

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

JANUARY 11, 2023

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

- FREDERICK HILL, Chairperson
- LORNA JOHN, Vice Chairperson
- CHRISHAUN SMITH, Commissioner
- PETER MAY, Zoning Commissioner

BOARD OF ZONING ADJUSTMENT STAFF PRESENT:

- CLIFFORD MOY, Secretary

BOARD OF ZONING ADJUSTMENT LEGAL COUNSEL:

- RYAN NICHOLAS, Esquire
- MARY NAGELHOUT, Esquire

The transcript constitutes the minutes from the Regular Public Hearing held on January 11, 2023.

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

Case No. 20838
Application of the Assembly of the Republic of Kosovo 7

Case No. 20828
Application of Olufemi Awoseye 17

Case No. 20846
Application of Jeremy L. Pelofsky 20

Case No. 20841
Application of Inmobiliara, LLC 30

Case No. 20851
Application of 2646 39th Street, LLC 43

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

(9:30 a.m.)

CHAIRPERSON HILL: Good morning, ladies and gentlemen. Today's date is 01/11/2023. This public hearing of the Board of Zoning Adjustment of the District Columbia is convening to act on a chancery application pursuant to the Foreign Missions Act 22 U.S.C 4301-4316 and Chapter 10 of the zoning regulations. My name is Fred Hill, Chairperson. Joining me today is Lorna John, Vice Chair, and Board members Chrishaun -- no, I don't. We have Marcel Acosta representing -- and the executive director representing the National capital Planning Commission, and Peter May representing the National Parks Service, the U.S. interior of Justice, as well as Vice Chair Lorna John, if I neglected to mention that.

Today's meeting and hearing agenda are available on the Office of Zoning's website. Please be advised that this proceeding is being recorded by a court reporter and is also webcast live via Webex and YouTube Live. The video of the webcast will be available on the Office of Zoning's website after today's hearing. Accordingly, everyone who is listening on Webex or by telephone will be muted during the hearing so as to not pick up sound or background noise. If you're experiencing accessing Webex or your telephone call-in, then please call our OZ hotline number at 202-727-5471, once again 202-727-5471 to receive Webex log-in or call-in instructions.

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1 To all persons planning to testify either in support
2 or opposition, please remember to state your name and home address
3 before providing oral testimony or your presentation.

4 The order of procedures for our foreign missions case
5 is as follows: statement and witness of the applicant; government
6 reports, including the United States Secretary of State and the
7 District of Columbia Office of Planning on behalf of the Mayor;
8 reports or recommendations by other public agencies; report of
9 the advisory neighborhood commission; persons in support; persons
10 in opposition.

11 Please note that requests for party status in a
12 chancery application are not applicable because it is a
13 rulemaking proceeding.

14 The following time constraints will be maintained:
15 persons testifying whether in support or opposition will be
16 permitted to three minutes each, except in ANC. These time
17 constraints do not include time used during questions from the
18 Board. The Board may place further reasonable restrictions or
19 permit additional time for testimony as it is deemed appropriate.
20 Because this is a rulemaking proceeding, there are no parties and
21 therefore there is no cross-examination. The record will be
22 closed at the conclusion of the case, except it may remain open
23 for any material specifically requested by the Board. The Board
24 and staff will specify at the end of the hearing exactly what is
25 expected and the date when the materials must be submitted to the

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1 Office of Zoning. After the record is closed, no other
2 information shall be accepted by the Board.

3 The District of Columbia Administrative Procedures Act
4 requires that the public hearing on each case be held in the open
5 for the public, pursuant to Section 405B and 406 of the Act. The
6 Board, may consistent with its rules of procedures and the Act,
7 enter into closed meetings on a case for purposes of seeking
8 legal counsel on a case pursuant to D.C. Official Code Section
9 2-575(b)(4) and/or deliberate on a case pursuant to D.C. Official
10 Code Section 2-575(b)(13), but only after filing necessary public
11 notice, and in the case of emergency closed meeting, after taking
12 a roll call vote.

13 The decision of the Board in this legislative procedure
14 must be based exclusively on public record. To avoid any
15 appearance to the contrary, the Board requests that persons
16 present not engage the members of the Board in conversation.
17 Well, that would only be when it was a live hearing. It's kind
18 of difficult to do that now. Preliminary matters and those which
19 relate to whether a case will or should be heard today, such as
20 a request for a postponement, continuance, or to withdraw, and
21 whether proper and adequate notice of a hearing has been given.
22 If you're not prepared to go forward with a case, you believe
23 this Board should not proceed at this time, this is something
24 that we will bring up when we bring all the preliminary matters
25 towards us.

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1 Mr. Secretary, do we have preliminary matters?

2 MR. MOY: Yes, sir. Thank you, Mr. Chairman, members
3 of the Board. Good morning and happy New Year. I would like to
4 make some quick announcements regarding today's docket. First,
5 regarding applications originally scheduled for today's docket,
6 Case No. 20773 of District Properties has been withdrawn by the
7 applicant. Case Application No. 20828 of Olufemi Awoseye,
8 including request for party status has been continued by the
9 Board to May 3rd, 2023. Case No. 20772 of District Properties
10 was also granted their motion for continuance to May 10th, 2023.
11 The office has also administratively rescheduled three cases
12 because of the boundary changes attendant of certain ANCs: 20831
13 of Joseph Britton and Katherine Ehly, E-H-L-Y; Case No. 20836 of
14 Samuel Lynch; and Case No. 20839 of Jennifer Bonnette and Randeep
15 Rathindran. These three cases have been continued to March 22nd,
16 2023.

17 Finally, Mr. Chairman, as to preliminary matters, we
18 have two cases on today's docket where there has been a motion
19 for a continuance. The first is to Case No. 20838. This is the
20 application of the Embassy of the Republic of Kosovo, which was
21 filed by the applicant as well as Case No. 7468B, application of
22 NHT Communities and G and I X East River Park MZL, LLC filed
23 requests -- motion for continuance by the applicant. And I think
24 for now, other than other preliminary matters, I'll conclude at
25 this point. Thank you, sir.

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

2 I guess what I'd like to do if the Board is good with
3 it, go ahead and call this FM BZA case and hear from the Applicant
4 concerning their request for a continuance. Mr. Acosta, happy
5 New Year, haven't seen you in a while.

6 MR. ACOSTA: Happy new year.

7 CHAIRPERSON HILL: I don't think I've seen you since,
8 oh, I don't think I've seen anybody since COVID actually in
9 person, now that I say that out loud.

10 Mr. Moy, if you want to go ahead and call 20838 please?

11 MR. MOY: Yes, sir. Thank you.

12 So again, this is Case Application No. 20838 of the
13 Embassy of the Republic of Kosovo. As advertised, this is an
14 application pursuant to Subtitle X, Section 201 to locate a
15 chancery use in a low to medium density residence zone.
16 Property's located at 3612 Massachusetts Avenue, N.W., Square
17 1931, Lot 5. Once again, the Applicant filed for a motion to
18 continue. There is also associated with this application, Mr.
19 Chairman, there's a request for a party status in opposition from
20 two individuals, and we also have witness sign-ups wanting to
21 testify who are opposed to the application. And it's about 10
22 to 12 individuals. And I believe that's it from me, Mr. Chairman.

23 CHAIRPERSON HILL: Okay. Great.

24 Ms. Wilson, can you hear me? And if so, could you
25 introduce yourself for the record?

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1 MS. WILSON: Yes. Can you hear me?

2 CHAIRPERSON HILL: Yeah, you're a little muddled, but
3 maybe I'll turn myself up.

4 MS. WILSON: Sorry, it's probably my headphones. The
5 other ones died. I apologize.

6 CHAIRPERSON HILL: I can hear you if I turn myself up
7 more, so go ahead.

8 MS. WILSON: Great. Thank you. Alex Wilson from
9 Sullivan & Barros on behalf of the Applicant in this case. And
10 we are requesting a postponement to next month, and we filed that
11 request on Monday in Exhibit 38.

12 CHAIRPERSON HILL: Right. So Ms. Wilson, the request
13 for a postponement is primarily about the DDOT issues; is that
14 correct?

15 MS. WILSON: That is correct, yes.

16 CHAIRPERSON HILL: Are you able to present your case
17 other than the DDOT issues at this point?

18 MS. WILSON: I think, given the nature of the public
19 space issues and the potential changes that we're going to have
20 to make to the property as a result of those discussions, we're
21 not prepared to move forward today, especially given the amount
22 of testimony that is anticipated. I think all of those people
23 also want to testify to these issues, and we just got our civil
24 engineer on board as well, and I would like him present for the
25 hearing and to have that updated survey before we proceed.

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1 CHAIRPERSON HILL: Okay. I guess I -- I don't know, I
2 want to make the best use of the Board's time and the witnesses
3 that are all here. So I don't think if you're going to make a
4 substantial argument in a different way the next time you're with
5 us, or even if it's kind of minor league different, I think that
6 maybe we should all be here to hear it rather than have you
7 present one particular argument now and then a different argument
8 later. Those are my thoughts. I don't know what you all on my
9 Board have to think of that. I'm going to start with Vice Chair
10 John, I guess.

11 VICE CHAIR JOHN: So I'm not opposed to continuing the
12 case based on representations that there might be significant
13 changes to the application. So I would be -- I would support
14 the postponement request.

15 CHAIRPERSON HILL: Okay. And I guess I'm going to ask
16 around the -- and my whole thing is like I don't want to waste
17 anybody's time again. Like if they're going to have to come back
18 again, you know, meaning the people that are in opposition as
19 well as the U.S. Department of State, then I don't see the point.

20 Commissioner May?

21 ZC COMMISSIONER MAY: It seems to me that it makes
22 sense to postpone it to next month and hopefully we'll have all
23 the information once it's -- an inconvenience to folks who are
24 here today, but I do think it's the best thing to do, given the
25 information that's still needed to satisfy DDOT's concerns.

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1 CHAIRPERSON HILL: And I'll give Mr. Acosta -- I guess
2 you're kind of outvoted anyway, but what do you think, Mr. Acosta

3 MR. ACOSTA: You are correct. No, I would concur with
4 deferral 'til next month, although I would say that many of the
5 arguments that the committee are making really go to the
6 determination of mixed use and the boundaries for that. But I
7 think it'd be worthwhile to hear everything at once.

8 CHAIRPERSON HILL: Okay.

9 What were the days, Mr. Moy, that we could come back?
10 Because, again, just so the public knows, there's like Mr. Acosta
11 and Mr. May have to be here with us at the same time. And I'll
12 also turn to the ANC just to get their thoughts. But what days
13 are available, Mr. Moy?

14 MR. MOY: Yes, before I forget we -- it appears that
15 on the screen there's a representative from the Department of
16 State, just to let you know, Mr. Chairman. I don't have all the
17 information from the Applicant with reference to how long it
18 would take them to prepare the materials, supplemental materials.
19 But in lieu of that, I would suggest either February 8th or
20 February 15th, number one. And number two, I would at least ask
21 if they could make their filing, if possible, two weeks before
22 that date, so all the parties would have a chance to review their
23 materials. So that's my that's my suggestion, sir.

24 CHAIRPERSON HILL: Okay.

25 So then I would put you, Ms. Wilson, on the 15th.

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1 MS. WILSON: Yes, thank you.

2 CHAIRPERSON HILL: Okay.

3 Could I hear -- is the representative from the
4 Department of State with us and can you hear me?

5 MS. FRANKE: Yes, I'm here and I can hear you. This
6 is Gretchen Franke from the Office of Foreign Missions at the
7 Department of State.

8 CHAIRPERSON HILL: Okay. I guess, Ms. Franke, if you
9 want to go ahead and give your testimony, because I -- I mean,
10 do you want to come back on the 15th?

11 MS. FRANKE: We're certainly happy to appear at the
12 same time when this is --

13 CHAIRPERSON HILL: Okay. And then you don't need to
14 give your testimony now.

15 Commissioner Nash, can you hear me?

16 ANC COMMISSIONER NASH: Yes, I can, Mr. Chairman.

17 CHAIRPERSON HILL: Could you introduce yourself for the
18 record please?

19 ANC COMMISSIONER NASH: Certainly. My name is Rick
20 Nash, and I'm appearing on behalf of the ANC 3C. I'm the
21 commissioner for SMD 3C08, in which the property subject to this
22 application is located. The ANC has no objection to the
23 postponement and is prepared to appear at that time in February.

24 CHAIRPERSON HILL: Okay. Thanks, Commissioner.

25 And I know that there's a lot of people that are

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1 planning on testifying and I'm sorry that we have switched this
2 date, but we do want to get information that the Applicant has
3 -- the Applicant has gotten further questions from DDOT. And so
4 for the best use of time for everyone is to hear everything at
5 the same time. So we'll all come back on the 15th then.

6 And I guess, Ms. Wilson, again, what -- I know that,
7 you know, the discussion that the Board is going to have questions
8 about I think primarily are again about the mixed use argument
9 and then that being the threshold question. So I will leave it
10 at that, I suppose, Ms. Wilson, do you have anything else on
11 behalf of the Applicant?

12 MS. WILSON: Just to apologize for the late
13 postponement and I appreciate everyone's time today and
14 willingness to postpone this.

15 CHAIRPERSON HILL: Okay. Great. Then we'll see you
16 on the 15th.

17 MR. MOY: Mr. Chairman?

18 CHAIRPERSON HILL: Yes, sir?

19 MR. MOY: It's a reminder, I don't want to belabor
20 this, but if it's possible, so that all the parties, including
21 our staff, have a chance to review the materials, is the Applicant
22 able to make their filing two weeks prior to February 15, or at
23 least maybe by that Friday of February the 3rd or Monday, February
24 the 6th?

25 MS. WILSON: Yes. We anticipate the survey will be

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1 done by January 25th, so the 3rd or the 6th will give us plenty
2 of time, and we'll try to get any updated materials sooner.

3 CHAIRPERSON HILL: Let's try to get you by the 3rd,
4 okay, that's Friday the 3rd. Okay? And then parties will have
5 an opportunity to take a look at it on the weekend.

6 Commissioner Nash, did you hear that?

7 ANC COMMISSIONER NASH: I did, Mr. Chairman.

8 CHAIRPERSON HILL: Okay. Great.

9 All right. Okay. Well, that was short. You guys have
10 a good day. Bye, Mr. Acosta.

11 MR. ACOSTA: Thank you, Mr. Chair, we'll see you next
12 month.

13 CHAIRPERSON HILL: And in that case, also we'll
14 probably have a full Board with Mr. Blake anyway, so that's kind
15 of helpful. All right. We got Mr. Smith back. And I get to
16 read something else. Oh, that reminds me. The Board and the
17 public, I unfortunately have a -- something I need to do at 12
18 noon. So we'll take lunch at 12 noon. And then come back, I
19 don't know, probably 12:30 or something, actually 12:30. And so
20 just to let everyone know, I will have to stop at 12:30 and we
21 can come back and we'll just take our lunch then is all, if that's
22 all right with everybody.

23 Okay. Good morning, ladies and gentlemen, the Board
24 of Zoning Adjustment. Today's date is 01/11/2023. This public
25 hearing will please come to order. My name is Fred Hill, I'm

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1 the Chairperson of the District of Columbia Board of Zoning
2 Adjustment. Joining me today is Vice Chair Lorna John, Board
3 members Chrishaun Smith, and Zoning Commissioner Peter May.

4 Today's meeting and hearing agenda are available on the
5 Office of Zoning's website. Please be advised that this
6 proceeding is being recorded by a court reporter and is also
7 webcast live via Webex and YouTube Live. The video of the webcast
8 will be available on the Office of Zoning's website after today's
9 hearing. Accordingly, everyone who is listening on Webex or by
10 telephone will be muted during the hearing. Also, please be
11 advised we do not take any public testimony in our decision
12 meeting session. If you're experiencing difficulty accessing
13 Webex or with the telephone call-in, then please call our OZ
14 hotline number at 202-727-5471 to receive Webex log-in or call-
15 in instructions.

16 At the conclusion of a decision meeting, I shall, in
17 consultation with the Office of Zoning, determine whether a full
18 or summary order may be issued. A full order is required when
19 the decision it contains is adverse to a party, including an
20 affected ANC. A full order may also be needed if the Board's
21 decision differs from the Office of Planning's recommendation.
22 Although the Board favors the use of summary orders whenever
23 possible, an applicant may not request the Board to issue such
24 an order.

25 In today's hearing session everyone who is listening

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1 on Webex or by telephone will be muted during the hearing, and
2 only persons who are signed up to participate or testify will be
3 unmuted at the appropriate time. Please state your name and home
4 address before providing oral testimony or presentation. Oral
5 presentations should be limited to a summary of your most
6 important points. When you're finished speaking, please mute
7 your audio so that your microphone is no longer picking up sound
8 or background noise.

9 All persons planning to testify either in favor or in
10 opposition should have signed up in advance. They'll be called
11 by name to testify. If it is an appeal, only parties are allowed
12 to testify. By signing up to testify all participants complete
13 the oath or affirmation as required by Subtitle Y 408.7. Requests
14 to enter evidence at the time in online virtual hearings such as
15 written testimony or additional supporting documents, other than
16 live video which may not be presented as part of the testimony,
17 may be allowed pursuant to Y 103.13 providing that the person
18 making the request to enter exhibits explain, A, how the proposed
19 exhibit is relevant, B, the good cause that justifies allowing
20 the exhibit in the record, including an explanation of why the
21 requester did not file the exhibit prior to the hearing pursuant
22 to Y 206, and how the proposed exhibit would not unreasonably
23 prejudice any parties.

24 The order of procedures for special exception and
25 variances are pursuant to Y 409. At the conclusion of each case,

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1 an individual who was unable to testify because of technical
2 issues may file a request for leave to file a written version of
3 the planned testimony to the record within 24 hours following the
4 conclusion of public testimony in the hearing. If additional
5 written testimony is accepted, then parties will be allowed a
6 reasonable time to respond as determined by the Board. The Board
7 will then make its decision at its next meeting session, but no
8 earlier than 48 hours after the hearing.

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

14 Finally, District of Columbia Administrative
15 Procedures Act requires that the public hearing on each case be
16 held in the open before the public. However, pursuant to Section
17 405(b) and 406 of that Act, the Board may, consistent with its
18 rules of procedures and the Act, enter into closed meetings on a
19 case for purposes of seeking legal counsel on a case pursuant to
20 D.C. Official Code Section 2-575(b)(4) and/or deliberate on a
21 case pursuant to D.C. Official Code Section 2-575(b)(13), but
22 only after filing the necessary public notice, in the case of an
23 emergency closed meeting, after taking a roll call vote.

24 Mr. Secretary, once again, I know you went through
25 this, but do we have any preliminary matters that you'd like to

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1 repeat or we'll just go ahead deal with those on a case-by-case
2 basis?

3 MR. MOY: Yes. Thank you, sir. The latter, of course.
4 No sense to be repetitive. The Board is in its meeting session
5 for two applications. And the first is Application No. 20828 of
6 Olufemi Awoseye, I'm sorry for damaging my pronunciation of his
7 last name, but this application is called for the Board to
8 consider the request for party status by a Mr. Christopher Austin.
9 For the record, the Board originally granted the Applicant's
10 request for continuance. And as I said earlier in the day, the
11 continuance is to May 3rd, 2023, but this case now is to consider
12 the request of party status. So let me read the caption, if I
13 may, sir. This is a self-certified application pursuant to
14 Subtitle X, Section 1002 for an area variances from the side yard
15 requirement, Subtitle D, Section 206.3 and the minimum lot area
16 requirement, Subtitle D, Section 302.1. Property's located at
17 5321 B Street, S.E., Square 5304, Lot 6. And once again before
18 the Board is the request for a party status.

19 CHAIRPERSON HILL: Sure.

20 I'm going to -- if you could just bring in the Applicant
21 and the party status individual, please, Mr. Young?

22 If the Applicant can hear me, could you please
23 introduce yourself for the record?

24 MR. AUSTIN: All right. My name is Christopher Austin.

25 CHAIRPERSON HILL: No, I'm sorry, Mr. Austin. That's

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1 okay. I meant the Applicant first please, Mr. Austin.

2 MR. AUSTIN: Okay, sorry.

3 CHAIRPERSON HILL: No problem.

4 MS. DRYDEN: Hi, my name is Hayley Dryden. I am on
5 behalf of the Applicant's team at Carballo Architecture for 5321
6 B Street.

7 CHAIRPERSON HILL: Okay. Great. So, Ms. Dryden, as
8 you know, we've already gone ahead and granted the postponement
9 request.

10 Mr. Austin, you are the adjacent property owner,
11 correct?

12 MR. AUSTIN: That is correct.

13 CHAIRPERSON HILL: And you're requesting party status,
14 correct?

15 MR. AUSTIN: Yes, I am.

16 CHAIRPERSON HILL: Okay. So I've looked, as the Board
17 has also, at your request for party status. I'm sure -- I
18 shouldn't say I'm sure. I believe you meet the criteria. I
19 believe my colleagues will also agree that you meet the criteria.
20 So unless I hear something different from my colleagues, I will
21 assume that we are in agreement. And if not, please speak up.

22 Okay. Hearing none, Mr. Austin, I guess just so you
23 know now, so you'll be granted party status. And what that means
24 is that you'll have an opportunity to present your case, so the
25 Applicant will go ahead, present their understand -- no, I'm

1 sorry. They will present their reasons as to why they believe
2 they're meeting the criteria within the regulations to grant the
3 relief requested. So I would go ahead if I were you and take a
4 look at the case application that's in the BZA. And if you have
5 any questions on how to do that, you can go ahead and reach out
6 to the Office of Zoning and, you know, study what the Applicant's
7 arguments are for the actual regulation. Then you will have an
8 opportunity to give your testimony and also why you believe
9 they're either, A, I mean, you know, not meeting that criteria
10 is what we are focusing on or will focus on, but also you can
11 tell us your concerns about the project. And then you'll have
12 an opportunity to ask questions of the Applicant. You'll also
13 hear from the Office of Planning, you'll ask questions of the
14 Office of Planning. You're basically treated as a party, meaning,
15 you know, you'll have every opportunity that the Applicant has
16 for their case. Do you have any questions, Mr. Austin?

17 MR. AUSTIN: None at this time.

18 CHAIRPERSON HILL: Okay. Great. All right. Well,
19 then, Mr. Austin and Ms. Dryden -- does the Board have anything
20 they'd like to say? And if so, please speak up.

21 All right. Then Ms. Dryden and Mr. Austin, we will see
22 you on May 3rd.

23 MR. AUSTIN: All right. Thank you so much.

24 MS. DRYDEN: Thank you.

25 CHAIRPERSON HILL: Thank you. Bye-bye.

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1 Okay. All right. Mr. Moy, you can call our next one
2 when you get a chance.

3 MR. MOY: Yes, thank you, sir. The Board is still in
4 its public meeting session and this is the last case in that
5 session. And it is an expedited review calendar Case Application
6 No. 20846 of Jeremy L. Pelofsky. And it is an application
7 pursuant to Subtitle X, Section 901.2 for special exception under
8 Subtitle D, Section 5201.1(b) from the rear yard requirement,
9 Subtitle D, Section 5004.1(a), which would allow an accessory
10 structure in a required rear yard. Property is located at 4704
11 46th Street, N.W., Square 1546, Lot 808. And this application
12 -- I'm sorry -- okay, that's all I have, sir.

13 CHAIRPERSON HILL: Okay.

14 All right. Is anybody interested in talking before me?

15 ZC COMMISSIONER MAY: Talking for you?

16 CHAIRPERSON HILL: I said before me.

17 ZC COMMISSIONER MAY: Oh, before you.

18 CHAIRPERSON HILL: I've been talking a lot. I've been
19 talking the last 45 minutes.

20 ZC COMMISSIONER MAY: No, I --

21 CHAIRPERSON HILL: No, I'm fine, I'll talk first.

22 VICE CHAIR JOHN: I'll go ahead, Mr. Chairman.

23 CHAIRPERSON HILL: Okay. Go ahead. Thanks, Vice Chair.

24 VICE CHAIR JOHN: So this is a request for expedited
25 review. And in looking at the record, it appears to be fairly

1 straightforward. The -- ordinarily or in some situations, we
2 would see a request for rear yard relief, but in this case,
3 there's an existing accessory structure already in the rear yard.
4 And by adding -- by constructing the addition, it would result
5 in having -- it would reduce the required rear yard and result
6 in having the accessory building situated within the required
7 rear yard.

8 And in looking at the application, there doesn't seem
9 to be any adverse impact on the neighboring properties because
10 of the addition, which will be a lot shorter than the main house.
11 And so in terms of light and air and privacy, I don't believe
12 there would be any adverse impact, and I would be in support of
13 the application. ANC is also in support. There's any issue
14 about the permeable surface and whether the Board should
15 incorporate a condition for mitigation -- drainage mitigation,
16 and I'm trying to find the exact terminology. Apparently there's
17 a well that the Applicant promised to construct, which would help
18 with the loss of the required permeable surface. So I don't know
19 how the Board feels about including that as a condition.

20 CHAIRPERSON HILL: Okay. Thanks, Vice Chair John.

21 Mr. Smith?

22 COMMISSIONER SMITH: (Indiscernible) logically with the
23 assessment that Ms. John provided just now regarding this case,
24 to the testament of the Office of Planning, this is a very
25 straightforward case. I believe that the Applicant's met the

1 burden of proof for us to grant them the special exception. They
2 meet all of the criteria specified in Subtitle X, 901.2, the
3 general special exception standards as well as the special
4 standards of 5201.1(b). So I would be inclined to grant them
5 the special exception. Regarding the ANC's conditions,
6 installing a dry well system and stated that the permeable area
7 will meet or exceed the 50 percent requirement and ANC asked the
8 Board to (indiscernible) requirement for the installation of dry
9 well, I'm comfortable with including that condition. It seems
10 to me to be within the scope of what we can grant to eliminate
11 some potential impacts that this structure may have on
12 surrounding property. So I'm comfortable with the condition and
13 would support the inclusion of it.

14 CHAIRPERSON HILL: Okay.

15 Commissioner May?

16 ZC COMMISSIONER MAY: I would agree with everything
17 that has been said so far. I think that the inclusion of the
18 condition can be supported. It is, in effect, a mitigation for
19 this addition that -- for which the relief is being sought. It's
20 a little bit slightly disconnected because the relief has to do
21 with the existence of the accessory structure, but the bare fact
22 of it is that it comes down to the addition which increases the
23 impervious surface on the property and installing a dry well is
24 a way to address that. So I think it's a reasonable thing to
25 include in the order.

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1 CHAIRPERSON HILL: Okay.

2 I would have kind of gone either way. In fact, I would
3 have leaned more towards not including it as a condition only
4 because it's something that I didn't think necessarily tends to
5 fall within what we analyze. However, I now will ask my fellow
6 Board members who are here on a regular basis to remember this
7 whenever we're talking about, again, water runoff or -- like I
8 mean, I don't want to get into the fact of the whole like, you
9 know, dry wall system -- I mean, sorry, dry well system like I
10 know what a dry well system is overall. I thought that those
11 kind of were things that you're putting in to protect your own
12 investment, which is your building or whatever you're building,
13 so that they would do that anyway. Right? So but I'm comfortable
14 including that as a condition because it's also requested by the
15 ANC. And I would also agree with the analysis that my colleagues
16 have put forward. So that being the case, I'll go ahead and make
17 a motion to approve Application No. 20846 as captioned and read
18 by the secretary, including a condition that the Applicant
19 install a dry well system to mitigate environmental harms, and
20 ask for a second, Ms. John?

21 VICE CHAIR JOHN: Second.

22 CHAIRPERSON HILL: Motion been made and seconded, Mr.
23 Moy, if you'd take a roll call please?

24 MR. MOY: Yes, sir, thank you. When I call your name,
25 if you'll please respond to the motion made by Chairman Hill to

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1 grant the relief as well as a condition to install a dry well
2 system. This motion to grant was second by Vice Chair John.

3 Mr. Smith?

4 COMMISSIONER SMITH: Yes.

5 MR. MOY: Vice Chair John?

6 VICE CHAIR JOHN: Yes.

7 MR. MOY: Zoning Commissioner Peter May?

8 ZC COMMISSIONER MAY: Yes.

9 MR. MOY: Chairman Hill?

10 CHAIRPERSON HILL: Yes.

11 MR. MOY: Then staff would record the vote as four to
12 zero to one. And this is on the motion made by Chairman Hill to
13 approve the application with the condition as cited by the Chair.
14 The motion to approve was second by Vice Chair John. Also in
15 support of the motion is Zoning Commissioner Peter May, Mr. Smith,
16 of course Vice Chair John, and Chairman Hill. Again, the motion
17 carries on a vote of four to zero to one, and that is one no
18 other Board member participating today. Motion carries, sir.

19 CHAIRPERSON HILL: Okay. Thank you.

20 All right. Are we all good to continue. Is everybody
21 good? Okay.

22 All right. Mr. Moy, you can take -- you can call our
23 next case please.

24 MR. MOY: Okay. So this would be Case Application No.
25 7468B, B as in Bravo, of NHT Communities and G and I -- or rather

1 G and I X East River Park MZL, LLC. The Applicant is seeking
2 -- this is a self-certified application pursuant to Subtitle Y,
3 Section 704 for a modification of significance of a BZA order,
4 which are appeal 7468 and 7469 that allow the location of required
5 parking on a separate lot and a special exception from Subtitle
6 C, Section 701.10 to permit the reduction of required parking
7 spaces pursuant to Subtitle C, Section 703 and Subtitle X, Section
8 901. The property is located in MU-7B zone at 307 40th Street,
9 N.E., Square 5083, Lot 179, Square 5051N, Lots 15, 16, 838, and
10 840, including the East River Shopping Center. The preliminary
11 matter here, Mr. Chairman, is that ANC 7F filed a motion for
12 continuance. And one other thing, there is a Applicant's
13 PowerPoint which was submitted within the 24 hour block and of
14 course I just announced that the ANC's asking for a postponement.
15 So if you allow that to the record, then the staff can move ahead
16 with that. And that's all I have, sir.

17 CHAIRPERSON HILL: Okay. Unless the Board has any
18 issues, we can go ahead and put the PowerPoint into the record.
19 We will see how after if we do hear this or not.

20 If the Applicant could hear me, could they introduce
21 themselves for the record please?

22 MR. TUMMONDS: Yes, good morning, Mr. Chairman, members
23 of the Board, my name is Paul Tummonds with the law firm of
24 Goulston & Storrs on behalf of the Applicant.

25 CHAIRPERSON HILL: Okay, Mr. Cummins, you know the ANC

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1 is asking for a postponement, correct?

2 MR. TUMMONDS: Correct. And so we submitted a letter
3 to the record yesterday, which said we agree to the postponement.
4 However, due to the nature of this case, we believe that a
5 postponement to Jan- -- I'm sorry, to February 15th would be
6 appropriate and that in the next five weeks we could absolutely
7 make a presentation to ANC 7F and address any questions that they
8 have.

9 CHAIRPERSON HILL: Okay.

10 Mr. Moy, is -- Mr. Young, is the ANC here? You don't
11 know?

12 MR. YOUNG: I do not see him on.

13 CHAIRPERSON HILL: Okay. That's fine.

14 Mr. Moy, what do we -- I know we now have an FMBZA case
15 scheduled on the 15th, which means that Mr. May is going to have
16 to come back. And I guess that just as good as he comes back
17 for this, I suppose, depending upon how many cases are on there.

18 But I don't think, Mr. May, you don't have -- that's
19 not your day necessarily. You don't have to answer just yet,
20 Mr. May.

21 Mr. Moy, what's our schedule look like on the 15th?

22 MR. YOUNG: Sorry, the ANC is on now.

23 CHAIRPERSON HILL: Okay. Give me one second,
24 Commissioner.

25 Go ahead, Mr. Moy, what's our schedule on the 15th?

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1 MR. MOY: Okay. For February 15th, including the
2 foreign missions embassy of Kosovo case, we would have three
3 cases, so I think the Board can certainly handle an additional
4 case for February 15th. That's my suggestion.

5 CHAIRPERSON HILL: No, that's good. That's great.
6 That FMBZA case does not seem like it's going to take a short
7 amount of time.

8 So but, Mr. Tummonds, okay, then we're going to put you
9 on the 15th.

10 Commissioner Holcomb, can you hear me?

11 ANC COMMISSIONER HOLCOMB: Yes, sir, Mr. Chairman.

12 CHAIRPERSON HILL: Could you introduce yourself for the
13 record please, sir?

14 ANC COMMISSIONER HOLCOMB: Yes, sir, for the record,
15 Tyrell Holcomb, commissioner 7F01, Chair of ANC 7F.

16 CHAIRPERSON HILL: Okay, Commissioner, well, welcome.

17 ANC COMMISSIONER HOLCOMB: Thank you.

18 CHAIRPERSON HILL: Let's see. So then we're going to
19 go ahead and postpone you, Mr. Chairman, to the 15th. Okay.

20 ANC COMMISSIONER HOLCOMB: Could I make a request to
21 postpone until March?

22 CHAIRPERSON HILL: I don't know if we need --

23 ANC COMMISSIONER HOLCOMB: Actually --

24 CHAIRPERSON HILL: Why is that, Commissioner?

25 ANC COMMISSIONER HOLCOMB: Postponing to February still

1 is a bit rushed for us and that date won't allow us the
2 opportunity to vote. We've already set our agenda for our January
3 meeting. The commission would like to have a separate meeting
4 with Mr. Tummonds' client in advance of us having a vote. Our
5 January meeting is next week on the 17th, so we'd like to be able
6 to take up this matter at the February meeting. If there's a
7 date at the end of February, we'd support that, but we don't
8 support a quick turnaround.

9 CHAIRPERSON HILL: Okay.

10 Mr. Moy? Can you hear me, Mr. Moy?

11 MR. MOY: I'm sorry, sir.

12 CHAIRPERSON HILL: Yeah, that's all right.

13 When, Commissioner, is your ANC meeting in February?

14 ANC COMMISSIONER HOLCOMB: Our February meeting date
15 is the 21st, I believe.

16 CHAIRPERSON HILL: Okay. So the 23rd.

17 So then, Mr. Moy, what's March 1st look like?

18 MR. MOY: The March 1st docket, the Board is carrying
19 three cases at the moment.

20 CHAIRPERSON HILL: Okay. I mean, Mr. Tummonds, is a
21 few more weeks going to affect your financials or anything?

22 MR. TUMMONDS: It gets close, but I think we can do
23 March 1st.

24 CHAIRPERSON HILL: Okay. All right. Then we'll do
25 March 1st, Mr. Moy.

1 MR. MOY: Okay. And I have one other comment, sir.
2 Staff informs me that there's an individual on the phone who
3 would like to give his oral testimony because according to this
4 person, he may not be available at the next hearing on this
5 application.

6 CHAIRPERSON HILL: Okay. I don't know how to do that
7 exactly because like there's not really any -- we haven't heard
8 the case yet.

9 ZC COMMISSIONER MAY: We could ask this person to submit
10 written testimony if they can't be here in person.

11 CHAIRPERSON HILL: Okay. Thank you, Commissioner May,
12 and I think that that is a wonderful idea.

13 Mr. Moy, if you could please let the person who would
14 like to submit testimony if they could just submit written
15 testimony into the record, and then we'll be able to take a look
16 at it at that time.

17 I mean, again, as the person who's on the phone
18 listening right now, it's difficult to give testimony when we
19 haven't heard the case yet. So that's why it would be better in
20 written form at this time. All right. Then we'll come back on
21 04 -- 03/01, 03/01?

22 MR. MOY: March 1st.

23 CHAIRPERSON HILL: Yeah. Okay. All right. Thank you,
24 Mr. Tummonds and Commissioner Holcomb, we'll see you or we'll at
25 least hear from your ANC commissioner on March 1st.

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1 ANC COMMISSIONER HOLCOMB: Thank you, Mr. Tummonds, we
2 will be present and prepared to provide some testimony.

3 CHAIRPERSON HILL: Okay. Thank you.

4 MR. TUMMONDS: Thank you.

5 CHAIRPERSON HILL: All right, Mr. Moy, let me see. So
6 that other one that we just postponed, the 20828, that was in
7 May, right, May 3rd, correct, Mr. Moy? I think that's correct.

8 MR. MOY: That's correct, sir.

9 CHAIRPERSON HILL: Okay. I guess we'll just keep going.
10 I don't know what's going to happen today. Let's go ahead and
11 do 20841.

12 MR. MOY: Okay. So the case before the Board is
13 Application No. 20841 of Inmobiliara, if I'm pronouncing that
14 correctly, LLC. This is a self-certified application for special
15 exceptions pursuant to Subtitle X, Section 901.2 from the rear
16 yard requirement Subtitle G, Section 605.1, pursuant to Subtitle
17 G, Section 609.1, and Subtitle G, Section 1201, and under Subtitle
18 U, Section 504.1(f) to permit a lodging use. Property is in the
19 MU-15 zone at 1322 through 1326 18th Street, N.W., Square 137,
20 Lots 33 and 824. And checking one other thing, Mr. Chairman. I
21 think that's all I have, but would like to add -- I don't see
22 anyone else who has signed up to testify at the moment. Thank
23 you.

24 CHAIRPERSON HILL: Okay. Thank you.

25 If the Applicant could hear me, if they could please

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1 introduce themselves for the record?

2 MR. KADLECEK: Good morning, Mr. Chair, Cary Kadlecek
3 from the law firm of Goulston & Storrs on behalf of the Applicant.

4 CHAIRPERSON HILL: Hi, Mr. Kadlecek, how are you doing
5 today, happy New Year.

6 MR. KADLECEK: I am -- thanks, you too.

7 CHAIRPERSON HILL: All right. Mr. Kadlecek, if you can
8 go ahead and walk us through your application, your client's
9 application, and why you believe that you're meeting the criteria
10 for us to grant the relief requested. I'm going to put 15 minutes
11 on the clock just so I know where we are, and you can begin
12 whenever you like.

13 MR. KADLECEK: Great. Thank you. Also joined --
14 joining me today is Don Malnati, he's part of the owner, developer
15 and Sean Pichon, the architect. Bill -- Sean will be talking as
16 well. So again, we are here to present the application for
17 special exception relief to allow the expansion and conversion
18 of an existing building to lodging use in the MU-15 zone, which
19 is in the DuPont Circle neighborhood. To construct the fifth-
20 floor addition and rear addition for the proposed 62-room inn,
21 we're requesting special exception relief, one, from the rear
22 yard requirements, and, two, from the use requirements to allow
23 the lodging use. We're pleased to have the support of the Office
24 of Planning, DDOT, and ANC 2B. And I just want to note, as stated
25 in our pre-hearing filing, we've committed to two conditions as

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1 we proposed and agreed with with the ANC. So with that, I'll
2 turn it over to Mr. Pichon.

3 And Mr. Young, if you could bring up our presentation
4 please?

5 MR. PICHON: Thank you, Cary. Good morning, Board.
6 Again, my name is Sean Pichon, I'm principal here at PGN
7 Architects. We are presenting today the properties between 1322
8 and 1326 18th Street for the BZA exceptions that Cary noted
9 earlier. If we'd go to the next slide?

10 We are located along 18th Street, N.W., within a block
11 away from the DuPont Circle Metro along 18th Street between Mass
12 Avenue and M Street, N.W. Next slide please?

13 The property is one property in from Mass Avenue,
14 nestled in two existing structures along 18th Street. We are
15 three existing historic townhouses that we will be renovating and
16 adding on to. Next slide please?

17 This is an image of the existing rear yard condition.
18 These were non-historic additions that were put on to the
19 building. We are going to be removing those and adding on a new
20 addition to the rear yard. Next slide please?

21 This is a site plan that shows the -- the hatched area
22 is the new addition that will be added on beyond what is there
23 in the previous picture shown. Next slide please?

24 So as Cary mentioned, we're going to be creating a 61-
25 key hotel use, lodging use situated here. The rear yard is what

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1 we're asking for relief from. The expansion to the rear is to
2 accommodate the additional units within the historic structures.
3 Next slide please?

4 So we did two calculations for the rear yard. One is
5 the -- it's an irregular rear yard. One is a calculation that
6 takes into consideration each foot and gives you an average of
7 the rear yard, and that average comes out to 12 foot 6. And we
8 also did another calculation that shows what the area is for the
9 average rear yard and what that would look like if it were a line
10 cut parallel to the rear property line. And so you can see the
11 relationship to both calculations. Under the average, we are 12
12 foot 6 on average in a dimensional standpoint. And if we were
13 to provide a 12-foot rear yard across, that would require us to
14 have 914 square feet across the rear yard. And we are meeting
15 that same requirement, just in an irregular shape, that same 914
16 square feet. Next slide please?

17 The highlighted red areas are showing the addition. So
18 we are adding one story onto the existing rowhouses.

19 And if you'll go to the next slide, you'll see the
20 addition to the rear yard in total. And next slide?

21 I would also like to mention -- this is a three-
22 dimensional image of the addition and what the property would
23 look like once completed. I'd also like to add that we did
24 receive approval from the HPRB for this addition and rear yard
25 addition. I'll turn it over back to Cary for the next slide and

1 run through the remainder of our presentation.

2 MR. KADLECEK: Thank you, Sean. So I'm just going to
3 quickly highlight how the project meets the standards for relief.
4 So this was submitted into the record, but what I wanted to
5 highlight is one of the key aspects of the analysis for the relief
6 for the use is a balance of commercial, residential, and lodging
7 uses in the vicinity of the property. And so we did an analysis
8 of what the current land uses are within one quarter mile of the
9 property, and you can see the distribution of uses. Even with
10 the proposed lodging use, only about 2 percent of the land use
11 within one quarter mile would be lodging use. Next slide please?

12 So this just highlights how the application meets the
13 standards for lodging use in the MU-15 zone. I won't run through
14 all these. It's all laid out in our written submissions. But I
15 just want to note that, as Sean mentioned, that the project as a
16 concept for height massing and design has already been approved
17 by the HRB, so it is deemed commensurate with the neighborhood
18 and the surrounding properties. As mentioned, there is still a
19 maintained balance of uses in the vicinity of the property, even
20 with the proposed lodging use. Again, this project as an inn
21 will not have any function rooms, so that criteria is satisfied.
22 In addition, as walking along public rights of way, the building
23 entrance is only 800 feet from the DuPont Circle Metro Station.
24 With respect to parking and loading demand, we don't anticipate
25 it would generate much based on the nature of how the use

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1 operates, but it couldn't be accommodated on site regardless.
2 And that goes into the condition though that we did agree to with
3 the ANC, which is the Applicant is committed to leasing two off-
4 site parking spaces within 500 feet of the building for use by
5 people who will be servicing the building, such as maintenance
6 people and cleaning staff, and so forth.

7 And then finally, with respect to access, there's
8 really no ability again, because this property is landlocked to
9 provide access, any sort of curb cut. But I do want to note that
10 the adjacent building to the north, the large office building,
11 there's a driveway right next to the subject property that's on
12 that adjacent parcel. And we are in discussions with them both
13 in terms of being able to use some of the -- or to occupy part
14 of their property during construction. And we're also hoping to
15 come to some arrangement that we may be able to share some of
16 that driveway access to service, like garbage pickup, and also
17 allow, for example, people who are coming to this lodging use to
18 be able to drop off on that little driveway. So it's nothing we
19 can commit to right now because we haven't had those discussions,
20 but it is something that the Applicant is quite aware of and is
21 engaging actively with that adjacent property. Next slide
22 please?

23 And then this slide goes to how the application meets
24 the standards for rear yard relief with respect to the first two.
25 This project, of course, won't contain any offices or

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1 residential, so those are not applicable standards. The
2 sightlines, as you may have noticed on an earlier slide, the
3 properties that are to the rear, the adjacent properties that are
4 rear, they're actually fairly set back from the property lines.
5 And then, of course, because of the angle of the rear property
6 and the building, it doesn't really create any sightlines that
7 would be objectionable to neighboring properties. Again, we
8 don't anticipate any significant parking and loading demand. And
9 as mentioned, we will be leasing those two off-site spaces. And
10 then finally, as Sean described, the rear yard is really irregular
11 because of the line of the -- their property line and then of
12 course the way that the building is designed in the rear. But
13 in terms of average rear yard and then the amount of actual open
14 space that will still be preserved, it's effectively the same as
15 if we had a regular rear yard, but it's because of the pinch
16 points where the rear yard does get much closer to the rear
17 property line than 12 feet that we're requesting the relief.

18 So with that, that concludes our presentation, and we
19 are happy to answer any questions that the Board may have.

20 CHAIRPERSON HILL: Thank you, Mr. Kadlecek.

21 Does the Board have any questions of the Applicant?

22 All right. Going to turn to the Office of Planning.

23 MR. KIRSCENBAUM: Good morning, Chair Hill, and members
24 of the Board of Zoning Adjustment. I'm Jonathan Kirschenbaum
25 with the Office of Planning and we recommend approval of the two

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1 special exception requests and we rest on the record. Please let
2 me know if you have any questions. Thank you.

3 CHAIRPERSON HILL: Thank you.

4 Does anybody have any questions for the Office of
5 Plannig?

6 Mr. Kadlacek, I forget, what are the two conditions
7 that the ANC had wanted you guys to do?

8 MR. KADLACEK: One was to lease -- well, the two we
9 agreed to though, were that we would lease two off-site parking
10 spaces for use by building staff servicing the building. And
11 then the second was that we would post a contact phone number on
12 the front of the building for neighbors to be able to reach the
13 hotel operator in the event that there's guests who are
14 disruptive, making noise, or the like.

15 COMMISSIONER SMITH: I have a question.

16 CHAIRPERSON HILL: Go ahead, Mr. Smith.

17 COMMISSIONER SMITH: Mr. Kadlacek, have you already
18 identified those two parking spaces and preliminarily entered
19 into some kind of contract for those two?

20 MR. KADLACEK: We haven't identified them, but we are
21 -- and, Don, correct me if I'm wrong -- we are hoping that we
22 can lease them from that adjacent office building. They have a
23 large underground parking garage. So it's our hope that we'll
24 be able to leave them there. But no, we haven't identified
25 anything yet.

1 COMMISSIONER SMITH: Okay. All right. Thank you.

2 CHAIRPERSON HILL: Now, Mr. Kadlacek, just to be clear,
3 you guys aren't asking for parking relief, correct?

4 MR. KADLACEK: No, we're not. And parking isn't
5 required. This was simply an accommodation that we made at the
6 request of the ANC. They had concerns about where people parking
7 -- sorry, servicing the building would park, so we agreed to this
8 condition.

9 CHAIRPERSON HILL: How do you plan on posting a number?

10 MR. KADLACEK: We'll just put it on the front door of
11 the building.

12 CHAIRPERSON HILL: Got it. Okay.

13 MR. KADLACEK: And we'll also provide it to the ANC.

14 CHAIRPERSON HILL: Got it. All right.

15 Mr. Young, is the ANC or anybody here wishing to speak?

16 MR. YOUNG: We do not.

17 CHAIRPERSON HILL: Okay. Mr. Kadlacek, you have
18 anything at the end?

19 MR. KADLACEK: I have nothing further. Thank you.

20 CHAIRPERSON HILL: Does the Board have anything else?

21 All right. I'm going to go ahead and close the hearing
22 on the record. Thank you, Mr. Kadlacek.

23 MR. KADLACEK: Thank you.

24 CHAIRPERSON HILL: Okay. I thought this is actually
25 pretty straightforward. I didn't really have any issues or

1 concerns. I think that the Applicant in its PowerPoint and in
2 their testimony has explained to me how they're meeting the
3 criteria within the regulations. So I will be voting in favor.
4 As far as the conditions are concerned, I don't really feel
5 comfortable necessarily implementing them only because it seems
6 as though they have agreed with the ANC since it's not something
7 that they're actually needing relief from. I think that, again,
8 the mitigation of the phone number sounds very reasonable as well
9 as the parking spaces. So I would just ask the Office of Zoning
10 when they're writing the record to refer to those conditions that
11 the Applicant has agreed to, but not to actually implement them
12 in the order. But those would be my thoughts.

13 Mr. Smith, do you have anything else you'd like to add?

14 COMMISSIONER SMITH: I do agree with you that I believe
15 that it's a fairly straightforward application and to the
16 testament of Office of Planning with working with the Applicant
17 they've gotten it to a position where we can support the
18 application. I do believe its met the burden of proof for us to
19 grant the special exception from the rear yard requirements, and
20 I do believe that they have sufficiently demonstrated that they
21 meet those -- the general special exception standards for us to
22 grant it. Regarding the condition and -- the conditions raised
23 by the ANC, I do agree with your assessment of the written
24 clarification regarding, which one was it, was it the long-term
25 commitment -- oh, the coordination and communication condition

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1 recommended by the ANC. But regarding the parking one, I'm kind
2 of torn to be completely honest with you, being that the Applicant
3 has already agreed to that particular condition. So I agree with
4 you that this -- the parking -- they're not required to have
5 parking and the request before us isn't necessarily tied to
6 anything related to parking, it's regarding the rear yard
7 requirements. But that hasn't stopped us in the past from condit-
8 -- agreeing to conditions raised by ANCs that have -- where the
9 Ap has agreed to them. So I'm very comfortable with putting in
10 the condition that they be required to have two off-street parking
11 spaces. But I would tie it to an enforcement trigger to say that
12 it needs to -- they would need to have that in hand prior to the
13 issuance of a certificate of occupancy, just for an enforcement
14 trigger for the zoning administrator. But you know, I'm open to
15 hearing from our fellow Board members about, you know,
16 incorporating that one condition. So with that, I would support
17 the application and I welcome any dialog from my fellow
18 commissioners.

19 CHAIRPERSON HILL: Okay. Yeah. Please, y'all let me
20 know about what you think about the conditions.

21 Commissioner May?

22 ZC COMMISSIONER MAY: Yeah. I mean, this is one where
23 I could go either way on the conditions. I mean, generally
24 speaking, I support the relief. I agree with you that this is a
25 pretty straightforward case. The -- you know, it's the lodging

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1 use that generates the need for some service vehicles, and for
2 -- and because of this particular lodging use, since there's no
3 one like at a front desk, you know, it's sort of -- it implies
4 there ought to be some other way to, you know, for neighbors to
5 address any concerns. So I mean, I, I mean, I think it's probably
6 sufficient to simply point to that within the order rather than
7 require it as a condition. But you know, I could go either way.

8 CHAIRPERSON HILL: Okay.

9 Vice Chair John?

10 VICE CHAIR JOHN: Thank you, Mr. Chairman. I support
11 all of the comments so far concerning how the application meets
12 the criteria for relief or rear yard relief and the lodging use,
13 which I appreciated the Applicant's analysis of the existing uses
14 in the neighborhood. That helped very much to show exactly what
15 -- how the lodging use would impact the neighborhood. I don't
16 support including the condition that -- both conditions in the
17 order, and I agree with Commissioner May that we could point or
18 reference those conditions. I am not very comfortable imposing
19 conditions where -- that are not tied to the particular relief
20 requested because there's no parking requirement. And so the
21 applicant is really, you know, meeting the ANC's concerns. And
22 the board is limited to considering ANC's interests and concerns
23 that are related to the zoning issue. So I -- that's a long way
24 of saying that I would reference the conditions, but not
25 incorporate them into the order.

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1 CHAIRPERSON HILL: Okay. Thanks, Ms. John.

2 Well, I'm of your mindset. And it doesn't sound like
3 our fellow Board members are necessarily -- at least one of them
4 is on the fence. So I'm going to go ahead and make a motion and
5 see what happens, which is to go ahead and make a motion to
6 approve Application No. 20841 as captioned and read by the
7 secretary and ask the Office of Zoning to reference in their
8 order the conditions that were put forward by the ANC and agreed
9 upon by the Applicant, but not issue them as conditions and ask
10 for a second, Ms. John?

11 VICE CHAIR JOHN: Second.

12 CHAIRPERSON HILL: The motion made and second, Mr. Moy,
13 if you could take a roll call please?

14 MR. MOY: When I call your name, if you'll please
15 respond to the motion made by Chairman Hill to approve the
16 application for the relief requested. Yeah, this motion to
17 approve was second by Vice Chair John.

18 Mr. Smith?

19 COMMISSIONER SMITH: Yes.

20 MR. MOY: Zoning Commissioner Peter May?

21 ZC COMMISSIONER MAY: Yes. Yes.

22 MR. MOY: Vice Chair John?

23 VICE CHAIR JOHN: Yes.

24 MR. MOY: Chairman Hill?

25 CHAIRPERSON HILL: Yes.

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1 MR. MOY: Staff would record the vote as four to zero
2 to one. And this is on the motion made by Chairman Hill to
3 approve the application. The motion to approve was second by
4 Vice Chair John also in support. We have no other -- we have
5 one Board member not present. Other members in support of the
6 motion to approve is Zoning Commissioner Peter May, Mr. Smith,
7 Vice Chair John, and Chairman Hill. Again, the motion carries
8 on a vote of four to zero to one.

9 CHAIRPERSON HILL: All right. Everyone, I guess since
10 we had so many postponements today, I'm probably going to make my
11 12:00 meeting. So why don't we go ahead and take a quick break
12 and come back at 11, and then we'll have our final case. Thank
13 you.

14 (Whereupon, there was a brief recess.)

15 MR. MOY: The Board is back, has returned to its public
16 hearing session after a quick break. And the time is at or about
17 11:00 in the morning, or 11:00 am. The next and last case for
18 the day is Application No. 20851 of 2646 39th Street, LLC. This
19 is a self-certified special exception pursuant to Subtitle X,
20 Section 901.2 for a special exception under Subtitle U, Section
21 421, which would allow a new residential building, a seven-unit
22 apartment house in the RA-1 zone at 2646 39th street, N.W., Square
23 1807, Lot 37.

24 CHAIRPERSON HILL: I love it, I was on mute. Okay.

25 If the Applicant can hear me, can they please introduce

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1 themselves?

2 MS. WILSON: Hi, Alex Wilson from Sullivan & Barros on
3 behalf of the Applicant in this case, and I am here with our
4 architect, Eric Gronning and the representative of the owner,
5 Armon Hekmat if any testimony is needed from them.

6 CHAIRPERSON HILL: Okay. Great. Ms. Wilson, if you
7 would go ahead and walk us through your client's application and
8 why you believe they're meeting the relief requested? I'm going
9 to put 15 minutes on the clock so I know where we are, and you
10 can begin whenever you like.

11 MS. WILSON: Great. Thank you so much.

12 Mr. Young, could you please pull up the presentation?
13 Could you go to the next slide please? Thank you.

14 The proposal is relatively straightforward. It's to
15 expand and add three units to an existing four-unit apartment
16 building for a total of seven units. All other development
17 standards are met. We are here because U 421 requires new
18 residential developments in the RA-1 zone to obtain relief, and
19 the zoning administrator has expanded the definition of a new
20 residential development to include expansions of existing
21 apartment buildings. The Office of Planning is recommending
22 approval. There was one comment from OP with respect to the
23 landscaping. They requested that we add shrubs to the front of
24 the building consistent with the adjacent properties and the
25 other properties on that block. We agreed to that. Initially,

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1 I think there was a concern that it could negatively impact our
2 GAR compliance, but we are happy to commit to adding the shrubs
3 in front of the building as long as it doesn't reduce our GAR to
4 noncompliance. And we're amenable to that as a condition if the
5 Board finds that appropriate. The ANC is supportive; DDOT has
6 no objection. We have some letters of support in the record and
7 we did see there is one letter in opposition. We always encourage
8 clients to be responsive to neighbor concern. In this particular
9 case, the concerns appeared to be relatively general,
10 overcrowding, parking, and character were listed as the primary
11 concerns of this neighbor. This is an existing apartment house
12 within an RA-1 zone next to other apartment houses. Therefore,
13 this proposal is appropriate for the character of the
14 neighborhood and we are meeting the parking requirement. And
15 again, there -- it's only a net increase of three units, which
16 should not lead to overcrowding. Next slide please?

17 I'd say also for those reasons, the proposal meets the
18 general special exception criteria. It is an expansion of an
19 existing apartment building in an existing apartment zone and all
20 other development standards are met. Next slide please?

21 In terms of the specific requirements, the proposal is
22 only for a net increase of three units and the infrastructure
23 surrounding the site is sufficient to accommodate that increase.
24 The Applicant has submitted all relevant materials for the Office
25 of Planning to review, and ultimately they recommended approval

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1 of this application. Next slide please?

2 Thank you. That concludes our presentation. Again,
3 we have the architect here and planner at the end of the
4 presentation if anyone has any specific questions.

5 CHAIRPERSON HILL: Okay. Great. Thank you.

6 Does the Board have any questions for the Applicant?
7 Sure, go ahead, Mr. Smith.

8 COMMISSIONER SMITH: Ms. Wilson, would the building
9 have a rooftop deck or would that be open to all residents of
10 the building or just the owner, that top penthouse unit?

11 MS. WILSON: The rooftop deck is private space, and so
12 we'll end up paying the IZ fee into the housing production trust
13 fund.

14 COMMISSIONER SMITH: Okay. I had another question.
15 How far to the rear of the adjacent attached building does this
16 -- how far back does your construction extend from the rear wall
17 of the attached dwelling unit, do you know?

18 MS. WILSON: Yeah, that's an existing apartment. Mr.
19 Gronning, could you answer that, how far past the --

20 MR. GRONNING: Good morning, my name's Eric Gronning,
21 I'm the architect for the project. It extends approximately 22
22 foot 7 inches past the neighboring building.

23 COMMISSIONER SMITH: Okay. So to that point, it's
24 fairly deep. Did you -- was there any conversations with the
25 attached -- with the owners of the attached building to gauge

1 their feelings on your proposed construction?

2 MR. GRONNING: I'm going to let -- defer to the owner
3 here to answer that question.

4 MR. HEKMAT: Hi, Arman Hekmat, I'm with the owner.
5 We've had conversations with all the immediate neighbors around
6 the property. I can't really recall specifics, but we haven't
7 had much opposition from either adjacent properties to my
8 knowledge.

9 COMMISSIONER SMITH: So you haven't heard anything back
10 from that?

11 MR. HEKMAT: Yeah, we have letters of support. I
12 believe one --

13 COMMISSIONER SMITH: All your letters of support are
14 from the east.

15 MR. HEKMAT: Yeah.

16 COMMISSIONER SMITH: Not from the attached building.

17 MR. HEKMAT: We have -- I have had conversations with
18 that one, I believe it's 2653 9th Street, and shared the plans,
19 but haven't heard back from them since, I'd say, the beginning
20 of December.

21 COMMISSIONER SMITH: Okay. All right. Thank you.
22 That's all I -- that's the end of my questions, thank you.

23 CHAIRPERSON HILL: I'm going to go ahead and turn to
24 the Office of Planning.

25 MS. BROWN-ROBERTS: Good morning, Mr. Chairman, and

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1 members of the Board. Maxine Brown-Roberts on BZA Case 20851 to
2 permit the expansion of an existing apartment house from four to
3 seven dwelling units pursuant to Subtitle U 421 and Subtitle X
4 901.2. As outlined in the OP report, the proposal meets all the
5 development standards and requirements of Subtitle U 421 and
6 would meet the general requirements of Subtitle X 901.2 as it
7 would meet all the development standards of the RA-1 zone and
8 would not affect the light, air, and privacy of the adjacent
9 properties. OP therefore recommends approval of the proposal.
10 Also in our report we recommended that the Applicant provided a
11 foundation plantings and as presented by the Applicant's
12 representative today, they are in support of that, provided that
13 it would not affect their GAR. Their GAR is -- could be met in
14 a number of ways, so I don't think there should be any conflict
15 in meeting the GAR and also, you know, providing the additional
16 landscaping. Also in our report, we talked about, you know,
17 providing -- for the parking surface to have water and more
18 permeable paving there, also to support the adjacent trees that
19 are being retained on the site. So in general, again, we
20 recommend approval of the proposal. Thank you, Mr. Chairman, and
21 I'm available for questions.

22 CHAIRPERSON HILL: Thanks, Ms. Brown-Roberts. So Ms.
23 Brown-Roberts, what exactly are the conditions that you had hoped
24 the BZA adopted?

25 MS. BROWN-ROBERTS: I think the main one was the having

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1 the additional plantings. That was the main one.

2 CHAIRPERSON HILL: Additional plantings on the front
3 of the property?

4 MS. BROWN-ROBERTS: Yes.

5 CHAIRPERSON HILL: To match the adjacent properties?

6 MS. BROWN-ROBERTS: Yes. And it's just again, it's
7 generally to, you know, provide some break from the concrete on
8 the along the frontage and just provide some additional
9 vegetation.

10 CHAIRPERSON HILL: Gotta love it, I'm completely
11 blanking, what's JAR?

12 MS. BROWN-ROBERTS: GAR.

13 CHAIRPERSON HILL: Oh, GAR, GAR. I thought you said
14 JAR, I though everyone was saying J, I was like -- okay. All
15 right.

16 Okay. All right. Mr. Young, is there anyone here
17 wishing to speak?

18 MR. YOUNG: We do not.

19 CHAIRPERSON HILL: Okay.

20 So Ms. Wilson, you're good with the condition. I don't
21 -- I mean -- and I guess we'll see what the Board has to say, my
22 fellow Board members, but like you're not concerned about the GAR
23 ratio?

24 MS. WILSON: So we're fine with having that as a
25 condition. And just to be conservative, if we could add something

1 at the end saying as long as it doesn't bring the GAR ratio to
2 noncompliance, we'll do that. I think it would be an overall
3 benefit to have shrubs as well. We discussed it as a team
4 yesterday, and so that -- you know, we could just add that as a
5 condition, that's fine with us.

6 CHAIRPERSON HILL: Ms. Brown-Roberts, I don't know what
7 the Board's going to say, but is that comfortable with the Office
8 of Planning?

9 MS. BROWN-ROBERTS: Yes, Mr. Chairman.

10 CHAIRPERSON HILL: Okay.

11 Okay. Does the Board have any questions of anybody?

12 All right. I'm going to go ahead and close the hearing
13 on the record. Thank you all.

14 Okay. Again, in this situation, I thought it was
15 relatively straightforward. I didn't have any issues with the
16 application and thought that they are meeting the criteria for
17 me to comfortably feel as though I can vote in favor. In terms
18 of the condition, I guess we put -- we have conditioned plantings
19 before, so I'm not opposed to the condition. And since it would
20 be made in a way that the Applicant and the Office of Planning
21 feel comfortable with concerning the GAR ratio in terms of their
22 noncompliance, I again would be fine with the condition. And in
23 some cases I know we, the Board, have wanted to see everything
24 before us prior to making a decision. In this particular case,
25 I also think that the order could be written in a way that is

1 pretty clear as to the plantings matching additional property
2 that is next door. So I would be comfortable with both the
3 application and the condition, and I'm going to go around the
4 board now.

5 Mr. Smith, you have any thoughts?

6 COMMISSIONER SMITH: No, I by and large agree with your
7 assessment of this particular case, and I will support the
8 inclusion of that condition as noted by you into the order.

9 CHAIRPERSON HILL: Thank you.

10 Commissioner May?

11 ZC COMMISSIONER MAY: Just a couple of comments. I
12 agree with everything that's been said so far and I agree with
13 including the condition. It's a little baffling to me that adding
14 plants might somehow cause a project to go out of compliance from
15 a GAR perspective. Maybe I need to look at that -- the math on
16 that again, because that's certainly not what GAR is intended to
17 do. The -- but I'll let that go for right now. I mean, I think
18 the condition is fine the way it -- I mean, the way it's been
19 proposed by OP and the Applicant, what they've agreed to. I will
20 say, you know, this is not the greatest looking building, this
21 addition that they're putting on. And I don't have any problem
22 with adding this and adding the density, but, you know, it would
23 sure be nice if what was put on these buildings was a little bit
24 more sympathetic to the existing architecture and the context.
25 But that's just an editorial comment that has no bearing on our

1 decision, so. But I couldn't -- you know, I just can't let it
2 go.

3 CHAIRPERSON HILL: All right.

4 Vice Chair John?

5 VICE CHAIR JOHN: I'm generally in agreement with the
6 comments so far. I believe the Applicant has shown how the
7 application meets the criteria for relief under U 421.1 and I
8 support the OP's condition, and I agree with Commissioner that I
9 don't know how GAR would come out of compliance because of the
10 addition of the shrubbery. I don't understand that. But the
11 Applicant said that they were being conservative, so I'm fine
12 with the condition.

13 CHAIRPERSON HILL: All right. Thanks, Ms. John.

14 Okay. I'm going to go ahead and make a motion to
15 approve Application No. 20851 as captioned and read by the
16 secretary, including a condition that additional plantings be
17 made in the front yard to match the adjacent properties as long
18 as the GAR ratio does not come into noncompliance, and ask for a
19 second, Ms. John?

20 VICE CHAIR JOHN: Second.

21 CHAIRPERSON HILL: Motion been made and second, Mr.
22 Moy, if you'd take the roll call?

23 MR. MOY: Thank you, sir. When I call your name, if
24 you'll please respond to the motion made by Chairman Hill to
25 approve the application for the relief requested, including the

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1 condition to add additional planting, I believe, to match the
2 adjacent property. The motion to approve was second by Vice
3 Chair John.

4 Mr. Smith?

5 COMMISSIONER SMITH? Yes.

6 MR. MOY: Zoning Commissioner Peter May.

7 ZC COMMISSIONER MAY: Yes.

8 MR. MOY: Vice Chair John?

9 VICE CHAIR JOHN: Yes.

10 MR. MOY: Chairman Hill?

11 CHAIRPERSON HILL: Chairman Hill. Yes.

12 MR. MOY: And we have a Board member not present today.

13 Staff would record the vote as four to zero to one and this is
14 on the motion made by Chairman Hill to approve. The motion to
15 approve was second by Vice Chair John. Also in support of the
16 motion to approve Zoning Commissioner Peter May, Mr. Smith, and
17 of course Vice Chair John, and Chairman Hill. The motion carries,
18 sir, four to zero to one.

19 CHAIRPERSON HILL: Thank you. All right, everybody, I
20 hope you guys have a nice week and we'll see you next time. We
21 are adjourned.

22 (Whereupon, the above-entitled hearing was adjourned.)
23
24
25

C E R T I F I C A T I O N

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: Board of Zoning Adjustment

Date: 01-11-2023

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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