building expressed concerns about the loss of light and the  
12 loss of views of the city resulting from the proposed  
13 addition. I believe that the Applicant has demonstrated that  
14 the project will not substantially adversely affect the use  
15 or enjoyment of the abutting property or dwelling in regards  
16 to light, air, privacy, or visual intrusion. The shadow  
17 studies and the design and the orientation, the Applicant has  
18 demonstrated that neither the addition or the removal of the  
19 mansard would have an impact on the light and air available  
20 to the neighboring properties.

21           And of course as Board Member Smith pointed out  
22 and as Chairman Hood always points out, views are not  
23 protected. And I do understand -- I'm very familiar with  
24 this neighborhood. It is on a hill and there are some very,  
25 very attractive views that come out of this location. But

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1 those views are not protected. The design and masting is  
2 consistent with the neighborhood's scale and patterns of  
3 buildings along the street.

4           The RF-1 zone permits row buildings of multiple  
5 dwellings and units and would allow for two additional units  
6 to be added to the building. On the north side, the addition  
7 would only extend 10 feet, which is permitted by right. And  
8 again, the Applicant's sun study showed that the neighbor's  
9 sunlight should not be significantly impacted. So having  
10 said that, I will give great weight to the Office of Planning  
11 report. Note that ANC5E is in support. They heard this and  
12 gave us the supplemental report, which said they had no  
13 significant objections during the meeting. DDOT has no  
14 objection. I'll be in favor of the Applicant -- voting in  
15 favor of the application.

16           VICE CHAIRPERSON JOHN: Thank you. Thank you,  
17 Board Member Blake. So I don't really have a lot to add to  
18 what's been said so far. And I in general agree with  
19 everything that Board Member Smith and Board Member Blake  
20 have said, especially with respect to the neighbor on the  
21 north side at 1937 Second Street where the addition is only  
22 10 feet, which is within the matter of right allowance.

23           So again, views are not protected even though  
24 there will be some loss of views on that side from the 10  
25 foot addition. And I agree that there is no significant

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1 impact on light and air. And privacy, there are no windows  
2 on the sides of the addition. And even after the addition,  
3 the rear yard would be 55 feet. So I am generally in support  
4 of the application and I associate myself with the comments  
5 that have been made so far. Dr. Imamura?

6 COMMISSIONER IMAMURA: Thank you, Madam Vice  
7 Chair. And I'm in agreement with everything that's been said  
8 before. I do want to acknowledge the opposition parties  
9 statement about sort of light, air, and views. As stated by  
10 Board Member Blake and Board Member Smith, the views are not  
11 protected. I think there's -- they provided a compelling  
12 document in Exhibit 52 with the exception on Page 7 that  
13 shows the height of the sun actually in view of one of the  
14 units there. I really struggled with this and I looked at  
15 the design and plans carefully. I think here an argument  
16 cannot be made against air.

17 And in terms of light, I think the concern here  
18 is the 10 foot expansion beyond the northern property there  
19 would put the three units for the property to the north in  
20 some shadow, but not complete shadow. So while they may have  
21 partially -- well, the direct light may be partially blocked,  
22 they will still receive indirect light for the unit. So this  
23 was a tough case, but I align myself with my fellow  
24 colleagues here. And give great weight to OP and ANC report.  
25 I'm prepared to vote in favor.

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1           VICE CHAIRPERSON JOHN: Thank you, Dr. Imamura.  
2 I agree, it was a tough case in terms of, you know, the  
3 impact of the views, but views are not protected. And there  
4 is light flowing to the apartments and there's no significant  
5 impact. As we all agree, there is some impact, but it's not  
6 so significant that we would deny an application for a matter  
7 of right extension. And while I sympathize with the persons  
8 who live in those apartments, we have to comply with  
9 regulations and this is a special exception relief request.  
10 And it's not like a variance where the standard is really  
11 extraordinarily high.

12           So having said that, I believe we're all in  
13 agreement. And so I will make a motion to approve  
14 Application No. 20685 as captioned and read by the Secretary.  
15 And ask for a second, Mr. Blake?

16           MEMBER BLAKE: Second.

17           VICE CHAIRPERSON JOHN: Mr. Moy, would you please  
18 take the roll call?

19           MR. MOY: When I call your name, if you would  
20 please respond with a yes, no, or abstain to the motion made  
21 by Vice Chair John to approve the application for the relief  
22 that's requested. The motion to approve was seconded by Mr.  
23 Blake. Mr. Smith?

24           MEMBER SMITH: Yes.

25           MR. MOY: Mr. Blake?

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1 MEMBER BLAKE: Yes.

2 MR. MOY: Vice Chair John?

3 VICE CHAIRPERSON JOHN: Yes.

4 MR. MOY: Zoning Commissioner Dr. Imamura?

5 COMMISSIONER IMAMURA: Yes.

6 MR. MOY: And before I give the vote count, Madam  
7 Vice Chair, we have an absentee ballot vote from Chairman  
8 Hill and his vote is to approve. So that would give a  
9 resulting vote count of 5-0-0. And this is on the motion  
10 made by Vice Chair John to approve. The motion to approve  
11 was seconded by Mr. Blake. Also in support of the motion to  
12 approve Mr. Smith, Dr. Imamura, Mr. Blake, Vice Chair John,  
13 and Chairman Hill. The motion carries -- The motion carries  
14 on a vote of 5-0-0.

15 VICE CHAIRPERSON JOHN: Thank you.

16 COMMISSIONER IMAMURA: Madam Vice Chair, that does  
17 it for me.

18 VICE CHAIRPERSON JOHN: Okay.

19 COMMISSIONER IMAMURA: I will turn things over to  
20 Commissioner May.

21 VICE CHAIRPERSON JOHN: Thank you so much. Have  
22 a great day.

23 COMMISSIONER IMAMURA: Thank you, all.

24 VICE CHAIRPERSON JOHN: Bye. Welcome,  
25 Commissioner May.

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1 COMMISSIONER MAY: Thanks. I'm happy to be here.

2 VICE CHAIRPERSON JOHN: I'm sure. So if  
3 everyone's in agreement, we'll take the next two cases and  
4 then maybe a five minute break. We're under a time crunch  
5 today. So Mr. Moy, could you please call the next case?

6 MR. MOY: All right. To help me, Madam Vice  
7 Chair, are the next two cases the party status request --

8 VICE CHAIRPERSON JOHN: The expedited review --

9 MR. MOY: That's right.

10 VICE CHAIRPERSON JOHN: -- I believe it's 20722 and  
11 then 20727.

12 MR. MOY: Yes, great. Thank you. I just wanted  
13 to double check.

14 VICE CHAIRPERSON JOHN: Thank you.

15 MR. MOY: All right. The first of the two  
16 expedited review cases. This is Application No. 20722 of  
17 Josh and Allison Dunning. This is as amended self-certified  
18 application for a special exception pursuant to Subtitle D,  
19 Section 52201 and Subtitle X, Section 901.2 from the lot  
20 occupancy requirements of Subtitle D, Section 304.1 and the  
21 pervious surface requirements of Subtitle D, Section 308.1.  
22 The property is located in the R-1-B zone at 6101 29th Street  
23 NW, Square 2340, Lot 43. That's it for me.

24 VICE CHAIRPERSON JOHN: Thank you. Are we ready  
25 to deliberate? So I'll go ahead and start. This is a

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1 special exception for lot occupancy and for relief from the  
2 pervious surface requirements with 45 percent proposed, 48  
3 percent existing where a minimum of 50 percent is required.  
4 The Applicant is seeking to build an 85 square foot rear  
5 addition. And in my view, it is a fairly straight forward  
6 application. And the Office of Planning has analyzed how the  
7 application meets the requirements and I will give great  
8 weight to that analysis. And the Office of Planning has not  
9 proposed any special conditions. The ANC is also in support,  
10 but apparently there is no official letter from the  
11 Applicant, so there's nothing to give great weight to. And  
12 DDOT has no objection. So with that, I'm in support of the  
13 application.

14 So are there any other comments from any board  
15 members?

16 MEMBER BLAKE: No comments.

17 VICE CHAIRPERSON JOHN: Thank you.

18 MEMBER SMITH: I would add one thing. The persons  
19 in support -- There were two letters in support; one from the  
20 adjacent neighbor as well. And as you said, I would also  
21 give great weight to the analysis and recommendation of the  
22 Office of Planning and I would be prepared to support as  
23 well.

24 VICE CHAIRPERSON JOHN: Thank you. Any other  
25 comments? Okay. So I will make a motion to approve

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1 Application 20722 as captioned and read by the Secretary.

2 And ask for a second, Mr. Blake?

3 MEMBER BLAKE: Second.

4 VICE CHAIRPERSON JOHN: Mr. Moy, would you please  
5 take the roll call?

6 MR. MOY: When I call your name, if you would  
7 please respond with a yes, no, or abstain to the motion made  
8 by Vice Chair John to approve the application relief -- for  
9 the relief requested. The motion to approve was seconded by  
10 Mr. Blake. Mr. Smith?

11 MEMBER SMITH: Yes.

12 MR. MOY: Mr. Blake?

13 MEMBER BLAKE: Yes.

14 MR. MOY: Vice Chair John?

15 VICE CHAIRPERSON JOHN: Yes.

16 MR. MOY: Zoning Commissioner Peter May?

17 COMMISSIONER MAY: Yes.

18 MR. MOY: And we have a board member not  
19 participating. The staff would record the vote as 4-0-1.  
20 And this is on the motion made by Vice Chair John to approve.  
21 The motion to approve was seconded by Mr. Blake. Also in  
22 support of the motion to approve Mr. Smith, Zoning  
23 Commissioner Peter May, and of course Mr. Blake and Vice  
24 Chair John. No other votes. The motion carries on a vote  
25 of 4-0-1.

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1           VICE CHAIRPERSON JOHN: Thank you, Mr. Moy. So  
2 please go ahead and call the next case, Mr. Moy, which I  
3 believe is 20727.

4           MR. MOY: Thank you, yes. So case Application No.  
5 20727 of Robert Bernstein and Bryant Hudson. This is a self-  
6 certified application for a special exception. Pursuant to  
7 Subtitle E, Section 205.5, Subtitle E, Section 5201 and  
8 Subtitle X, Section 901.2. This is from the rear addition  
9 requirements of Subtitle E, Section 205.4, rear yard  
10 requirement of Subtitle E, Section 306.1. And finally, the  
11 lot occupancy requirement of Subtitle E, Section 304.1.  
12 The property is located in the RF-1 zone at 1208 Euclid  
13 Street NW, Square 2865, Lot 79.

14           VICE CHAIRPERSON JOHN: Thank you, Mr. Moy. So  
15 this is another quite straight forward application. And I  
16 wonder if Mr. May -- Commissioner May, if you'd like to start  
17 the discussion? If not, I can go ahead.

18           COMMISSIONER MAY: Well, I can start the  
19 discussion, but don't have much to say. Yes, it's very  
20 straight forward. I think the facts in the case are clear.  
21 And the Office of Planning's support, the ANC's support, and  
22 the adjacent property owners are all in support. It's a  
23 pretty minor request. I mean the pergola component of this  
24 is a little bit odd because of the side sections of it. But  
25 you know, that's -- I think that's secondary to the overall

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1 case. And I don't see any problem granting relief.

2 VICE CHAIRPERSON JOHN: Thank you. Mr. Smith?

3 MEMBER SMITH: I agree with both of you. I think  
4 it's a fairly straight forward request and a very reasonable  
5 one as well. Just as Mr. May stated, all the adjacent  
6 property owners are in support of this particular case. And  
7 would note that many properties along Euclid or Benning  
8 Square will have a similar system over their rear yards. So  
9 I do not believe it would, you know, impact the light and  
10 privacy of adjacent properties, especially if they're all in  
11 support of this particular case. And also, I would note that  
12 OPM, you know, did a very thorough analysis of this case.  
13 And they are also recommending approval. So I do agree with  
14 their analysis that they've met the standard and will support  
15 the application.

16 VICE CHAIRPERSON JOHN: Thank you. Board Member  
17 Blake?

18 MEMBER BLAKE: The statements that you guys have  
19 made up to this point give great weight to the Office of  
20 Planning's analysis and recommendation for approval. I'll  
21 be voting in favor of the application.

22 VICE CHAIRPERSON JOHN: Thank you. And Mr. Moy,  
23 I'm going to go ahead and make a motion to approve  
24 Application 20727 as captioned and read by the Secretary.  
25 And ask for a second, Mr. Blake?

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1 MEMBER BLAKE: Second.

2 VICE CHAIRPERSON JOHN: Would you take the roll  
3 call please, Mr. Moy?

4 MR. MOY: Yes. Thank you, Madam Vice Chair. When  
5 I call your name, if you would -- if you would please respond  
6 with a yes, no, or abstain to the motion made by Vice Chair  
7 John to approve the self-certified application for relief.  
8 This motion was seconded by Mr. Blake. Mr. Smith?

9 MEMBER SMITH: Yes.

10 MR. MOY: Mr. Blake?

11 MEMBER BLAKE: Yes.

12 MR. MOY: Vice Chair John?

13 VICE CHAIRPERSON JOHN: Yes.

14 MR. MOY: Zoning Commissioner Peter May?

15 COMMISSIONER MAY: Yes.

16 MR. MOY: And we have a board member not  
17 participating today. The staff would record the vote as 4-0-  
18 1. And this is on the motion made by Vice Chair John to  
19 approve. The motion to approve was seconded by Mr. Blake.  
20 Also in support of the motion to approve, Mr. Smith, Mr.  
21 Blake, Vice Chair John, and Zoning Commissioner Peter May.  
22 A member not participating. The motion carries 4-0-1.

23 VICE CHAIRPERSON JOHN: Thank you, Mr. Moy. It  
24 is now 10:37. And is everyone ready for a quick five-minute  
25 break? I am. Can we take a quick five-minute break? Okay,

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1 we'll be back at 10:45.

2 (Whereupon, the above-entitled matter went off the  
3 record at 10:38 a.m. and resumed at 10:50 a.m.)

4 VICE CHAIRPERSON JOHN: Okay, I believe we're all  
5 here. And the next case is 20636.

6 MR. MOY: Yes, thank you. The Board has returned  
7 to its session -- its meeting session actually. And the time  
8 is at or about 10:50 a.m.

9 The next Board action is to a request for advanced  
10 party status. This is to Application No. 20636 of Penguin,  
11 LLC. For the record, this is a self-certified application  
12 for a special exception pursuant to Subtitle C, Section 305.1  
13 and Subtitle X, Section 901.2. From the subdivision  
14 requirements -- rather regulations of Subtitle C, Section  
15 302.1, area variance pursuant to Subtitle X, Section 1002.  
16 From the vehicular ingress and egress requirements, Subtitle  
17 C, Section 305.3B. The property is located in the RA-1 zone  
18 at 4509 Foxhall Crescent NW, Square 1397, Lot 960.

19 Again, this is a request for advanced party  
20 status. The scheduled hearing on the merits of this case is  
21 scheduled for June 15th. Other than that, Madam Chair, with  
22 regards to preliminary, there is an Applicant's motion to  
23 deny party status request from John Fox that was submitted  
24 within the 24-hour block, as well as a corrected second  
25 request for party status, as well as a corrected Certificate

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1 of Service from John Fox. And from the Applicant, I believe  
2 there's a motion to deny the request for party status from  
3 a John Fox. And of course, as the Board is aware, there's  
4 a request for party status from Mr. Andrew Wong and a Jody  
5 Westby, W-E-S-T-B-Y in Exhibit 37. So that's before you,  
6 Madam Vice Chair.

7 VICE CHAIRPERSON JOHN: Thank you. Mr. Young, is  
8 Mr. Wong present? I see Ms. Westby.

9 MR. YOUNG: I don't see Ms. Giordano and then  
10 calling out on the phone is Mr. John Fox.

11 VICE CHAIRPERSON JOHN: Okay. And could you let  
12 Ms. Giordano in please? Ms. Giordano, can you hear me?

13 MS. GIORDANO: Good morning.

14 VICE CHAIRPERSON JOHN: Okay. Yes, good morning.  
15 And please remind me who you're representing.

16 MS. GIORDANO: I represent the Applicant.

17 VICE CHAIRPERSON JOHN: Okay.

18 MS. GIORDANO: And I made a motion to allow a late  
19 filing yesterday morning. It's in response to the filing of  
20 Mr. Fox, which was made the previous evening around 9:30 p.m.  
21 So that was the earliest opportunity that I could respond.  
22 I would ask the Board to admit it.

23 VICE CHAIRPERSON JOHN: Thank you. So under the  
24 Board's procedures, we don't normally take testimony at the  
25 decision meetings. However, the party requesters need to be

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1 present. So I understand that Mr. Wong is present and Ms.  
2 Westby is also present.

3 COMMISSIONER MAY: I don't see Mr. Wong. But I  
4 see -- I understand from what Paul said that Mr. Fox was  
5 calling in.

6 VICE CHAIRPERSON JOHN: Mr. Fox is calling in?  
7 Okay. So who is missing?

8 COMMISSIONER MAY: Wong.

9 VICE CHAIRPERSON JOHN: Mr. Wong. Mr. Fox, can  
10 you hear me? Mr. Fox, your microphone is muted.

11 MR. FOX: Now do you hear me, Madam Chair?

12 VICE CHAIRPERSON JOHN: Yes. Is this Mr. Fox?

13 MR. FOX: Thank you. I was pressing the pound  
14 key, not the star key.

15 VICE CHAIRPERSON JOHN: Okay. I still don't see  
16 Mr. Wong. Is he in the waiting room, Mr. Young?

17 MR. YOUNG: Mr. Wong?

18 VICE CHAIRPERSON JOHN: Okay. So I will give him  
19 a couple of minutes. If he is not present, then his  
20 application under the regulations is deemed abandoned or  
21 withdrawn. So I will -- Well why don't we do this. Let's  
22 take the next case to see if Mr. Wong shows up.

23 MR. FOX: I have --

24 VICE CHAIRPERSON JOHN: Hello? Is someone  
25 speaking?

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1 COMMISSIONER MAY: That was Mr. Fox, but he's now  
2 muted.

3 VICE CHAIRPERSON JOHN: Okay. Mr. Young, can we  
4 move to the next case and we'll see if Mr. Wong shows up?  
5 I believe --

6 MR. FOX: I believe Mr. Wong will not be showing  
7 up.

8 VICE CHAIRPERSON JOHN: Well, we'll take the next  
9 case. So Mr. Young, please excuse the parties in this case.  
10 And Mr. Moy, would you please call the next case, 20636? And  
11 if Mr. Young is not present, then we will assume he's  
12 withdrawn his request.

13 MR. MOY: Unless I miss something, there's also  
14 the issue of the late filings that I mentioned earlier. Were  
15 you allowing those into the record?

16 VICE CHAIRPERSON JOHN: I will take that up when  
17 we call the case again if that's okay.

18 MR. MOY: Sure, of course.

19 VICE CHAIRPERSON JOHN: Thank you.

20 MR. MOY: Sorry, I didn't mean to step on your  
21 toes. I just wanted to be sure you had not forgotten.

22 VICE CHAIRPERSON JOHN: Right. Thank you.

23 MR. MOY: So let's see, where are we? Okay. So  
24 jumping to the next advanced party status consideration is  
25 Application No. 20743 of Shayleen and Robert Thorne. This

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1 is a self-certified application for special exception from  
2 the side yard requirement, subtitle D, Section 206.7.  
3 Pursuant to Subtitle D, Section 5201 and Subtitle X, Section  
4 901.2. The property is located in the R-16 zone at 1630  
5 Nicholson Street NW, Square 2723 W, Lot 33. And the merits  
6 of this application is scheduled for hearing on June 22nd.  
7 And let me double check something here. And I believe that's  
8 it for me other than the fact that the request for party  
9 status and opposition is under exhibit 18, and that's all I  
10 have, Madam Vice Chair.

11 VICE CHAIRPERSON JOHN: Thank you. Ms. Ferster,  
12 would you please identify yourself for the record?

13 MS. FERSTER: Good morning, Madam Vice Chair and  
14 members of the Board. I'm Andrew Ferster. I am counsel for  
15 Maurice Jackson and Laurie Ginsburg who reside at 1628  
16 Nicholson Lane. They are the abutting actual attached to the  
17 property owners.

18 VICE CHAIRPERSON JOHN: Thank you. And Ms.  
19 Ferster, the Board is not taking any testimony on the  
20 application. It's a full record and it's fairly straight  
21 forward. So if I can start. So under the regulations, the  
22 adjacent property owners are presumed to be significantly  
23 impacted -- more significantly impacted than the general  
24 public. In its request, the Applicant has described how it  
25 meets -- in detail, how it meets the specific criteria. And

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1 I'm inclined to grant this request. Does anyone have any  
2 comments? No, no one? Okay.

3 So I will make a motion to grant party status to  
4 Mr. Jackson and Ms. Ginsburg. And ask for a second, Mr.  
5 Blake?

6 MEMBER BLAKE: Second.

7 VICE CHAIRPERSON JOHN: Mr. Moy, would you please  
8 take the roll call?

9 MR. MOY: When I call your name, if you would  
10 please respond with a yes, no, or abstain to the motion made  
11 by Vice Chair John to grant party status request.

12 VICE CHAIRPERSON JOHN: Thank you.

13 MR. MOY: And this motion was seconded by Mr.  
14 Blake. Zoning Commissioner Peter May?

15 COMMISSIONER MAY: Yes.

16 MR. MOY: Mr. Smith?

17 MEMBER SMITH: Yes.

18 MR. MOY: Mr. Blake?

19 MEMBER BLAKE: Yes.

20 MR. MOY: Vice Chair John?

21 VICE CHAIRPERSON JOHN: Yes.

22 MR. MOY: The staff would record the vote as 4-0-1  
23 and this is on the motion made by Vice Chair John to grant  
24 party status request to Zachary Jackson and Laurie Ginsburg,  
25 represented by Andrew Ferster. This motion to grant was

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1 seconded by Mr. Blake. Also in support of the motion is  
2 Zoning Commissioner Peter May, Mr. Smith, and of course Mr.  
3 Blake, Vice Chair John. No other board members. The motion  
4 carries 4-0-1.

5 VICE CHAIRPERSON JOHN: Thank you, Mr. Moy. When  
6 you have a minute, please re-call 20636.

7 MR. MOY: Okay. Returning to Case Application No.  
8 20636 of Penguin, LLC. This is a request for advanced party  
9 status. And I'm just going to read Vice Chair that this  
10 application is located in the RA-1 zone at 4509 Foxhall  
11 Crescent NW, Square 1397, Lot 960.

12 VICE CHAIRPERSON JOHN: Okay. Thank you, Mr. Moy.  
13 So I see Ms. Giordano is present, Ms. Westby, and Mr. Fox,  
14 I believe that's you on the phone. Would you please identify  
15 yourself for the record? Mr. Fox?

16 MR. FOX: This is John Fox. I live at 4504  
17 Foxhall Crescent in the District.

18 VICE CHAIRPERSON JOHN: Okay, thank you. So as  
19 in the last case, the Board will not take testimony on the  
20 request for party status. This is a full record. We also  
21 have Mr. Moy, several late filings, which if you don't mind,  
22 I would like to admit in the record just because I would like  
23 to see them and I think the Board might also like to see  
24 them. And the first thing is the Applicant's motion to deny  
25 party status request from John Fox, which was submitted late.

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1 The corrected second request for party status submitted late.  
2 The corrected Certificate of Service from Mr. Fox submitted  
3 late. And the Applicant's motion to deny the second party  
4 status request for Mr. Fox, also submitted late. So I'll  
5 give you a moment to get that in the record, Mr. Moy.

6 MR. MOY: It's being processed.

7 VICE CHAIRPERSON JOHN: Pardon?

8 MR. MOY: It's being processed into the record,  
9 so they'll be in shortly.

10 VICE CHAIRPERSON JOHN: Okay. So while I am  
11 waiting on those documents to be admitted to the record, I'll  
12 go ahead and rule on the parties -- not rule -- discuss the  
13 party status request for Mr. Wong. And under Y404.10, a  
14 person requesting party status must be present at the public  
15 hearing or meeting at which the request is being considered.  
16 However, the attendance of the Applicant or affected ANC at  
17 the public meeting is discretionary. Failure of the person  
18 or the representative to appear shall be deemed to constitute  
19 the withdraw of the party status request.

20 So the Board has given Mr. Wong two opportunities  
21 to be present. And I wanted to hear from the Board any  
22 comments on considering his request for party status  
23 withdrawn, which I'm inclined to do.

24 COMMISSIONER MAY: I think the rules are pretty  
25 clear that if he's not present --

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1 VICE CHAIRPERSON JOHN: Okay.

2 COMMISSIONER MAY: -- it will be withdrawn. But  
3 (audio interference) the next day neighbor, he might have had  
4 a good case. So it's unfortunate, but I think it's -- we  
5 should be denying the application for party status.

6 VICE CHAIRPERSON JOHN: Okay. Anyone else? Okay,  
7 thank you. This is -- Yeah, this is unfortunate. So I will  
8 make a motion then to consider the party status request of  
9 Mr. Wong withdrawn and ask for a second?

10 MEMBER BLAKE: Second.

11 VICE CHAIRPERSON JOHN: Mr. Moy, would you please  
12 take the roll call? Mr. Moy?

13 MR. MOY: When I call your name, if you would  
14 please respond with a yes, no, or abstain to the motion made  
15 by Vice Chair John to withdraw the request for party status  
16 from a Mr. Andrew Wong. This motion was seconded by Mr.  
17 Blake, I believe. Zoning Commissioner Peter May?

18 COMMISSIONER MAY: Yes.

19 MR. MOY: Mr. Smith?

20 MEMBER SMITH: Yes.

21 MR. MOY: Mr. Blake?

22 MEMBER BLAKE: Yes.

23 MR. MOY: Vice Chair John?

24 VICE CHAIRPERSON JOHN: Yes.

25 MR. MOY: We have a board member present not

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1 present. The staff would record the vote as 4-0-1 on the  
2 motion made by Vice Chair John and seconded by Mr. Blake.  
3 Also in support of the motion, Zoning Commissioner Peter May,  
4 Mr. Smith, and of course Mr. Blake, and Vice Chair John.  
5 There are no other board members. The motion carries, Madam  
6 Vice Chair.

7 VICE CHAIRPERSON JOHN: Thank you. So the next  
8 motion for party status -- Well, before I get there. Has the  
9 Board had an opportunity to look at the recently filed  
10 documents, which are all late? But we'll just admit them for  
11 completeness. So I have reviewed all of the documents  
12 submitted by Mr. Fox. And as I read the initial request,  
13 this was a request from Mr. Fox in his own capacity, as well  
14 as the President of the Foxhall Crescent Homeowners  
15 Association.

16 So as to his request to represent the Foxhall  
17 Homeowners Association, I will note that there's information  
18 in the record from the HOA that states that Mr. Fox is no  
19 longer authorized to represent the organization as President  
20 and a new President has been elected. So unless a board  
21 member objects, I'm inclined to deny Mr. Fox's request for  
22 party status as the President of the Homeowners Association.

23 COMMISSIONER MAY: Vice Chair, I think that Fox --  
24 it was a very strange application. It's usually done,  
25 something like if somebody is representing the Homeowners

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1 Association, it's very clear that, that's what they're doing.  
2 They have authorization to do it. Mr. Fox seemed to make the  
3 case that he's doing it personally and in representation of  
4 the Homeowners Association. And I think the larger point  
5 here is that he is not representing the Homeowners  
6 Association. And furthermore, when it comes to his  
7 individual concerns about the property, I do not believe he's  
8 uniquely affected and therefore doesn't qualify for party  
9 status on that basis either. So I'm inclined to deny the  
10 party status request for Mr. Fox.

11 VICE CHAIRPERSON JOHN: Thank you. I believe he  
12 was the President at the time --

13 COMMISSIONER MAY: Oh, I agree. Yes.

14 (Simultaneous speaking.)

15 VICE CHAIRPERSON JOHN: Yeah. So he's no longer  
16 the President. Yes, we're in agreement on that, that he's  
17 no longer the President, so he's not able to represent the  
18 HOA. And I'm inclined to agree with you with respect to his  
19 ability to show under the regulation that he meets the  
20 criteria for party status. Mr. Fox does not live within the  
21 200 mile radius and --

22 COMMISSIONER MAY: Feet.

23 VICE CHAIRPERSON JOHN: Pardon?

24 COMMISSIONER MAY: 200 feet, not miles.

25 VICE CHAIRPERSON JOHN: Feet, thank you. Thank

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1 you. So I do not believe he can meet the intent of the  
2 regulation, which is really quite specific. And in his  
3 response to the particular question, Mr. Fox was not able to  
4 describe how he would be significantly impacted by the  
5 proposed project and more impacted than any other resident  
6 in the community. So I'm inclined to deny both Mr. Wong's  
7 initial request for party status and his second request for  
8 party status. Are there any other comments from any board  
9 member as to that last point?

10 MEMBER SMITH: I'll just comment that I think you  
11 probably meant Mr. Fox -- You had said Mr. Wong.

12 VICE CHAIRPERSON JOHN: I'm sorry. I can't hear  
13 you, Mr. Smith.

14 MEMBER SMITH: Did you mean Mr. Fox, instead of  
15 Mr. Wong?

16 VICE CHAIRPERSON JOHN: No, I meant Mr. Fox.

17 MEMBER SMITH: Okay.

18 VICE CHAIRPERSON JOHN: Mr. Fox's request for party  
19 status.

20 MEMBER SMITH: Okay.

21 VICE CHAIRPERSON JOHN: Okay. Mr. Blake. Okay.  
22 So I'm going to -- pardon?

23 MEMBER BLAKE: No, I'm fine.

24 VICE CHAIRPERSON JOHN: Okay. So I'm going to  
25 make a motion to deny Mr. Fox's first and second request for

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1 party status and ask for a second.

2 MEMBER BLAKE: Second.

3 VICE CHAIRPERSON JOHN: Mr. Moy, would you please  
4 take the roll call? Mr. Moy?

5 MR. MOY: Yeah, I know. I always have a few  
6 seconds lag here. So when I call your name, if you would  
7 please respond with a yes, no, or abstain to the motion made  
8 by Vice Chair John to deny the first and second requests for  
9 party status from Mr. John Fox. This motion was seconded by  
10 Mr. Blake. Zoning Commissioner Peter May?

11 COMMISSIONER MAY: Yes.

12 MR. MOY: Mr. Smith?

13 MEMBER SMITH: Yes.

14 MR. MOY: Mr. Blake?

15 MEMBER BLAKE: Yes.

16 MR. MOY: Vice Chair John?

17 VICE CHAIRPERSON JOHN: Yes.

18 MR. MOY: (Audio interference). And there is no  
19 other board member participating. Staff would record the  
20 vote as 4-0-1. And this is on the motion made by Vice Chair  
21 John to deny. The motion to deny was seconded by Mr. Blake.  
22 Also in support of the motion to deny, Zoning Commissioner  
23 Peter May, Mr. Smith, and of course, Mr. Blake and Vice Chair  
24 John. No other participating. The motion carries, Madam  
25 Vice Chair.

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1           VICE CHAIRPERSON JOHN: Thank you. And the next  
2 request is a motion -- is the Applicant's motion to deny  
3 party status request from John Fox. So Mr. Fox made his  
4 request for party status in February and the Applicant did  
5 not respond in a timely manner. And therefore, I'm inclined  
6 to deny that request, which is moot because Mr. Fox has not  
7 been granted party status, but I need to close the loop on  
8 that motion.

9           So the next motion is a motion for party status  
10 of the Foxhall Crescent HOA, which is filed by Ms. Westby.  
11 And so the new HOA President, Ms. Westby filed a Letter of  
12 Representation on March 29, 2022, but did not expressly  
13 request party status, which was not expressly stated until  
14 April 27th after the initial hearing date of March 2nd. And  
15 although both requests are not timely, there's good cause to  
16 waive the requirement in this case. Mr. Fox submitted a  
17 timely request on behalf of the HOA and was the President of  
18 the HOA at the time. And so since that request was properly  
19 filed on behalf of the HOA, it's my view that the HOA may now  
20 substitute another authorized representative to represent it.  
21 As a new President and authorized HOA, based on the documents  
22 she submitted, I believe Ms. Westby is authorized to be the  
23 substitute representative of the HOA's interest. And does  
24 any board member have comments? No. Okay.

25           So I will make another motion to grant party

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1 status to Ms. Westby a representative of the Foxhall Crescent  
2 Homeowner's Association and ask for a second. Mr. Blake?

3 MEMBER BLAKE: Second.

4 VICE CHAIRPERSON JOHN: Thank you. Mr. Moy, would  
5 you please take the roll call?

6 MR. MOY: When I call your name, if you would  
7 please respond with a -- whether you -- with a yes, no, or  
8 abstain to the motion made by Vice Chair John to grant party  
9 status request to Ms. Westby as the President -- as her role  
10 as the President of the HOA. This motion was seconded by Mr.  
11 Blake. Zoning Commissioner Peter May?

12 COMMISSIONER MAY: Yes.

13 MR. MOY: Mr. Smith?

14 MEMBER SMITH: Yes.

15 MR. MOY: Mr. Blake?

16 MEMBER BLAKE: Yes.

17 MR. MOY: Vice Chair John?

18 VICE CHAIRPERSON JOHN: Yes.

19 MR. MOY: Staff would record the vote as 4-0-1 and  
20 this is on the motion made by Vice Chair John to grant. The  
21 motion was seconded by Mr. Blake to grant. Also in support  
22 of the motion to grant, Zoning Commissioner Peter May, Mr.  
23 Smith, and of course Mr. Blake and Vice Chair John. No other  
24 board member participating. Motion carries 4-0-1.

25 VICE CHAIRPERSON JOHN: Thank you. So I want to

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1 say that the Board appreciates the submissions from the  
2 neighbors. And would note that although Mr. Fox has not been  
3 granted party status, they can all testify as witnesses  
4 during the hearing and will be allowed three minutes as  
5 individuals.

6 So with that, I think that concludes our decision  
7 meeting -- decision cases, Mr. Moy?

8 MR. MOY: That's correct.

9 VICE CHAIRPERSON JOHN: Okay.

10 (Whereupon, the meeting in the above-entitled  
11 matter was concluded at 11:17 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DC BZA

Date: 05-25-22

Place: teleconference

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



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