

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY

MAY 1, 2024

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

- FREDERICK L. HILL, Chairperson
- LORNA L. JOHN, Vice-Chairperson
- CARL BLAKE, Member
- CHRISHAUN S. SMITH, NCPC Designee

ZONING COMMISSION MEMBERS PRESENT:

- ANTHONY J. HOOD, Chairperson
- ROBERT MILLER, Vice-Chairperson
- TAMMY STIDHAM, NPS Designee

OFFICE OF ZONING STAFF PRESENT:

- KEARA MEHLERT, Secretary
- PAUL YOUNG, A/V Production Specialist

OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

- SARAH BAJAJ, ESQ.
- COMETRIA COOPER, ESQ.
- MARY NAGELHOUT, ESQ.
- RYAN NICHOLAS, ESQ.

The transcript constitutes the minutes from the Regular Public Meeting held on May 1, 2024.

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

2 9:38 a.m.

3 BZA CHAIR HILL: Good morning, ladies and  
4 gentlemen, the Board of Zoning Adjustment. Today is May 1st.  
5 Happy May. Public hearing will please come to order.

6 My name is Fred Hill, Chairman of the District of  
7 Columbia Board of Zoning Adjustment. Joining me today are  
8 Board members Lorna John, Carl Blake, and Chrishaun Smith and  
9 Zoning Commissioners Rob Miller, Tammy Stidham, and Chairman  
10 Anthony Hood. Today's meeting and hearing agenda are  
11 available at the Office of Zoning's website.

12 Please be advised that this proceeding is being  
13 recorded by a court reporter and is also webcast live via  
14 Webex and YouTube Live. The video webcast will be available  
15 on the Office of Zoning's website after today's hearing.  
16 Accordingly, everyone who is listening on Webex or by  
17 telephone will be muted during the hearing.

18 Also, please be advised that we do not take any  
19 public testimony at our decision meeting sessions. If you're  
20 experiencing difficulty accessing Webex or with your  
21 telephone call in, then please call our OZ hotline number,  
22 202-727-5471. Once again, 202-727-5471. It's also listed  
23 on the screen.

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

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1 whether a full or summary order may be issued. A full order  
2 is required when the decision it contains is adverse to a  
3 party, including the affected ANC. A full order may also be  
4 needed if the Board's decision differs from the Office of  
5 Planning's recommendation.

6           Although the Board favors the use of summary  
7 orders when possible, an applicant may not request the Board  
8 to use such an order. At today's hearing session, everyone  
9 who is listing on Webex or by telephone will be muted during  
10 the hearing. And the only person's who have signed up to  
11 participate or testify will be muted at the appropriate time.

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

18           All parties planning to testify, either in favor  
19 or in opposition, shall sign up in advance. They'll be  
20 called by name to testify. If this is an appeal, only  
21 parties are allowed to testify.

22           By signing up to testify, all participants  
23 completed the oath or affirmation as required by Subtitle Y  
24 408.7. Request to enter evidence on time in online virtual  
25 hearings, such as written testimony or additional supporting

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1 documents, other than live video which may not be presented  
2 as part of the testimony, may be allowed, pursuant to Y  
3 103.13, provided the persons making the request to enter an  
4 exhibit explain, (a) how the proposed exhibit is relevant,  
5 (b) the good cause that justifies allowing the exhibit into  
6 the record, including an explanation of why the requester did  
7 not file the exhibit prior to the hearing pursuant to Y 206,  
8 and how the proposed exhibit would not unreasonably prejudice  
9 any parties.

10           The order of procedures for special exceptions and  
11 variances are pursuant to Y 409. At the conclusion of each  
12 case, an individual who was unable to testify because of  
13 technical issues may file a request for leave to file a  
14 written version of the planned testimony to the record within  
15 24 hours, following the conclusion of public testimony of the  
16 hearing. If additional written testimony is accepted, the  
17 parties will be allowed a reasonable time to respond, as  
18 determined by the Board.

19           The Board will then make its decision at its next  
20 meeting session, but no earlier than 48 hours after the  
21 hearing. Moreover, the Board may request additional specific  
22 information to complete the record. The Board and the staff  
23 will specify at the end of the hearing exactly what is  
24 expected and the date when persons must submit the evidence  
25 to the Office of Zoning. No other information shall be

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1 accepted by the Board.

2           Once again, after the Board -- oh, sorry.  
3 Finally, the District of Columbia Administrative Procedures  
4 Act requires that the public hearing on each case be held in  
5 the open, before the public. However, pursuant to Section  
6 405(b) and 406 of the act, the Board may, consistent with its  
7 rules of procedures and the act, enter into a closed meeting  
8 on a case for purposes of seeking legal counsel on a case.

9           Pursuant to D.C. Office Code Section 2-575(b)(4),  
10 and or deliberating on a case pursuant to D.C. Official Code  
11 Section 2-575(b)(13). But only after providing the necessary  
12 public notice, and the case of an emergency closed meeting,  
13 after taking a roll call vote. Madam Secretary, do we have  
14 any preliminary matters?

15           MS. MEHLERT: Good morning, Mr. Chairman and  
16 members of the Board. A couple scheduling changes today.  
17 Application No. 21101 of Mendomas, LLC has been postponed to  
18 the July 24, 2024 hearing. And Appeal No. 21057 of ANC 6C  
19 has been postponed to the September 11th public hearing.

20           In addition, the chairman has reviewed and granted  
21 a waiver to allow filing in the applicant's record pursuant  
22 to Subtitle Y, Section 206.7 and Section 103.13. Any other  
23 late filings during the course of today's hearing should be  
24 presented before the Board by the applicant or parties for  
25 the witnesses after the case is called. And any other

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1 preliminary matters will be noted when that case is called.

2 BZA CHAIR HILL: Okay, great. Thank you, Ms.  
3 Mehlert. Let's see. Okay. Well, good morning, everybody.  
4 Nice to be back. Nice to see everyone. Madam Secretary, you  
5 can call our first decision case.

6 MS. MEHLERT: Sure. The first case in the Board's  
7 meeting session is Appeal No. 21040, the Advisory  
8 Neighborhood Commission 2G. This is an appeal pursuant to  
9 Subtitle X, Section 1100 challenging the decision made by the  
10 Department of Buildings, Zoning Administrator, to issue  
11 Building Permit No. B2301285. The subject property is in the  
12 D4R zone at 501 New York Avenue, Northwest, Square 482-S, Lot  
13 800.

14 The Board heard the merits of this appeal at the  
15 March 13th hearing and participating are Chairman Hill, Vice  
16 Chair John, Mr. Blake, Mr. Smith, and Zoning Commissioner  
17 Miller. Oh, and as a preliminary matter, I just want to  
18 remind the Board the appellant filed a motion to reopen the  
19 record in Exhibit 72. And DOB submitted a response in  
20 opposition to the motion, Exhibit 73.

21 BZA CHAIR HILL: Thank you. Okay. All right.  
22 In terms of the preliminary matters, there was a motion to  
23 open the record to allow what I believe is clarification of  
24 a point that the appellant had or we had started to discuss  
25 during the hearing. And then there was another preliminary

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1 matter which was to strike the motion.

2           In terms of a preliminary matter, I would go ahead  
3 and accept the -- it's not really a motion to open the  
4 record. But I guess I will treat it as such, clarifying the  
5 appellant's point. And so I'm going to go ahead and allow  
6 that into the record.

7           And then I'm not going to allow the motion to  
8 strike from DOB. And so unless anyone has any questions or  
9 thoughts, please say so. Okay. Madam Secretary, we will go  
10 ahead and proceed as I stated with those preliminary motions  
11 -- preliminary matters I should say.

12           So in terms of our deliberation for this, I assume  
13 we're all ready to deliberate. I thought that it was -- as  
14 we know, it was a long hearing with a lot of testimony that  
15 we took from the appellant and the Department of Buildings.  
16 I do appreciate all of the efforts that the appellant has put  
17 forward as well as the testimony that received from the  
18 Department of Buildings as well as the police department as  
19 well as I can't recall what other department maybe it was  
20 that gave testimony concerning how they're planning on --  
21 thank you, thank you, thank you Vice Chair Miller.

22           The Department of Corrections, I want to thank  
23 their testimony as well. In terms of the items that the  
24 appellant had brought up, one of them was, again, the change  
25 in use from local government to large scale government.

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1 Another was the cessation -- the stopping of large scale  
2 government use for more than three years.

3           Therefore, it would've required them to come  
4 meaning the Department of Corrections to come back before us  
5 for a special exception. And then last, the expansion of a  
6 nonconforming use. In terms of the first argument, the  
7 change from local government to large scale government, I  
8 think that we had enough testimony from the police  
9 department, the chief there.

10           And I'm sorry if I'm getting his title incorrect.  
11 But that I don't think -- I think it was large scale  
12 government. I mean, I think that they did prove in my  
13 opinion that this is something that had been used for  
14 citywide uses. It's something that had been used for  
15 citywide uses.

16           And I think it would qualify as large scale  
17 government, even after we got all of the information from the  
18 Department of Buildings concerning large scale versus local  
19 government. I think it still is a little confusing in terms  
20 of the regulations that this is something that started from  
21 2016 when the regulations changed. And then also I thought  
22 it was a little confusing between the large scale and local.

23           However, I do think that it was -- they talked  
24 about the DWI things that they were doing there as well as  
25 the insurgents that came forward during the January 6th

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1 thing. And so I think that they did share it was large scale  
2 government. So I think it was large scale government.

3 So then the other issue was whether or not they  
4 stopped using it as a holding jail. Even the term jail was  
5 in question at one point. But they were holding people  
6 there. I guess maybe it was prior to three years ago.

7 But even if that were the case, I don't that the  
8 District of Columbia Department of Buildings ever thought  
9 that they were going to stop using this facility for that  
10 use. And what had been mentioned before was that it's as if  
11 it was zoned -- let's say someone had a house. It's zoned  
12 for their house use.

13 They moved away for four years. They don't plan  
14 on not using it as a home. And then they can come back and  
15 use it as a home again.

16 So I think that there was never any intent of the  
17 government to abandon that facility as a holding cell or the  
18 uses that they had been using it in the past. So that's what  
19 I think on that one. The last, however, I think that it was  
20 more -- and this is where the Department of Buildings had  
21 said that it was more the -- hold on just a second. Let me  
22 look at my notes here.

23 Under C 204.1, the nonconforming use of land or  
24 structure shall not be extended in land area, gross floor  
25 area, or use intensity and shall not be extend to portions

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1 of a structure not devoted to that nonconforming use at the  
2 time of enactment of this title. So I don't know if it was  
3 expansion of a nonconforming use as much as I think it was  
4 an increase in use intensity. I think that there was an  
5 increase in use intensity.

6 I thought that going from whatever cell number it  
7 was to another cell number it was did trigger that C 204.1.  
8 And therefore, if it triggered the C 204.1, I think that this  
9 particular use would have come back before us as a special  
10 exception under X 900.3 and I 303.1. So again, in X 900.3  
11 under the general provisions for special exception, in the  
12 case of use, it was originally permitted and lawfully  
13 established as a matter of right and for which the zoning  
14 regulations now require special exception approval from the  
15 Board of Zoning adjustment.

16 Any extension or enlargement of that use shall  
17 require a special exception, approval from the Board of  
18 Zoning Adjustment. So I think that in that particular case,  
19 it was an increase in intensity of use. And therefore, it  
20 should've come before us as a special exception.

21 So I am going to vote in favor of the appeal based  
22 upon that thought process. And I am going to now move around  
23 my fellow Board members to see what you all have to say. And  
24 I will start with Mr. Smith if that would be fair.

25 MEMBER SMITH: Okay. Sure. So you stated we had

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1 a long hearing on March 13th. And the Board heard extensive  
2 testimony from the appellant in this case, ANC 2D regarding  
3 the District government's proposal to use the building at 501  
4 New York Avenue, Northwest, as a central cell block while the  
5 existing building that holds the cell block is being  
6 renovated. A critical component of this case that merits  
7 concern is whether the expansion of the renovation and  
8 expansion of cell blocks within the building constitute a  
9 change in view from the appellant's viewpoint, government  
10 local to government large scale as stated by the appellant.

11           Based on the information provided within the  
12 record by the Department of Buildings and MPD and the  
13 Department of Corrections, this building has been used for  
14 citywide oriented MPD units that had used the entire space  
15 in the building for a variety of functions towards citywide  
16 police work. This includes the administrative stays,  
17 processing stays, and holding cell space for arrested  
18 persons.

19           All these spaces are not separate lanes in this  
20 category. They are types of work spaces that fall under the  
21 government large scale land use category based on how the  
22 mission of the space was oriented. Also, I would state that  
23 based on the wording of both of the government use categories  
24 that just stated by the definition a, quote-unquote, jail,  
25 could be a local government use if it's only serving the

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1 local neighborhood as a police precinct and it has holding  
2 cells to serve explicitly that precinct, that being citywide.

3 In that hypothetical, said police precinct and  
4 that use of the space within the building is local government  
5 use. If the building is used for larger citywide search,  
6 the, quote-unquote, police station, could be considered large  
7 scale. I do not believe that these various types of  
8 government buildings city spaces are statically within either  
9 of these types of use categories.

10 The main distinction is based on the definition  
11 is the neighborhood serving versus citywide or larger service  
12 areas. Based on the definition of government large scale  
13 use, increasing the number of the holding cells in this  
14 building is no different to me than if a nonconforming  
15 government office space such as a large regional library that  
16 is not conforming and does have a special exception were to  
17 convert a large singular office space into a series of  
18 cubicles in that it may increase density of a particular  
19 usage of the space but does not change the overall use  
20 categories of space as serving a regional citywide use. I  
21 would note that the zoning regulations do not have a separate  
22 unit description, just again to reiterate.

23 Moving this space, whether you want to call it a  
24 jail or a cell block, return jail is irrelevant. Because the  
25 space was used for an MPD unit that has a citywide focus, the

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1 entire space in my opinion is a government large scale use.  
2 The Department of Buildings has demonstrated within the  
3 record that many government buildings within the District  
4 have a citywide function.

5 I therefore believe that the Zoning Administrator  
6 did not error in her interpretation. And this space has been  
7 used and clarified as government large scale for the last 50  
8 or 60 years based on the record. And we recommend to uphold  
9 the interpretation of the Zoning Administrator and to deny  
10 the appeal.

11 BZA CHAIR HILL: Thank you, Mr. Smith. Mr. Black?

12 MEMBER BLAKE: Thank you very much, Mr. Chair.

13 I would have to agree with the interpretation of Board Member  
14 Smith as it relates to the -- actually with you as well as  
15 it relates to the interpretation of the large government  
16 services existing in this property and having existed there  
17 for many years and continuing to do so. And I do not believe  
18 that there's been a cessation of that large scale government  
19 use for more than three years because, as we said, it's been  
20 sitting ready to go.

21 The intended design of the building has not  
22 changed. In fact, if the cells are still there, if they were  
23 going to change it to something else, they would've put  
24 something else there and destroyed the cells. And as we saw  
25 in the presidential inauguration documented, it was ready to

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1 go and it was there.

2           And as Board Member Smith pointed out, these other  
3 built rooms within the building serve functions that support  
4 that facility. Rather than use them at that time or not as  
5 been used currently, it's the case. So I think when we look  
6 at the larger picture, the services are -- government large  
7 is what we're looking at and has maintained that  
8 continuously.

9           There has never been and it's never been presented  
10 in this record of local government activities at this  
11 location. So in that sense, this is local services. The  
12 jail itself is a subcategory of that.

13           So as Board Member Smith pointed out, in  
14 increasing the square footage devoted to that didn't  
15 necessarily cause an -- it did not necessarily cause -- that  
16 gross square increase did not change the government large  
17 categorization change. It didn't increase that. Now your  
18 comment, Mr. Chair, with regard to the intensification of  
19 use, that is an interesting argument.

20           It is not the matter that we approached from the  
21 beginning, from the outset nor which was reintroduced. It  
22 was only based on square footage of gross square footage  
23 increase of that sub-segment. The in intensification of use  
24 argument has not been discussed at any point.

25           It was not brought up at initial filing. And it

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1 has not been discussed. In parts, it has. Certainly  
2 elements of it have.

3 But that argument has not been approached as the  
4 intensification of use. And I've looked through the  
5 document. I did not see a definition of intensification of  
6 use. The appellant has not discussed a definition or their  
7 interpretation of intensification of use.

8 And the department building, I suspect, does have  
9 a definition. We are unaware of it because the rebuttal that  
10 they put in their closing statement with regard to the  
11 expansion of nonconforming use responded to the appellant's  
12 concern which was the increase in gross square footage  
13 devoted to the subcategory of the cells. So for that reason,  
14 I would not feel comfortable looking at this from, as you  
15 pointed out with the intensification of use in violation of  
16 C 204.1 requiring specific exception and would therefore be  
17 in a position to deny the appeal as I do not feel any errors  
18 were committed.

19 BZA CHAIR HILL: Okay. Thanks, Mr. Blake. Just  
20 also to clarify one item as we were talking about this.  
21 Like, the Board during its hearings, we look at the  
22 regulations. And our job is to look at the regulations and  
23 interpret the regulations the way we see them.

24 And therefore, during that hearing and in this  
25 case again during this appeal, things might come up,

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1 questions might come up about the use intensification, right?  
2 So it is appropriate for us to look at that. And it's  
3 appropriate for us to kind of think about that, even if it  
4 wasn't in the original arguments.

5           However, I am comfortable with everything you  
6 said, Mr. Blake. I was just kind of clarifying a thought.  
7 Vice Chair Miller?

8           ZC VICE-CHAIR MILLER: Thank you, Mr. Chairman.  
9 And I thank the appellant at Advisory Neighborhood Commission  
10 2G's post-hearing submissions as well as those from  
11 Department of Buildings and appreciate the testimony that  
12 they provided as well as their witnesses from Metropolitan  
13 Police Department and the Department of Corrections as you  
14 stated, Mr. Chairman. I agree with your assessment, Mr.  
15 Chairman.

16           This permit will allow an expansion of a  
17 nonconforming use which requires a special exception process  
18 before this Board of Zoning Adjustment to evaluate potential  
19 adverse impacts and possibly set conditions that would  
20 mitigate or address those impacts. As you said, Subtitle C  
21 204.1 states at the outset a nonconforming use of land or  
22 structure shall not be extended -- excuse me, extended --  
23 shall not be extended in land area, gross floor area, or use  
24 intensity. I agree with you that expanding the number of  
25 cells in that facility from 20 to 46, more than doubling the

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1 number of cells and the capacity of arrestees and detainees  
2 in those cells and employees that would have to supervise and  
3 operate the facilities is an intensification of use.

4           The traditional use of those cell blocks in recent  
5 years -- well, the Metropolitan Police Department, their  
6 government could only document one instance -- the most  
7 recent instance in January of 2017 when those cells were used  
8 in connection with the January 2017 inauguration. I  
9 specifically asked Assistant Chief Emerman did he mean  
10 January 2021 that they were used for the demonstration that  
11 occurred on January 7th of 2021 as part of the mass arrests  
12 that took place on that terrible day. The chief said, no,  
13 they were not used but it was part of -- he has no record of  
14 them being used that day.

15           But they were part of the contingency plan for  
16 that day if there was a need for the facility. But he  
17 couldn't say for sure whether or not they were used that day  
18 or not. I agree with the comment of -- I can't remember if  
19 it was Board Member Blake or Smith -- that they were ready  
20 and intended and available for use. But they were all ready  
21 and available and intended for use only for really overflow.

22           BZA VICE-CHAIR JOHN: Can you hear me, Mr.  
23 Chairman?

24           BZA CHAIR HILL: Yes, yes. We can, Vice Chair  
25 John. Sorry, Vice Chair Miller.

1           ZC VICE-CHAIR MILLER: They were only available --  
2 those cells had been primarily available in recent years  
3 going all the way back to the January 2017 only for overflow,  
4 high volume, mass arrest cases. So it was very rare. What  
5 we're talking about here is replacement may be temporary  
6 replacement for the central cell block of the District of  
7 Columbia that's located in the Daly Building on 300 Indiana  
8 Avenue which has daily counts of arrestees and detainees  
9 coming through to court and back which the court is adjacent  
10 to.

11           The Superior Court is adjacent to that. Whether  
12 they get papered or not or prosecuted, charges are brought,  
13 it's going to be on a daily basis. The Department of  
14 Corrections' spokesperson -- representative whose name I --  
15 I think it was Wilson. I think it was Deputy Director  
16 Wilson, but I might have that wrong. I apologize if I did.

17           But she stated in response to, I think, one of my  
18 fellow Board member's questions or maybe she just did it as  
19 part of her presentation. When she was talking about the  
20 operations that they're at least 28 people -- 28 arrestees  
21 coming in and out of there on a daily basis. And it's 24/7.

22           People are arrested all hours of the night and the  
23 day. So I just don't -- I think it's just as a matter of  
24 law, I think it clearly is an intensification of use. And  
25 I think it's an expansion of the area because it's going to

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1 be doubling the number of cells from 20 to 46 and more than  
2 doubling the capacity thereof. I don't disagree that with  
3 my fellow Board members Smith and Blake's characterization  
4 of the large scale versus neighborhoods serving --

5 BZA VICE-CHAIR JOHN: Mr. Chairman, can you hear  
6 me? I'm sorry. I might have to log out and log back in.

7 ZC VICE-CHAIR MILLER: We can hear you. I'm not  
8 the chair, but we can hear you, Mr. John. If you have to log  
9 off, we'll wait for you.

10 BZA CHAIR HILL: Yeah, Vice Chair Miller, why  
11 don't you pause. I think probably Vice Chair John did hear  
12 your deliberation. But let's just wait for her to log back  
13 in.

14 ZC VICE-CHAIR MILLER: Oh, gosh. Can't we just  
15 run a videotape?

16 BZA CHAIR HILL: Yeah, no, no. I don't think  
17 you'll have to repeat. I don't think you'll have to repeat.  
18 I don't think you'll have to repeat.

19 ZC VICE-CHAIR MILLER: Okay. Because it's not  
20 written down. I don't have notes. I'm doing this off the  
21 top. I'll try.

22 BZA CHAIR HILL: No, no, no. I'm saying I do not  
23 think you'll have to. I'm saying just pause.

24 ZC VICE-CHAIR MILLER: Okay. Well, I might not  
25 remember what I said and I may repeat myself. Okay.

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1 BZA CHAIR HILL: That's all right. Vice Chair  
2 John, we can see you now again. But your little thing is on  
3 mute or your screen is on mute. Can you hear us?

4 BZA VICE-CHAIR JOHN: Hello.  
5 Can you hear me?

6 ZC VICE-CHAIR MILLER: Yes.

7 BZA VICE-CHAIR JOHN: But I cannot hear you.

8 MEMBER SMITH: Hey -- oh, she can't hear us.

9 BZA VICE-CHAIR JOHN: Can you hear me, Mr.  
10 Chairman?

11 BZA CHAIR HILL: Mr. Young, do you want to call  
12 Vice Chair John and see if you can assist?

13 ZC VICE-CHAIR MILLER: Mr. Chairman, I'll be right  
14 back. I just need 90 seconds.

15 BZA CHAIR HILL: Okay. Thank you.

16 BZA VICE-CHAIR JOHN: Can you hear me?

17 BZA CHAIR HILL: Yes, we can hear you. Can you  
18 hear us?

19 BZA VICE-CHAIR JOHN: Now I can hear you.

20 BZA CHAIR HILL: Okay.

21 BZA VICE-CHAIR JOHN: Thank you. Mr. Young was  
22 able to get me back on. Thank you.

23 BZA CHAIR HILL: Okay, wonderful. Ms. John, go  
24 ahead and mute yourself for a moment because I'm going to try  
25 and --

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1 (Pause.)

2 BZA CHAIR HILL: Okay. Are we all back?

3 BZA VICE-CHAIR JOHN: I think I'm here. Can you  
4 hear me now?

5 BZA CHAIR HILL: We can hear you. Can you hear  
6 us?

7 BZA VICE-CHAIR JOHN: Yes, I can. Thank you.

8 BZA CHAIR HILL: So Mr. Miller -- Vice Chair  
9 Miller, if you want to go ahead and finish your thought and  
10 also we're going to go back and summarize all of our thoughts  
11 a little bit, right? If that would be okay. If you, Mr.  
12 Miller, would just finish your thought and then summarize if  
13 you would.

14 ZC VICE-CHAIR MILLER: Just out of curiosity,  
15 Board Member John, were you able to hear any of the previous  
16 discussion? No? Okay.

17 BZA VICE-CHAIR JOHN: No, no. I wondered by the  
18 chair was not making an announcement that there is a delay.  
19 So I waited patiently.

20 ZC VICE-CHAIR MILLER: Yeah, we've all been in  
21 that, every one of us, and our public as well. It's been a  
22 very useful technology, but there are always glitches each  
23 of us have. I was not able to see myself at a Zoning  
24 Commission meeting I think last week. It was too late to log  
25 back off and on. So I participated without being able to see

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1 myself or anybody else being able to see me which at least  
2 I could hear unlike you could not hear us.

3 BZA VICE-CHAIR JOHN: I could not hear anything.

4 ZC VICE-CHAIR MILLER: But even that, when you're  
5 used to do it a certain way and I couldn't see myself. They  
6 couldn't see me. I couldn't see reactions. Anyway, that's  
7 that.

8 BZA VICE-CHAIR JOHN: Thank you. Thank you.

9 ZC VICE-CHAIR MILLER: That's our virtual world  
10 that we are in five years, four years, four years.

11 BZA VICE-CHAIR JOHN: Yeah.

12 ZC VICE-CHAIR MILLER: Four years. It seems like  
13 40. So in summary of what I said previously of where I was,  
14 I agree with Chairman Hill's argument that C 204.1 of the  
15 regulations gives grounds for this appeal and that there is  
16 sufficient evidence in the record that there has been an  
17 expansion of use -- that there would be an expansion of use.  
18 There's an increased -- we know that there's been an  
19 expansion of both the -- increase in the number of cell  
20 blocks at this facility from 20 to 46, increasing the  
21 capacity, more than doubling the capacity, and increasing the  
22 use intensity.

23 C 204.1 reads, that first part, a nonconforming  
24 use of land or structure shall not be extended in land area,  
25 gross floor area, or use intensity. And I agree with you,

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1 Mr. Chairman, that there is evidence in the record that there  
2 would be an increase in use intensity. This facility, I  
3 don't dispute whether or not that I was a large scale  
4 government facility and it will be a large scale government  
5 facility based on those definitions of citywide services and  
6 because there are other services in the building that have  
7 been citywide for a long time.

8           Although I must say they are much more  
9 administrative. Those other services are much more  
10 administrative in nature and office-related to the traffic  
11 enforcement, the traffic crash investigations or the DWI  
12 investigations the detectives are operating in and out of  
13 that office -- those offices. And the child safety  
14 installation which I guess was still going on in the garage  
15 up until recently, that those were all citywide services.

16           And the cell block was available, the 20 cell  
17 blocks were available for overflow, high volume, mass arrest  
18 situations. And the Metropolitan Police Department could  
19 only -- could document the only -- the most recent use of  
20 that for that purpose, overflow, mass demonstration  
21 arrestees, detainees was January -- the early -- the most  
22 recent time it was used that way was January 2017, over six  
23 years ago. It wasn't even used for the mass arrests that  
24 took -- or they don't have a record of it being used --  
25 actually used and occupied in January of 2021 when there were

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1 also mass arrests on January 7th as a result of those -- of  
2 the attack on the Capitol.

3           But it wasn't, it apparently might not have been  
4 used that way. But there's no question that it's going to  
5 be more than double the size, double the capacity. And it's  
6 going to be daily.

7           It's going to be the central cell block  
8 replacement, maybe temporary while the availability is being  
9 renovated, including the cell blocks that are in terrible  
10 condition there. It's going to be used as a 24/7 operation.  
11 And there are dozens of detainees on a daily basis coming in  
12 and out of the central cell block which will be coming out  
13 of this facility under this proposal.

14           It will be much more fully occupied than it has  
15 been for at least almost a decade. I think it may have been  
16 originally built as a police station, a neighborhood serving  
17 police station like the other District police stations before  
18 there was a new 3rd District police station but way back  
19 originally. And so those cell blocks may have been built for  
20 the neighborhood serving, the district that it was serving  
21 at the original time.

22           Anyway, but it hasn't used as a neighborhood  
23 police district for a very long time. There were citywide  
24 uses. So I don't dispute the whole discussion or evaluation  
25 by Department of Buildings or by my fellow Board members

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1 that's changed from -- a subcategory from -- that there was  
2 not a change in that subcategory from neighborhood serving  
3 to large scale, that it was always -- it always was -- I  
4 would concede the argument that it's always with large scale  
5 because it was citywide services.

6           Although it's very clear in the record that it's  
7 going to be much larger scale despite whatever definitions  
8 that are in the zoning reg. It's going to be a much larger  
9 scale of use than previously. It's the central cell block  
10 of the city where people are being arrested in the dozens  
11 every day.

12           And we had substantial testimony from the  
13 appellant -- well, let's remember that the appellant is the  
14 Advisory Neighborhood Commission 2G where the facility is  
15 located, unanimously brought this appeal to us. And it's  
16 supported unanimously by the adjacent affected -- another  
17 affected advisory neighborhood commission right across the  
18 street. And both ANCs are unanimous in their support of this  
19 appeal.

20           And all they're asking for is that the government  
21 in this case do what we ask every small homeowner and large  
22 developer to do when there's a nonconforming use expansion  
23 come before us and say how you're going to address potential  
24 adverse impacts, if any, and give us the opportunity to place  
25 conditions that might mitigate that relief that's being

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1 requested. We had testimony for the appellant's witnesses.  
2 United House of Prayer is right adjacent.

3           The pastor testified he can see the cell windows  
4 of the cell block from his front porch. The people who live  
5 in all the church's affordable housing that they build there,  
6 other new and longtime residents all testified that they  
7 wanted the opportunity to be able to hear what the operations  
8 are and whether there are adverse impacts that could be  
9 addressed. The childcare facility that's across the street,  
10 the church, United House Prayer, has student marching bands  
11 going in and out.

12           We heard testimony that it would only be entrance  
13 and exists through the garage. But we don't even have the  
14 opportunity to put those operational conditions in any order.  
15 It's like they got the permit and they can do whatever they  
16 want there.

17           We can't lose sight of the fact that this ANC and  
18 the adjacent affected ANC and any of the neighbors weren't  
19 even informed about what their neighbor was planning in terms  
20 of a major change in use of this facility. The adjacent  
21 neighbors who are not even -- ANC had to do a Freedom of  
22 Information Act request, I think more than one, to even find  
23 out what was being proposed here. And that's just not the  
24 right process and it's not the right example that the  
25 government itself should be setting for the rules that each

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1 are requiring, small homeowners and others who want to do  
2 something different or expand something that's been different  
3 on their property.

4           It's a special exception process. If DOB has  
5 spent as much effort and time on just going through that  
6 process, they'd probably have their special exception an  
7 permit and not appealed permit by now and much more comity  
8 with their fellow neighbors who they have been living with  
9 and should be treating like neighbors. This is obviously a  
10 critical function -- a central function of the city which is  
11 needed.

12           The renovation is needed of the existing central  
13 cell block. But that cell block is located much more  
14 conveniently -- right adjacent to the court. I'm not sure  
15 they even have to get into a van or anything to get from the  
16 court to the -- from a police station cell block the Daly  
17 Building cell block to the court.

18           This is is right in a developing residential  
19 neighborhood that's now considered a residential  
20 neighborhood, Mount Vernon Square. We had testimony from  
21 Mount Vernon Square community improvement district, large  
22 property owners, Tungsten Properties and Douglas Development.  
23 They just want to know what's going to be happening and  
24 address any conditions and potential adverse impacts on a  
25 downtown residential neighborhood that we need to -- that

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1 frankly our whole entire downtown is on life support right  
2 now because of other economic and pandemic-related  
3 conditions.

4           So I think that there has been an expansion of use  
5 intensity. I think that the appeal should be upheld and the  
6 government should spend its time -- future time helping the  
7 Advisory Neighborhood Commission understand what's going on  
8 in a more friendly and public friendly way than has been in  
9 the past and go through the process. And allows us to set  
10 conditions, whether it's a time thing.

11           They say it's going to be temporary, but we have  
12 no ability in this process what they say they have a right  
13 to, to say that it's really going to be temporary. And who's  
14 coming and going and when they're going to be visible and  
15 where they're going to be released. We had testimony that  
16 they'd be released instead from the court with transportation  
17 services.

18           But we can't even put any of those operational  
19 conditions which might satisfy -- which might address or  
20 mitigate potential adverse impacts. And to deprive the  
21 adjacent neighbors, the ANCs of that process, well, I want  
22 to -- let me say, I want to provide that opportunity for that  
23 process to work in this case. I think it can work.

24           I think the government knows how to make this work  
25 if they want to. And I appreciate that we didn't focus as

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1 much on the expansion argument. But it was mostly in the  
2 discussion of going from neighborhoods serving to large  
3 scale, local versus large scale under the definitions.

4 But in that -- which I agree. It was always large  
5 school. But in that discussion of local versus large scale,  
6 there was a lot of discussion of how the use will be  
7 expanded.

8 I'll be daily. It'll be twice the -- over twice  
9 the number in capacity. Could it be the central cell block,  
10 overflow, mass demonstration, rare overflow? And that was  
11 brought up.

12 It came up during the discussion, although it was  
13 in the context of large scale versus local. But the expanded  
14 use was discussed throughout the hearing, certainly asked  
15 about by Vice Chair John directly. Certainly addressed even  
16 in rebuttal testimony at the hearing by the appellant's  
17 attorney, although then she used the -- when she talked about  
18 expansion, she went to talk about local versus large scale.

19 Anyway, I'm sorry I've gone on so long. I agree  
20 with you, Mr. Chairman, that this should -- that the appeal  
21 should be upheld. I give great weight to both ANCs in this  
22 case. And I think to do that, we must uphold the appeal and  
23 make our government go through the process that we require  
24 of every other property owner when they want to do an  
25 expansion of a nonconforming use. Thank you.

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1           BZA CHAIR HILL: Thank you, Vice Chair Miller.  
2 All right. What I'm going to do is, okay, I'm going to  
3 summarize also. But I'm going to let Mr. Smith summarize and  
4 then Mr. Blake summarize. And then we'll hear from Ms. John.  
5 Mr. Smith, would you mind summarizing what you had said  
6 before?

7           MEMBER SMITH: Okay.

8           ZC VICE-CHAIR MILLER: WE got to find that  
9 videotape mechanism where we can just run it.

10          BZA VICE-CHAIR JOHN: Well, if it would help, I  
11 can go ahead. And then if folks want to add, that might  
12 help. How about that?

13          So at the hearing, I was persuaded by Chief  
14 Zimmerman's testimony that this is, in fact, large scale  
15 government use. So I didn't have any question about that  
16 because he was clear in contrasting how this facility was  
17 used, had a regional scope as opposed to a narrow local scope  
18 as in the seven District stations. So that kind of helped  
19 me to come to the conclusion that this is, in fact, large  
20 scale government use.

21          And so during the hearing, there was a discussion  
22 of whether or not the use was abandoned. And I don't believe  
23 that use was abandoned because the services that were  
24 performed there as Vice Chair Miller said all had regional  
25 scope. So the distinction between local and large scale

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1 government is not quantitative. It's the quality.

2           It's either large or small, citywide impact or  
3 local impact. So because there were citywide services being  
4 performed there, I came to the conclusion that the use was  
5 not abandoned. So I had raised the issue of increase in  
6 intensity of use or enlargement of an existing nonconforming  
7 use using the analogy of some of the special exception cases  
8 that we see frequently where a use remains.

9           But they want to increase it or maybe expand the  
10 building or somehow increase that use that was from what was  
11 previously approved. Not that the use changed but that there  
12 was an enlargement like making the building larger, for  
13 example, to add more apartments. So that's typically how we  
14 have looked at expansion of a nonconforming use.

15           But the more I looked at the regulations, this  
16 case is a little different. And if you look at -- oh, and  
17 I also agree -- before I say this, I agree with the  
18 Department of Buildings that the use would apply to the  
19 entire building, not to portions of it. So if it's large  
20 scale government use, it would apply to all of the building.

21           So then I would move to what the regulations say.  
22 And the definition of a nonconforming use and the sentence  
23 that caused a little confusion for me initially was that it  
24 says a use lawfully in existing at the time of adoption or  
25 amendment of this title that would thereafter require special

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1 exception approval from the Board of Zoning Adjustment shall  
2 not be deemed a nonconforming use. That nonconforming use  
3 shall be considered a conforming use subject to the further  
4 provisions of Subtitle X.

5 Now in my experience, we have not interpreted this  
6 provision before. And it's one I hadn't seen. So when I  
7 looked at whether or not this large scale government use  
8 would require special exception, you have to turn to the  
9 provisions of Subtitle I 303.1 which says that the uses in  
10 this section shall be permitted as a special exception  
11 approved by the Board of Zoning Adjustment under Subtitle X  
12 Chapter 9 subject to the following applicable provisions.

13 And one of the uses approved is large scale  
14 government use. So this application to me fits squarely  
15 under the definition of a conforming use under Subtitle B  
16 100.2. So I'm in agreement that we should grant the appeal  
17 but for slightly different reasons.

18 I would think that because this is a large scale  
19 government use as we said that would require special  
20 exception, it is a conforming use. It is not a nonconforming  
21 use. Typically for the run of the mill nonconforming uses  
22 that we see, we don't have this provision that says a use  
23 that would thereafter require special approval from the  
24 Board.

25 So this is sort of where -- this is where I've

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1 come down on this. I think I'm in agreement we should grant  
2 the appeal but not for the reason that it's an expansion of  
3 a conforming use but that it is a conforming use that would  
4 require special exception approval. So I think we get to the  
5 same result.

6 And I think there's enough in the record to reach  
7 this conclusion and that we might not need to hear from the  
8 Department of Buildings again. Because at the end of the  
9 day, it's the BZA that interprets the regulations. So there  
10 are two regulations that address the same subject matter.

11 But the rule of interpretation is that you apply  
12 the most specific provision. And in this case, I think we're  
13 left with the definition of what is a nonconforming use in  
14 the context of a large scale development -- large scale  
15 government use. I apologize, but we're coming at the end.

16 BZA CHAIR HILL: Okay. I don't even want to try  
17 to summarize that again. But I did understand. And I see  
18 Mr. Blake's hand up. Go ahead, Mr. Blake.

19 MEMBER BLAKE: Vice Chair John, you're saying that  
20 would be just under the general standards for that approval,  
21 correct, under special exception?

22 BZA VICE-CHAIR JOHN: Well, yes, it would be  
23 subject to Title X -- I mean, X 901. See, ordinarily for an  
24 expansion of a nonconforming use, we would look at what was  
25 approved before and how the building is being expanded or the

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1 use is being expanded. This particular provision has a  
2 phrase that the other provisions don't have which is if it  
3 would require a special exception now, then it's a conforming  
4 use.

5           Typically, the provision would say it is a lawful  
6 use, even though it's nonconforming. This provision says if  
7 a use lawfully in existence at the time of adoption or  
8 amendment of this title which would be ZR 16, that would  
9 thereafter require special exception of the Board of Zoning  
10 Adjustment which this one does. Large scale government use  
11 requires special exception approval.

12           If this were a new application, it would be  
13 subject to special exception approval. And here the  
14 provision says it shall not be deemed a nonconforming use.  
15 So we've been looking at this as a nonconforming use, and I  
16 did initially. And I looked at the DOB's analysis and said,  
17 well, everyone is look at this as a nonconforming use.

18           Maybe it is an increase or an expansion. And I  
19 should've looked more closely at this provision because it  
20 doesn't fit with that analysis. So we agree that the appeal  
21 should be granted but perhaps not for the same reason.

22           BZA CHAIR HILL: Right. I'm pretty sure I'm  
23 following along. But I'm not going to try to repeat. I'm  
24 going to let the attorneys deal with the order. Okay. So  
25 I have nothing additional to add. Now does anybody have

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1 anything additional to add? Because I'm going to make a  
2 motion.

3 Okay. All right. I'm going to make a motion.

4 BZA VICE-CHAIR JOHN: What about Mr. Smith had  
5 something?

6 MEMBER SMITH: No, no. Go ahead.

7 BZA CHAIR HILL: Okay, great. Thank you. I'm  
8 going to make a motion to approve Appeal No. 21040 as  
9 captioned and read by the Secretary and ask for a second, Ms.  
10 John.

11 BZA VICE-CHAIR JOHN: Second to grant the appeal.

12 BZA CHAIR HILL: Second to grant the appeal.

13 Madam Secretary, could you take a vote, please?

14 MS. MEHLERT: When I call your name, please  
15 respond to the chair's motion to grant the appeal. Chairman  
16 Hill?

17 BZA CHAIR HILL: Yes.

18 MS. MEHLERT: Vice Chair John?

19 BZA VICE-CHAIR JOHN: Yes.

20 MS. MEHLERT: Mr. Smith?

21 MEMBER SMITH: No.

22 MS. MEHLERT: Mr. Blake?

23 {No audible response.}

24 MS. MEHLERT: Zoning Commissioner Miller?

25 ZC VICE-CHAIR MILLER: Yes.

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1 MS. MEHLERT: Staff would report the vote as three  
2 to two to zero to grant appeal to 21040 on the motion made  
3 by Chairman Hill and seconded by Vice Chair John with Zoning  
4 Commissioner Miller in support and Mr. Smith and Mr. Blake  
5 opposed to the motion.

6 BZA CHAIR HILL: Thank you. Vice Chair Miller,  
7 if this might happen to come back as a special exception one  
8 day, I would request that you participate if that would be  
9 appropriate.

10 ZC VICE-CHAIR MILLER: If I'm here, yes, I would  
11 be willing to do that.

12 BZA CHAIR HILL: If you're here? Are you going  
13 somewhere, Vice Chairman?

14 ZC VICE-CHAIR MILLER: No, we sometimes can't  
15 control our own destinies, you know.

16 BZA CHAIR HILL: This is true. This is true. All  
17 right. I'm happy to move along. Does anybody need a break?

18 No? Okay. Let's go to our next decision, please.

19 MS. MEHLERT: The next case is Application No.  
20 20920, Florence Olajide. This is a self-certified  
21 application pursuant to Subtitle X Section 901.2 for a  
22 special exception under Subtitle U Section 421 to allow a new  
23 residential development. Project is to construct a four unit  
24 apartment house in a three-story detached building located  
25 in the RA-1 at 1326 Fort Stevens Drive, Northwest, parcel

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1 00870570. And the Board last heard this case on March 13th  
2 and April 10th. And participating are Chairman Hill, Mr.  
3 Smith, Mr. Blake, and Zoning Commissioner Miller.

4 BZA CHAIR HILL: Great. Thank you. Just so you  
5 all know, I have to be at a meeting in Tyson's Corner at 4:00  
6 o'clock. I think that shouldn't be a problem. But I'm just  
7 FYI. Okay.

8 In terms of this application, we've heard a lot  
9 of testimony about this particular relief for the new  
10 development. And I think that there was a lot of discussion  
11 from the community. The ANC was opposed.

12 And we got a lot of, again, testimony from the  
13 surrounding neighborhood as we as the Commissioner. In terms  
14 of this particular project, I mean, the struggle that I had  
15 is it is in the RA-1. It is an apartment building zone.

16 Now this particular apartment building is a nine  
17 unit apartment building which is not a particularly big  
18 apartment building in that zone. There are other much larger  
19 apartment buildings in that zone. I do think that due to the  
20 participation of the developer as well as the neighbors,  
21 there was some changes made to help mitigate some possible  
22 impacts of this development.

23 They had put -- there was completely open  
24 balconies. They went ahead and made kind of, like, a barrier  
25 around and as such to kind of block some of the views. There

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1 was also some landscaping measures that were put in place to  
2 help alleviate one of the neighbor's concerns for people  
3 coming and going into the development.

4           However, I think that overall, the developer did  
5 do their best to accommodate the concerns of the neighbors.  
6 Again, the issue is that this is an RA-1 zone. This is an  
7 apartment building zone. This is not a single family zone.

8           And so there are going to be some growing pains,  
9 I guess, with these types of projects because there are other  
10 houses that are there in that immediate area. I do  
11 appreciate the concerns of the surrounding neighbors.  
12 However, I think in this particular case, I'm going to have  
13 to vote in favor of the application because of the zone that  
14 it's in and that I believe it meets the criteria for us to  
15 grant this particular development. Mr. Smith, do you have  
16 anything you'd like to add?

17           MEMBER SMITH: I have nothing to add, Chairman  
18 Hill. By and large, I agree with the assessment of this case  
19 and thank the applicant for responding to some of the  
20 concerns raised by the ANC and the citizens and the measures  
21 that you had stated. So I do believe that they've met the  
22 burden of proof for us to grant the special exception for new  
23 development here at this site and will support this special  
24 exception as well.

25           BZA CHAIR HILL: Thank you. Mr. Blake?

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1           MEMBER BLAKE: So I'm in favor of the application.  
2 I believe that this is a very challenging situation in which  
3 you have whenever you have a bordering zone, a location, a  
4 property. But I do believe it meets the development  
5 standards of the zone. And I do believe that the applicant  
6 has taken measures to mitigate some of the concerns expressed  
7 by neighboring properties with regard to privacy and so  
8 forth. So I would be voting in favor of the application.

9           BZA CHAIR HILL: Thank you. I just need to  
10 clarify something real quick. If you all could just give me  
11 one moment, please.

12           Okay. Are you all back with me? So as I was  
13 doing this, I realize my cases were out of order here on the  
14 paperwork. So I was looking at the wrong case. So I'm going  
15 to let the Secretary start again and call the correct case  
16 so that I can then provide my testimony to the correct case.  
17 Okay? So Madam Secretary, if you can start again, that would  
18 be helpful to me.

19           MS. MEHLERT: Okay. So next is Application No.  
20 20920, Florence Olajide. This is a self-certified  
21 application pursuant to Subtitle X Section 901.2 for a  
22 special exception under Subtitle U Section 421 to allow a new  
23 residential development. This is to construct a four unit  
24 apartment house in a new three-story detached building. It's  
25 located in the RA-1 zone at 1326 Fort Stevens Drive,

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1 Northwest, parcel 00870570.

2           BZA CHAIR HILL: Okay. So now I apologize. I was  
3 looking at a different case. So this particular case was the  
4 one where there was a concern about, I believe, the easement,  
5 if that's the one I'm correctly looking at. Yes.

6           And this was on that lot that was kind of tucked  
7 away in the back. Okay. Now again, I think that this was --  
8 the ANC was opposed to this particular application. And in  
9 this particular case, I was not convinced by the arguments  
10 by the ANC or the parties in opposition that this again would  
11 be something that I would not be able to be in favor of.

12           In other words, I would be in favor of this  
13 application. I think that the easement issue is not  
14 something that really is necessarily within our purview.  
15 However, I didn't think that there was an issue with the  
16 easement. So that's one item.

17           I didn't think that there was going to be a whole  
18 lot of undo impacts concerning this particular project on  
19 this lot. I understand that the neighbor was concerned about  
20 some utility issues as well as again kind of, I guess,  
21 concerns about privacy. I don't think that this particular  
22 development, I think that the way the windows are going to  
23 be constructed that it shouldn't be an issue concerning  
24 privacy for that one particular neighbor.

25           And I think that the easement issue again is not

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1 something that is directly within our purview. I do  
2 apologize for getting confused in the beginning when we were  
3 talking about this case. And now I'm going to move to Mr.  
4 Smith to hear if you have anything to help with regards to  
5 this deliberation.

6 MEMBER SMITH: The -- yes, this is -- I'll expand  
7 on what I was talking about previously. Yes, this was the  
8 issue, concerns raised by the neighbors regarding the  
9 easement. At the hearing, I didn't personally have -- and  
10 I understand the issues raised by the neighbor.

11 And the issues raised by the neighbor relate to  
12 whether the building was built on their property or actually  
13 on the subject application's property. It was clear to me  
14 in the record at that time that it was being built on the  
15 applicant's property. And even if it wasn't as you stated,  
16 that's not necessarily the purview of the Board.

17 That would be handled at the time of the building  
18 permit when the building permit is filed and when  
19 construction is started on the footers. There will need to  
20 be a wall check done to ensure that the property is in  
21 compliance with not only standard zoning setback requirements  
22 but also any conditions that we in theory would impose as a  
23 Board. So those type of checks would occur at a later time  
24 and will give the neighbor the opportunity to voice any  
25 concerns that she may have at that time because neighbors

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1 have the ability to get access to those building permits.

2           The applicant has made some slight tweaks to the  
3 design to address some of the comments that were heard, I  
4 guess, at the last hearing. And they have stated -- and some  
5 of the concerns that were raised by some of the parties in  
6 opposition dealt with privacy. And the applicant -- and I  
7 will note that the applicant would have a six foot solid  
8 fence in compliance with zoning regulations of the District  
9 around the property to address some of those privacy  
10 concerns.

11           And the applicant -- I will also note the  
12 applicant's (b)(8) is part of the requirements. And no  
13 parking is being taken away with the construction of these  
14 particular projects. So other than the clarity that seemed  
15 to have been needed previously to show that this property is,  
16 in fact, on its property and would not impact the easement.

17           I'm fairly comfortable with what was presented.  
18 And I do believe that the applicant has met the burden of  
19 proof for us to grant the special exception construction  
20 building. I understand the heartburn. This is in an alley,  
21 and it would result in probably a little bit more of an  
22 additional density than what otherwise exists there now. But  
23 the zoning does allow for a level of density within that --  
24 in that particular neighborhood or in that particular zone.  
25 So with that, I would be include to give OP's report great

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1 weight and support the application.

2           BZA CHAIR HILL: Okay. Thanks, Mr. Smith. I'm  
3 going to come back around to these conditions because I don't  
4 know what you all's thoughts are on the OP conditions. One  
5 was about, again, like, the landscaping plan in A03 Exhibit  
6 16.

7           I guess I'm kind of leaning towards the  
8 landscaping plan. But in terms of the second one which was  
9 recorded access easement to the rear for trash pickup, I  
10 think the easement, again, is not necessarily something that  
11 is exactly within our purview. But I'll let you all tell me  
12 what you all think as you go through this round. Mr. Blake?

13           MEMBER BLAKE: Yeah, it's funny. I was about to  
14 mention the conditions. But I think I agree totally with Mr.  
15 Smith's analysis of the case and I will be voting in favor  
16 of it.

17           I do believe that the compliance with the  
18 landscaping plan is appropriate. And there were several  
19 other things that the participants in the case actually  
20 requested, many of which are not within our purview. So for  
21 that reason, I think we got the information on the easement.

22           There is a six foot high fence which may also be  
23 included in that -- as a condition since it's there. But it  
24 would also aid in the privacy. They did rework the window.  
25 I think they reversed it to accommodate that.

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1           So there's things that have been done that I think  
2 have addressed many of the issues that were raised before.  
3 And primarily having an easement, it was clear that nobody  
4 should park in it as opposed to somebody should block the  
5 space or something like that. That showed some clarity for  
6 me on that. And it should be -- there's construction issues  
7 that should be handled by other -- DOB, et cetera. So I'm  
8 in favor of the application.

9           BZA CHAIR HILL: Thank you. Vice Chair Miller?

10           ZC VICE-CHAIR MILLER: We're going to hear from  
11 Vice Chair John. I would like to defer to Vice Chair John.

12           BZA CHAIR HILL: Sure.

13           ZC VICE-CHAIR MILLER: She's participating. Thank  
14 you.

15           BZA VICE-CHAIR JOHN: Okay. I really don't have  
16 anything more to add. The outstanding issue for me was the  
17 easement which the scope of the easement is a private matter  
18 that the parties have to sort out themselves. For me, the  
19 easement shows that the applicant has access to removing  
20 trash and other things like that.

21           So in terms of the access requirement, I think the  
22 diagram in the record that shows access from Peabody Street  
23 to Fort Stevens Drive meets that requirement as described by  
24 the applicant. As to the scope of the easement and who is  
25 prohibited from doing what, that's a matter that the parties

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1 have to sort out themselves. So other than that, I'm in  
2 support of the application and I don't have anything else to  
3 add.

4 BZA CHAIR HILL: Thank you. Vice Chair Miller?

5 ZC VICE-CHAIR MILLER: Thank you, Mr. Chairman.  
6 I guess I too appreciate the revisions that were made by the  
7 applicant to address some of the concerns about privacy that  
8 were raised by the opposing neighbors and the ANC. I would  
9 support the landscaping plan that was referenced by other  
10 Board members and it's in the Office of Planning's report  
11 recommending approval that there be that specific landscape  
12 condition as submitted.

13 The plan referenced to it in our order. On the  
14 easement, I agree that it's not within our purview. But even  
15 with all the testimony in the record, the way that this  
16 property is wedged in between other properties and doesn't  
17 have direct public street access, it still gives me some  
18 concern.

19 I comforted in part by my colleague's comments  
20 about an unimpeded access. I was also comforted when I asked  
21 the applicant specifically would they have an objection if  
22 we included, as I think OP recommended, some reference to  
23 unimpeded access to the street by any of the parties to the  
24 street. And they did not have an objection to restating what  
25 the purposes of the easement which serve ingress and egress

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1 purposes.

2           This is on page -- the pages aren't numbered. But  
3 page 3 of their Exhibit 51 of their response to the  
4 opposition's closing statement, they state that they did not  
5 -- and they state at the hearing in response to my question  
6 that they wouldn't have an objection to restating that the  
7 applicant shall adhere to -- that there shall not be any  
8 obstruction of ingress and egress at any time from the  
9 vehicular or pedestrian access for any of the parties to the  
10 easement. I would have more comfort if we would restate that  
11 purpose and leave it to the lawyers to figure out how that  
12 would be appropriate, if it's appropriate.

13           I guess the other question I had was on the  
14 security. I'm not sure what the applicant's response was,  
15 whether they -- I agree that the construction-related  
16 conditions are beyond our purview as well and that that needs  
17 to be worked out. But the applicant did offer some  
18 conditions for which we could reference about -- reference  
19 and maybe not include as conditions of our order.

20           But a point of contact during construction phase  
21 and monthly road and control measures during construction,  
22 that's -- again, construction-related issues are not in our  
23 purview. But I think we can reference that in the decision  
24 but not as a condition of the order. But on the security,  
25 I guess I had a question.

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1           Did the applicant -- I would also be more  
2 comfortable with the locking of the gates which both  
3 opposition neighbors requested to address the security  
4 concern, whether that could be included as a condition. I  
5 guess I would have more comfort if that were included. I'm  
6 not sure -- I guess I had some general unreadiness, the way  
7 this is wedged in there, even though it's the RA-1 zone as  
8 my colleagues have said where apartment use would be  
9 appropriate if the general standards of the special exception  
10 process are adhered to.

11           So I guess does anyone have an answer to the  
12 question about -- or the issue about the locking of the  
13 gates? Was there a logistical problem with that? Or was  
14 that addressed by the applicant and their response? I didn't  
15 see it but I might've missed it. But it may not matter  
16 because -- does anybody know about that issue?

17           BZA CHAIR HILL: I can't recall. Do my fellow  
18 Board members have a recollection?

19           BZA VICE-CHAIR JOHN: I thought that those issues  
20 were all raised in a construction agreement which we  
21 typically don't enforce in the order. But just point to the  
22 issues that were raised, I guess I was more concerned with  
23 access to trash and parking which are zoning issues.

24           BZA CHAIR HILL: I'm just looking through the  
25 file.

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1 ZC VICE-CHAIR MILLER: Would you -- while we're --

2 BZA CHAIR HILL: Go ahead, Vice Chair Miller.

3 ZC VICE-CHAIR MILLER: Vice Chair John, would you  
4 support a condition which -- the order which would include  
5 a requirement of unobstructed access to the street or public  
6 -- is there a public alley here?

7 BZA VICE-CHAIR JOHN: The easement provides -- I  
8 didn't mean to talk over you. Go ahead, please.

9 ZC VICE-CHAIR MILLER: No, go -- no, please help  
10 me.

11 BZA VICE-CHAIR JOHN: So I looked at the diagrams  
12 last night. The easement provides access between Peabody and  
13 Stevens -- Fort Stevens Drive. So I don't know if it's  
14 necessary for us to put that provision in because then we're  
15 going to be enforcing it if we put it in the order. That's  
16 my only question.

17 MEMBER SMITH: As well. Okay. I can be heard.  
18 I agree with Ms. John on that. I've looked at the easement  
19 as well. It does provide access. I don't think it's the  
20 purview of the Board and by extension who would be tasked  
21 with enforcing this would be the zoning administrator to  
22 regularly check to make sure that it's being used in that  
23 particular matter.

24 I don't think it's necessary and there may be  
25 other avenues that can be pursued from an enforcement

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1 standpoint on that matter. I think the point of the easement  
2 is just to provide the access to the public streets. And I'm  
3 not inclined to go beyond that. So no, I would not be in  
4 favor adding that condition or the second condition as  
5 requested by the Office of Planning.

6 BZA CHAIR HILL: Vice Chair Miller, we could  
7 reference it in the order then, however.

8 ZC VICE-CHAIR MILLER: Well, that would give me  
9 the comfort level to support the application of it.  
10 Otherwise, I just have some unreadiness about it.

11 BZA CHAIR HILL: Okay, okay. Well, let me make  
12 a motion and see what happens. I'll go ahead and make a  
13 motion to approve application number 20920 as captioned and  
14 read by the Secretary, including a condition that the  
15 compliance with the proposed site and landscaping plan on  
16 page A03 and Exhibit 16 also referencing a six foot high  
17 fence and then in the order referencing the easement that  
18 would have egress and -- back and forth with all the  
19 different parties that were in this application and ask for  
20 a second. Ms. John?

21 BZA VICE-CHAIR JOHN: Second.

22 BZA CHAIR HILL: The motion made and second.  
23 Madam Secretary, can you take a roll call?

24 MS. MEHLERT: Please respond to the chair's motion  
25 to approve the application with the condition regarding

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1 compliance with the landscaping plan and references to the  
2 fence and easement access. Chairman Hill?

3 BZA CHAIR HILL: Yes.

4 MS. MEHLERT: Vice Chair John?

5 BZA VICE-CHAIR JOHN: Yes.

6 MS. MEHLERT: Mr. Smith?

7 MEMBER SMITH: Yes.

8 MS. MEHLERT: Zoning Commissioner Miller?

9 ZC VICE-CHAIR MILLER: Yes.

10 MS. MEHLERT: Staff will report the vote is five  
11 to zero to zero to approve Application 20920 with conditions  
12 on the motion made by Chairman Hill and seconded by Vice  
13 Chair John.

14 BZA CHAIR HILL: Okay, great. You all have one  
15 more decision with Mr. Miller and I'm not on it. So maybe,  
16 Vice Chair John, if you can do that with Mr. Miller and then  
17 you all can take a break and then Corm Stidham could come in  
18 if that sounds fair. And so I'll just see you all -- we'll  
19 take a five, ten-minute break after you're done with Mr.  
20 Miller. And then we'll get Commissioner Stidham. So I'm  
21 going to go away. Thank you.

22 ZC VICE-CHAIR MILLER: Thank you, Mr. Chairman.

23 BZA CHAIR HILL: Bye, Vice Chair Miller.

24 BZA VICE-CHAIR JOHN: Thank you.

25 BZA CHAIR HILL: So Madam Secretary, if you want

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1 to go ahead and call that next one.

2 MS. MEHLERT: Next case is Application No. 21088  
3 of 3583 13th, LLC. This is a self-certified application  
4 pursuant to Subtitle X 901.2 for special exceptions under  
5 Subtitle U Section 320.2 to allow conversion of an existing  
6 residential building to an apartment house and Subtitle E  
7 Section 204.4 from the rooftop and upper floor element  
8 requirements of Subtitle E Section 204.1 to allow removal of  
9 rooftop architectural elements.

10 This is a conversion of an existing two-story  
11 semidetached principle dwelling to a three unit apartment  
12 house with a new third story and three-story rear addition  
13 and removal of an existing front porch roof and upper floor  
14 architectural elements original to the building. The project  
15 is located in the RF-1 zone at 3583 13th Street, Northwest,  
16 Square 2833, Lot 173. The Board heard this case at the April  
17 17th hearing and participating are Vice Chair John, Board  
18 Member Smith, Board Member Blake, and Zoning Commissioner  
19 Miller.

20 BZA VICE-CHAIR JOHN: Thank you, Madam Secretary.  
21 So I'll go ahead and start the deliberations. I assume we're  
22 all ready. So this case is in the RF-1 zone where  
23 residential conversions are allowed as a matter -- under a  
24 special exception relief under Subtitle U 320.2.

25 In this case, there will only be three units. And

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1 the project meets all of the requirements, all of the  
2 development standards except for the removal of the rooftop  
3 elements. Both the porch and the roof line would be removed.

4           And there was a lot of discussion at the hearing  
5 about whether or not the removal of the rooftop architectural  
6 element would meet the requirement regulation. E 204.4  
7 Section 483 that says the building should not substantially  
8 visually intrude upon the character, scale, and pattern of  
9 houses along the street or alley frontage. And OP felt that  
10 the design of the front facade did not meet that standard  
11 because the bay area did not extend to the roof.

12           So the applicant met with OP again. I believe the  
13 applicant met with OP. In any event, the applicant revised  
14 its submission. And now in Exhibits 33 and 34 show where the  
15 bay window extends to the roof which gives it a more  
16 streamlined approach.

17           So I believe with those changes, the application  
18 is consistent with the regulations. I know that DDOT is in  
19 support of the application and the ANC is also in support  
20 with no issues or concerns. So I'm in support of the  
21 application. I'd like to hear from other Board members  
22 starting with Mr. Smith.

23           MEMBER SMITH: I have nothing to add, Chair John.  
24 You know, the issue, you've sufficiently provided a very  
25 comprehensive discussion on the issues that was raised by the

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1 Board at the last hearing that had to do with the design of  
2 the facade, and as you stated, concerns about the second  
3 ladder of relief related to the rooftop, the removal of the  
4 rooftop architectural elements, and the fact that the  
5 original design did not go to the roof of the adjacent  
6 attached building.

7           And based on the new design that was submitted by  
8 the applicant, they've redesigned the facade to, by and  
9 large, match the design of the attached building to the left  
10 as I'm looking at the property from the front, so it's mostly  
11 in line with the design of that building, which is an  
12 improvement over what we saw previously.

13           And the Office of Planning has submitted a  
14 supplemental report that does support their redesign. I  
15 believe that it is in keeping with the character of the  
16 neighborhood and the adjacent properties. So, with that, I  
17 believe that it meets all of the standards for us to grant  
18 the approval and will support the application.

19           BZA VICE-CHAIR JOHN: Thank you, Board Member  
20 Smith. Board Member Blake?

21           MEMBER BLAKE: Thank you, Vice Chair John. I  
22 appreciate the steps that the applicant has made to address  
23 the Office of Planning's concerns with regard to the facade  
24 design. I do agree with the Office of Planning's analysis  
25 of how the applicant has met the criteria and give great

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1 weight to the Office of Planning's recommendation for  
2 approval. I also give great weight to the ANC 1C, 1A  
3 support. No issues or concerns stated, and I'll be voting  
4 in support of the application.

5 BZA VICE-CHAIR JOHN: Thank you, Board Member  
6 Blake. Vice Chair Miller?

7 ZC VICE-CHAIR MILLER: Ms. Chair, I concur with  
8 your comments and those of our colleagues, Board Members  
9 Smith and Blake.

10 BZA VICE-CHAIR JOHN: Thank you. I would just  
11 also add that there were several persons in support. The  
12 adjacent property, two adjacent properties were in support.  
13 Okay, so with that, I will make a motion to approve  
14 application 21088 as captioned and read by the secretary and  
15 ask for a second, Mr. Blake.

16 MEMBER BLAKE: Second.

17 BZA VICE-CHAIR JOHN: Madam Chairwoman, would you  
18 please state the roll call?

19 MS. MEHLERT: When I call your name, please  
20 respond to the Vice Chair's motion to approve. Vice Chair  
21 John?

22 BZA VICE-CHAIR JOHN: Yes.

23 MS. MEHLERT: Mr. Smith?

24 MEMBER SMITH: Yes.

25 MS. MEHLERT: Mr. Blake?

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1 MEMBER BLAKE: Yes.

2 MS. MEHLERT: Commissioner Miller?

3 (No audible response.)

4 MS. MEHLERT: I record the vote as four to zero  
5 to one to approve application 21088 on the motion made by  
6 Vice Chair John and seconded by Mr. Blake, with one Board  
7 member not present or participating.

8 BZA VICE-CHAIR JOHN: Thank you. So, as the  
9 Chairman stated, the Board will take a brief break until  
10 11:30. Does that work for everyone? Yes or no? Okay,  
11 11:30, thank you.

12 (Whereupon, the above-entitled matter went off the  
13 record at 11:17 a.m. and resumed at 11:33 a.m.)

14 BZA CHAIR HILL: Okay, I am actually not on the  
15 next one either, so Vice Chair John, I will let you lead the  
16 decision on the next one, and I will pop back in after that  
17 one's done, so thank you so much, Vice Chair John.

18 BZA VICE-CHAIR JOHN: Thank you, Mr. Chairman.  
19 I thought you were on this one. So, I'll start the  
20 discussion and then I'll see where everyone else is. So --

21 BZA CHAIR HILL: Vice Chair John, Madam Secretary  
22 can call the case for you.

23 BZA VICE-CHAIR JOHN: Oh, thank you.

24 BZA CHAIR HILL: Sorry.

25 BZA VICE-CHAIR JOHN: I'm so anxious to get into

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1 it.

2 MS. MEHLERT: That's okay. So, after the Board's  
3 recess, the next case in the Board's meeting session is  
4 appeal number 21049 of Gernot Brodnig and Alison Schafer.  
5 This is an appeal from the decision made on August 11, 2023,  
6 by the Department of Buildings Zoning Administrator to issue  
7 building permit number B2305113.

8 This is located in the R3-GT zone at 2716 O  
9 Street, NW, Square 1239, Lot 143. The Board heard the merits  
10 of this appeal at last week's hearing and closed the record,  
11 and participating are Vice Chair John, Mr. Smith, Mr. Blake,  
12 and Zoning Commissioner Stidham.

13 BZA VICE-CHAIR JOHN: Thank you, so this is an  
14 appeal of a building permit which was issued to the new owner  
15 of a row dwelling to extend the rear wall more than ten feet  
16 beyond the rear wall of the adjoining property. And the BZA  
17 order that granted the zoning relief became final in November  
18 2018.

19 In 2019, I think approximately August, the  
20 applicants filed a building permit application based on the  
21 relief granted in the BZA order. Then the D.C. Court of  
22 Appeals affirmed the order on March 30, 2021, which is a very  
23 important date because the order then extended, did not  
24 expire, but it would extend for another two years, which  
25 would allow the owner of the property to obtain a building

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1 permit.

2           So, however, the applicant, the original applicant  
3 sold the building to a new owner and did not notify DOB of  
4 the sale, and under the regulations, that meant that the  
5 building permit would be null and void as a matter of law.  
6 So, then the new owners, recognizing that they did not have  
7 a valid permit, filed another application on March 28, 2023,  
8 just before the BZA order would expire.

9           And the appellants seemed to suggest that because  
10 that previous permit expired, the new order, the new owner  
11 would not be able to file for a new permit application as I  
12 understand the argument. However, that really makes no sense  
13 under the regulations because once zoning relief is granted,  
14 it runs with the land. It doesn't attach to an owner, and  
15 so irrespective of who the owner is, the zoning relief would  
16 continue to be effective.

17           In this case, the current owner could still file  
18 an application for a permit to complete the work that was  
19 previously approved under the order. So, just to repeat  
20 myself, the relief is not specific to a particular owner, but  
21 runs with the land. So, once there is a determination that  
22 the order, the relief runs with the land, it doesn't really  
23 matter who the owner is as long as the application for the  
24 building permit is made within, prior to the time that that  
25 order expired.

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1           So, it's not a very complicated appeal as I see  
2 it, and the DOB was not erroneous in issuing the new permit  
3 B2305113. So, I would like to hear what other Board members  
4 think beginning with you, Mr. Blake, if you would like to,  
5 or Board Member Smith?

6           MEMBER BLAKE: Ms. Chair, I agree completely with  
7 your recap and analysis. Obviously, with the two-year --  
8 because the order runs with the land and the two-year time  
9 horizon had not evaporated, then the applicant was within  
10 their right by making the application even though there was  
11 a new owner. So, the DOB appropriately issued the permit in  
12 conformance with Y702.1 and Y702.3.

13           So, I too believe this is a fairly straightforward  
14 appeal because the appellant really did focus on the word  
15 applicant, and we stress that tremendously throughout his  
16 testimony in the plain language of Y702.1 about the word  
17 applicant, and he was not of the mind that it really ran with  
18 the land, and therefore, that's really what the crux of this  
19 argument was.

20           And regardless of whether that other permit  
21 expired or not, the fact that they made it within that two-  
22 year time frame is what made the difference. So, had  
23 circumstances been different, perhaps there would have been  
24 a different outcome, but this is the outcome that we have  
25 given the timely application. I'll be in support of denying

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1 the appeal.

2 BZA VICE-CHAIR JOHN: Thank you, Board Member  
3 Blake. Board Member Smith?

4 MEMBER SMITH: I really have nothing to add, Vice  
5 Chair John. I agree with your statements on this particular  
6 matter and Mr. Blake's statements on this particular matter,  
7 and agree that this seems to be a fairly straightforward case  
8 when it comes down to my position on this appeal, and it  
9 sounds like the rest of my colleagues.

10 The appellant seems to, again, focus on the  
11 question about who was the owner of the original, the holder  
12 of the special protection, but again, the special protection  
13 runs with the land, and after the appeal was denied by the  
14 courts, the applicant or future applicant, again there's been  
15 a change in ownership, the new owners of this particular  
16 property did properly file a building permit prior to what  
17 would have been the expiration of the special exception.  
18 They filed it two days before it would have expired.

19 Because the office of, the Department of Buildings  
20 acted on that set of plans by October 10, the special  
21 exception was vested and the building permit is valid. So,  
22 it's fairly straightforward along those lines, so I do not  
23 believe that the appellants have made a sufficient case here  
24 given the actions taken by the property owners, the fact that  
25 the special exception runs with the land, and it was vested

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1 when the building permit was approved on August 10, and  
2 because that building permit was submitted to DOB prior to  
3 April 30, I mean March 30, sorry, 2023, there is no grounds  
4 for an appeal on this particular case, so I would vote to  
5 dismiss the appeal.

6 BZA VICE-CHAIR JOHN: Thank you. So, based on  
7 that discussion, I will make a motion to deny --

8 MEMBER BLAKE: Ms. Stidham is here.

9 BZA VICE-CHAIR JOHN: I'm sorry, did someone  
10 speak?

11 MEMBER BLAKE: Ms. Stidham is here.

12 BZA VICE-CHAIR JOHN: Ms. Stidham is here?

13 (Simultaneous speaking.)

14 BZA VICE-CHAIR JOHN: I don't see -- oh, I'm  
15 sorry. I didn't see you online. My apologies. I am going  
16 to have to --

17 MEMBER STIDHAM: It's okay. I wasn't sure if --

18 BZA VICE-CHAIR JOHN: No, I thought maybe you had  
19 submitted an absentee ballot. So, my screen -- okay, I'm  
20 just having difficulty today. Please go ahead, Commissioner  
21 Stidham.

22 MEMBER STIDHAM: No worries. No worries at all.  
23 And I really don't have anything to add to what has already  
24 been said. I think all of you covered this very well. It's  
25 a very straightforward case and I am prepared to support as

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1 well.

2 BZA VICE-CHAIR JOHN: Thank you. Thank you. So,  
3 based on that discussion, I will make a motion to deny appeal  
4 number 21049 as captioned and read by the secretary and ask  
5 for a second, Mr. Blake.

6 MEMBER BLAKE: Second.

7 BZA VICE-CHAIR JOHN: Madam Secretary, would you  
8 please take the roll call?

9 MS. MEHLERT: There's a motion to, or the Vice  
10 Chair's motion to deny the appeal. Vice Chair John?

11 BZA VICE-CHAIR JOHN: Yes to deny.

12 MS. MEHLERT: Mr. Smith?

13 MEMBER SMITH: Yes.

14 MS. MEHLERT: Mr. Blake?

15 MEMBER BLAKE: Yes.

16 MS. MEHLERT: And Zoning Commissioner Stidham?

17 (No audible response.)

18 MS. MEHLERT: Staff will record the vote as four  
19 to zero to one to deny appeal 21049 on the motion made by  
20 Vice Chair John and seconded by Board Member Blake, with one  
21 Board member not present or participating.

22 BZA VICE-CHAIR JOHN: Thank you. So, I think that  
23 ends my participation on the decision cases. I don't believe  
24 I'm on any of the other applications, so I'm going to turn  
25 off my camera. Thank you.

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1           BZA CHAIR HILL: Thank you, Vice Chair John.  
2 Okay, let's see, I think we have two more with Commissioner  
3 Stidham and then we're going to kind of go out of order here  
4 in terms of our decisions because Commissioner Stidham is  
5 also here for a public hearing case. So, let's go ahead and  
6 do our next decision one, Madam Secretary, and that will be  
7 helpful.

8           MS. MEHLERT: The next case is application number  
9 20974 of RVP H Street, NW, LLC. This is a self-certified  
10 application pursuant to Subtitle X, 901.2 for a special  
11 exception under Subtitle C, Section 909.2, from the loading  
12 requirements of Subtitle C, Section 901.1, and pursuant to  
13 Subtitle X, 1002 for an area variance from the rear yard  
14 requirements of Subtitle I, Section 205.1.

15           This project is a new nine-story building  
16 retaining portions of existing three or four-story buildings  
17 for lodging, retail, and assembly uses, with approximately  
18 85 lodging units, but ranging from 60 to 120. The project  
19 is located in the D-4-R zone at 505-517 H Street, NW, Square  
20 485, Lots 3, 30, 42 through 44, and 48.

21           The Board heard this case on March 17 and had it  
22 scheduled for a decision on April 10. At the April 10  
23 meeting, the Board postponed the decision and requested  
24 additional information from the applicant, and participating  
25 are Chair Hill, Mr. Smith, and Zoning Commissioner Stidham.

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1           BZA CHAIR HILL: Thank you, Madam Secretary. Do  
2 you all remember -- there was something that I can't  
3 remember, the applicant putting something about what they  
4 were going to try and do for the community. I thought there  
5 was something in the record there. Do you all know where  
6 that was, or even Madam Secretary, if you know? Do you all  
7 know what I'm talking about?

8           MEMBER STIDHAM: I'm not remembering it for this  
9 case. I'm recalling that --

10          BZA CHAIR HILL: There was something about like --

11          MEMBER STIDHAM: It looked like in the retail at  
12 the ground floor level.

13          BZA CHAIR HILL: Yeah, yeah, yeah.

14          MEMBER SMITH: I think it's Exhibit 123 where they  
15 talk about --

16          BZA CHAIR HILL: 123?

17          MEMBER SMITH: Exhibit 123.

18          BZA CHAIR HILL: I don't see a 123.

19          MEMBER SMITH: Well, let me see, 109, sorry, where  
20 the applicant is proposing a condition that says prior to the  
21 issuance of the first C of F, for the retail component of the  
22 project, the applicant shall --

23                   (Simultaneous speaking.)

24          BZA CHAIR HILL: Yeah, yeah, yeah, that's it.  
25 Okay, great, thanks. It was the email, thanks. Okay, so

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1 they, the applicant, has withdrawn their relief concerning  
2 the Chinatown submarket and the retail, right, and so what's  
3 left before us is the area variance for the rear yard and  
4 then the special exception for the loading requirements.

5 I mean, we heard a lot of testimony from the  
6 community as well as the applicant concerning this project  
7 and the range of the lodging units, and the upper limit was,  
8 I think it was 120, and then they were also looking for  
9 design flexibility to work with, I think it was HPRB.

10 MEMBER STIDHAM: I think they were -- some of the  
11 relief they were asking was related to some of the decisions  
12 from HPRB.

13 BZA CHAIR HILL: Okay, I'm just looking here about  
14 the design flexibility. So, well, I'm going to look for this  
15 design flexibility thing as I listen to you all's  
16 deliberation as well. The -- one moment, please. Okay, I've  
17 got it.

18 So, I, I mean, my big concern or issue with the  
19 application was the Chinatown submarket issue, and they've,  
20 you know, pulled that from their request for relief. So,  
21 they are going to comply with the regulations per the  
22 submarket there and the retail use, and they have submitted  
23 information into the record about that accepted uses.

24 In terms of the rear yard variance, I do think  
25 that they are met with a unique situation that leads to a

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1 practical difficulty with them having to push back that  
2 building because of those townhomes that are out front there,  
3 and so I do believe they meet the criteria for the area  
4 variance and with regard to the rear yard.

5           In terms of the special exception for the loading  
6 berth, I didn't really have a whole lot of concerns about  
7 that. I think that DDOT also spoke to that relief, and due  
8 to DDOT's recommendation, it is making me more comfortable  
9 with also approving that relief.

10           I would, however, like to point to the exhibit  
11 that Mr. Smith was kind enough to remind me of, which was  
12 109A. Now, while those things are not items that we could  
13 put in an order, I would like to ask, if this does move  
14 forward, the Office of Zoning legal division to point to that  
15 exhibit in the record so that at least hopefully the  
16 applicant would adhere to the items that they were putting  
17 forward with regard to the community and their concerns.

18           When I was looking at this, I was also looking at,  
19 again, how the relief would be affected with the range of 120  
20 lodging units. I think that the shadow study that they've  
21 provided also gives me comfort in how I view this project and  
22 how it's going to be affecting the community at large, so I'm  
23 going to be voting in favor of this application. Mr. Smith?

24           MEMBER SMITH: Chairman Hill, I have nothing to  
25 add, well, not too much to add. I agree with the assessment

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1 about -- I didn't have too much concern or heartburn about  
2 the special exception from the loading requirements as they  
3 are in an urban and dense location and it would be fairly  
4 hard to comply with those, that one loading berth  
5 requirement.

6           And this particular type of special exception has  
7 been a fairly common special exception that we've seen over  
8 the years, requesting a special exception from being required  
9 to provide that one loading berth, and I'm fairly comfortable  
10 with the approach that would be taken to provide some space  
11 within the street for loading, which is something we've  
12 probably seen and something that DDOT has been able to work  
13 out fairly successfully with the applicant going forward.

14           I didn't have too much major concern about the  
15 area variance. I do believe they've met the standards for  
16 us to grant the area variance from the rear yard requirements  
17 for the same reasons that I've stated previously, given the  
18 constraints imposed by HPRB and just the place constraints,  
19 I believe, for this urban setting.

20           I do believe that they've met the standards  
21 related to showing an exceptional situation or an exceptional  
22 practical difficulty, and that it would not have a  
23 substantial detriment to the public good to reduce that rear  
24 yard, those rear yard setbacks.

25           As you stated before, we had a lot of testimony

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1 specially from advocates, or residents and advocates of the  
2 tenant association out there concerning the loss of the  
3 retail space that would have been located there. And I  
4 initially, with the first iteration, I did have some  
5 heartburn about that, especially being that I believe it was  
6 against the purpose of the Chinatown subarea to remove that  
7 level of retail.

8           And I'm glad to see that the applicant has  
9 listened or, really even listened and maybe a combination of  
10 listening and also just a reflection of the fact that the  
11 future of the tenants of Capital One Arena has changed since  
12 we first heard this case, so that may be a reflection of  
13 there may be change in market conditions there that may  
14 demand a higher level of retail in the future.

15           I have to see that that component that would have  
16 reduced the amount of retail on the street has gone away and  
17 it would allow for an opportunity for additional retail that  
18 could be supported by the tenants of the Wah Luck House.

19           I do agree with you, Chairman Hill, that the  
20 conditions that the applicant has proffered here -- and I'm  
21 happy that they've proffered those conditions. They're  
22 listening to the community and the concerns of the loss of  
23 ethnic Chinese and Asian tenants here. I think it is beyond  
24 the purview of the Board to impose that type of condition,  
25 ethnic condition within the order because it doesn't

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1 necessarily mitigate any of the impacts related to the  
2 loading berth or the area variance to the rear yard setback.

3           So, I don't think that we're in a position where  
4 we can impose those types of conditions in the matter stated  
5 by the applicant, but I do welcome memorializing it in the  
6 order, and prayerfully and hopefully, and I'm sure that they  
7 will given the types of questions or concerns that were  
8 raised by the residents of the Wah Luck House, would do these  
9 three conditions in good faith because they would be  
10 memorialized in the order, and I think it's a good neighbor  
11 policy to continue on with what they're proposing with these  
12 conditions. So, with that, I would support the special  
13 exception and the area variance, and memorializing, well, I  
14 would say two, well, memorializing the three conditions.

15           BZA CHAIR HILL: Thank you. Commissioner Stidham?

16           MEMBER STIDHAM: Thank you. I really had a lot  
17 of heartburn over the subvariant variance. You know, I was  
18 glad to see that they removed that from their request. As  
19 far as the special exception for the loading area and the  
20 area variance for the rear yard, I think they've met the  
21 burden of proof on those areas, and I would just echo what  
22 you and Board Member Smith have already said in terms of the  
23 details associated with that. So, I am prepared to support  
24 at this point.

25           BZA CHAIR HILL: Thank you. Okay, I'm going to

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1 make a motion to approve application number 20974 as  
2 captioned and read by the secretary, including design  
3 flexibility, that revisions needed to respond to additional  
4 feedback from HPRB, provided that any changes made to the  
5 approved plans shall not expand the special exception or  
6 variance relief being requested with the subject application,  
7 or create any new areas of relief that would require further  
8 review by the Board, and ask OZLD to reference the items that  
9 the applicant has put forward with regard to their working  
10 with the community, including the Wah Luck House, in Exhibit  
11 109A, and ask for a second, Mr. Smith.

12 MEMBER SMITH: Second.

13 BZA CHAIR HILL: The motion has been made and  
14 seconded. Madam Secretary, if you would take a roll call,  
15 please?

16 MS. MEHLERT: Yes, and just to clarify, did you  
17 want to include the DDOT conditions regarding the loading  
18 management plan?

19 BZA CHAIR HILL: Yes, I do believe so. Give me  
20 one second. I would include the condition that DDOT -- the  
21 applicant implement the transportation demand management plan  
22 that is in page seven and the loading management plan of page  
23 five through six, however, not contain the language of for  
24 the life of the project as it runs with the land and life of  
25 the project is not necessary, and ask for a second, Mr.

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1 Smith.

2 MEMBER SMITH: Second.

3 BZA CHAIR HILL: Once again, it's made and  
4 seconded. If you could take a roll call, Madam Secretary?

5 MS. MEHLERT: Please respond to the Chair's motion  
6 to approve the application with the conditions included in  
7 the motion. Chairman Hill?

8 BZA CHAIR HILL: Yes.

9 MS. MEHLERT: Mr. Smith?

10 MEMBER SMITH: Yes.

11 MS. MEHLERT: And Commissioner Stidham?

12 MEMBER STIDHAM: Yes.

13 MS. MEHLERT: Staff will record the vote as three  
14 to zero to two to approve application 20974 with conditions  
15 on the motion made by Chairman Hill and seconded by Mr.  
16 Smith, with two Board members not present or participating.

17 BZA CHAIR HILL: Okay, great. Now, I think what  
18 we're going to do is -- I know we have Chairman Hood with us  
19 after a little while for further decision cases. However,  
20 since we have Commissioner Stidham with us, let's go ahead  
21 and do our public hearing case on the one case that  
22 Commissioner Stidham is with us for and then we can move  
23 forward.

24 (Whereupon, the above-entitled matter went off the  
25 record at 12:01 p.m. and resumed at 12:17 p.m.)

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1 BZA CHAIR HILL: And I think we're going to get  
2 Chairman Hood, okay.

3 ZC CHAIR HOOD: Good afternoon.

4 BZA CHAIR HILL: Good afternoon. Welcome,  
5 Chairman Hood.

6 ZC CHAIR HOOD: Let me just say this, Mr.  
7 Chairman. I have been here all day waiting, but I can tell  
8 you Pepco just pulled out. I don't know what they're getting  
9 ready to do on the block, so if I disappear, you know what  
10 happened.

11 BZA CHAIR HILL: All right, we'll understand if  
12 you disappear and figure it out. All right, we are going  
13 back to our meeting hearing for some decisions, and I will  
14 ask the secretary to call the next one up, please?

15 MS. MEHLERT: Yes, back to the Board's meeting  
16 session, next is application number 21065 of Thirteenth 202,  
17 LLC. This is a self-certified application pursuant to  
18 Subtitle X, 901.2 for a special exception under Subtitle U,  
19 Section 421, to allow a new residential development.

20 This project is a new third-story and side and  
21 rear additions to an existing two-story detached principal  
22 building for use as a nine-unit apartment house. It's  
23 located in the RA-1 zone at 6108 13th Street, NW, Square  
24 2790, Lot 57. The Board heard this case at the March 20 and  
25 April 10 hearings, and participating are Chairman Hill, Board

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1 Member Blake, Board Member Smith, and Chairman Hood.

2           BZA CHAIR HILL: Okay, thank you. All right, so  
3 as you all will recall, we have taken a tremendous amount of  
4 testimony concerning this particular project. I am  
5 understanding of the concerns of the neighbors in the  
6 neighborhood. However, I don't really know exactly -- how  
7 should I say it? Again, it is the RA-1 zone, and this is an  
8 apartment house zone.

9           I started the discussion on this one earlier, but  
10 all of the other apartment houses in this zone are much  
11 bigger than this. This is only nine units. And I think that  
12 given what the community's concerns were about this  
13 particular project, that the developer has done what it can  
14 to alleviate some of those concerns.

15           They did have kind of exposed balconies, and those  
16 exposed balconies have now been kind of enclosed so that  
17 there still is some outdoor space available to the people  
18 living in these units. However, it would create more privacy  
19 for those around this particular building.

20           I think when we were actually even talking about  
21 this, I was a little concerning about them removing the  
22 balconies insofar as, you know, if you have a good product,  
23 the potential for getting good tenants is better, as opposed  
24 to if you have a product that isn't particularly desirable,  
25 then you might get tenants or people in those units that

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1 might not be as caring for their home or community, but  
2 that's just kind of an anecdotal thought if those balconies  
3 were gone and they didn't have any kind of outdoor space.

4           So, I do think that they have then mitigated some  
5 of the impacts concerning one of the property owners, or, I'm  
6 sorry, people that are living in the property to, I think,  
7 adjacent to where the main entrance of the building is, in  
8 terms of they're putting up, I think there's a fence and  
9 then, you know, as high as they're allowed to put up, which  
10 I think is six feet tall, as well as landscaping there to  
11 block the entrance visually, and then also should mitigate  
12 some kind of sound issues.

13           Again, this is the RA-1 zone. This is an  
14 apartment zone. This is what is supposed to be put there,  
15 and so it's very difficult, I think, for us to not approve  
16 this. However, I do think that the developer has put forward  
17 a design that helps mitigate some of those impacts.

18           And this again is what is, you know, what the BZA  
19 is also kind of charged with doing is an application might  
20 come before us in a certain way, and then after the hearing,  
21 and after hearing from the community, and after understanding  
22 some of the adverse impacts, the design changes, and that's  
23 what we have had happen before us. So, I will be voting in  
24 favor of this application, and would agree with the  
25 recommendations and also the review of the Office of

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1 Planning. Mr. Smith, do you have anything you'd like to add?

2 MEMBER SMITH: I think this is a repetitive  
3 statement that I'm just saying for all of the cases that I've  
4 been sitting on today. We've had a very robust discussion  
5 on this particular matter, and I understand fully the  
6 concerns that were raised by the ANC and the surrounding  
7 neighborhoods, I mean surrounding residents.

8 The ANC's concerns are largely in line with the  
9 concerns that were raised by the adjacent property owners,  
10 and I'll cut to the case, of this being an apartment building  
11 proposed to be situated between two single-family houses, or  
12 a short block of four single-family houses along 13th Street,  
13 but as Chairman Hill has stated, this is the RA-1 zone. The  
14 intent of the RA-1 zone is for these types of buildings,  
15 these apartment buildings, lower density apartment buildings.

16 As a matter of fact, outside of these four single-  
17 family houses, and this was stated by the Office of Planning,  
18 and they typically look at the square when they're discussing  
19 the character, not just that one block, this entire square,  
20 save for these four single-family houses, is apartments or  
21 a mixture of duplexes, or low-density apartments, higher-  
22 density apartments. I guess I shouldn't say apartments,  
23 multifamily residential, at higher densities than single-  
24 family.

25 So, the application before us meets the intent of

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1 the zoning regulations for the RA-1 zone of the construction  
2 of apartments. So, we are not in a position to deny it  
3 simply because it's not a single-family house. For us to  
4 deny it because it's not a single-family house probably would  
5 invite an appeal to be completely honest, and when it gets  
6 to the Court of Appeals, it would be overturned and sent back  
7 to us.

8 I'll just be completely honest with you on that,  
9 if we're denying this based off of the use, which I think  
10 that's probably what the ANC and probably what the  
11 surrounding property owners would want, and I can't blame  
12 them for it, but we're tasked with looking at the  
13 regulations, and it's RA-1, and I feel like I'm beating a  
14 dead horse.

15 I believe that the applicant, given what they're  
16 proposing to construct has attempted to mitigate some of the  
17 adverse impacts related to the construction of an apartment  
18 between two single-family houses, and some of the other  
19 concerns that were raised about the design and the character  
20 --

21 This particular building from the front reads not  
22 as a very bulky apartment building as it attempts to  
23 communicate, or communicate the facades that currently exist  
24 within the neighborhood for some of the lower-density  
25 residential buildings that exist the single-family homes,

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1 rowhomes, even attempting to use some of the material that  
2 they see within that neighborhood.

3           They've attempted to address privacy concerns.  
4 These are not open balconies. They will be enclosed. There  
5 will be less sightlines into the rear yards of the adjacent  
6 single-family homes and some of the rowhomes that are to the  
7 north of this particular property across the alley.

8           The applicant is not requesting parking relief.  
9 They will meet the minimum parking requirements. I think  
10 there was a concern that was raised by an adjacent property  
11 owner about them building up to their property line, or  
12 constructing in a manner that would make it difficult for  
13 them to, for other people within the alley to use some of the  
14 green space or areas that haven't been developed on the  
15 applicant's property to turn around and navigate within the  
16 alley.

17           That is not within our purview to force a wider  
18 alley. That would require them dedicating additional land  
19 to the District of Columbia, and the District of Columbia  
20 improving it and widening the alley for something like that.  
21 So, that's not something that's, again, within the purview  
22 of the Board.

23           I do believe that the applicant has met the  
24 general special exception standards. The first one will be  
25 A, will the property be in harmony with the general purpose

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1 and intent of the zoning regulations and the zoning maps?  
2 Again, this particular zone, the RA-1 zone, does contemplate  
3 the construction of apartment buildings.

4           The second standard, will the property not, or the  
5 development would not tend to effect adversely the use of  
6 neighboring property in accordance with the zoning  
7 regulations and zoning maps. Again, it is zone RA-1, and I  
8 believe that with the enclosure of the balconies, and it  
9 attempts to address some of those concerns related to  
10 privacy.

11           And there aren't major parking concerns because  
12 the applicant would meet their parking requirement, and I do  
13 believe it meets the standard for us to grant this special  
14 exception under Subtitle U, 421, new residential  
15 developments. So, with that, I will give the OP staff report  
16 great weight and will support the application.

17           BZA CHAIR HILL: Thank you. Mr. Blake?

18           MEMBER BLAKE: I'm in support of the application  
19 and I will not repeat all of the stuff that Board Member  
20 Smith said. He covered pretty much everything. I would like  
21 to make sure that the conditions for the landscaping plan,  
22 if they include it, from Exhibit, I believe it's 65, the  
23 updated architectural plans, or no, 67, I'm sorry, to make  
24 sure they have the updated landscaping and so forth if the  
25 Office of Planning had wanted that included in the condition.

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1 Otherwise, I have nothing else to add. I'll be voting in  
2 favor of the application.

3 BZA CHAIR HILL: Thank you. I think it's  
4 compliance with the proposed site and landscaping plans, and  
5 the architectural plans on pages five, seven, 23, and 24 in  
6 Exhibit 65, including the screen, trash area and tree  
7 plantings. That's what I see in OP's report, and I think it  
8 is Exhibit 65.

9 MEMBER BLAKE: Okay, but I believe the  
10 architectural plan updated in 67, but we can -- if you want  
11 to reference the other --

12 BZA CHAIR HILL: Yeah, let me go back. I'm sorry.  
13 Yeah, yeah, I'm sorry. You're right. You're right. Okay,  
14 let me see if the page numbers are the same. While I do  
15 that, Chairman Hood?

16 ZC CHAIR HOOD: While I appreciate what I heard  
17 my colleagues say, I don't believe that the purpose of the --  
18 and I also heard Board Member Smith mention about on appeal.  
19 I'm not concerned about appeals or courts. I've been getting  
20 that quite a bit lately, but I'm just going to try to do the  
21 job that I've been tasked to do.

22 So, I will not be voting in support of this. I'm  
23 concerned about the nine units. And I think -- I don't know  
24 how we equated it up to 26 beds. I'm not sure how we got  
25 there, but I know there was some testimony provided. I may

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1 have that wrong.

2           But one of the problems I'm having, it says from  
3 F101.2, the RA zones, RA zones in this city are broke. This  
4 is not the first time I've said it. I'm waiting of the  
5 Office of Planning to do something to help us kind of  
6 mitigate some of what you all have to go through, and until  
7 that --

8           I'm not saying I will vote against every RA-1 or  
9 RA zone case, but I think this is a perfect textbook case of  
10 showing how they're broke. When you talk about permitting  
11 flexibility of all types of resolutions, that's fine. I  
12 don't have any problems with that, but I think there are  
13 some, under the special exceptions, there are some serious  
14 adverse impacts about the intensity of what we're getting  
15 ready to approve here in the development.

16           You know, you may be allowed to do nine, but you  
17 don't have to do nine units. So, I just think that this is  
18 a gross misuse of the legislative history and the legislative  
19 intent of how this is being used. I think for me, we all  
20 read things differently, but I think that it's being misused,  
21 and again, I'll just go back to saying RA zones in this city  
22 are broke. And I'm on the record of trying to get them  
23 repaired and fixed, so I'll leave it at that. Thank you, Mr.  
24 Chairman.

25           BZA CHAIR HILL: All right, Chairman Hood. Well,

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1 as soon as you fix them, and you're able to do so and give  
2 them to us, then we'll be able to look at things a little  
3 differently, but I --

4 ZC CHAIR HOOD: I still think, Mr. Chairman, I'm  
5 going to have to straighten this statement out. It's open  
6 for -- that's for the Board. It's open for interpretation.  
7 I'm not going to try to persuade. Obviously, I'm in the  
8 minority here, but just because you can do nine units doesn't  
9 mean you have to approve, I mean it doesn't mean you have to  
10 approve everything.

11 And actually, I don't blame the applicant. You're  
12 supposed to apply and ask for everything. I think it's  
13 there, but it leaves it open to interpretation, and I  
14 disagree fully and 100 percent of saying we can't do anything  
15 but approve it, and I'll just leave it at that. So, I wanted  
16 to correct that statement, so thank you, Mr. Chairman.

17 BZA CHAIR HILL: Okay, all right, I'm going to  
18 make a motion to approve application number 21065 as  
19 captioned and read by the secretary, including the conditions  
20 from the Office of Planning concerning compliance with the  
21 architectural plans that I believe are in Exhibit 67,  
22 including the landscaping plans that I believe are on pages  
23 five, seven, 23, and 24, and then also the screen, trash, and  
24 tree plantings, and ask for a second, Mr. Blake.

25 MEMBER BLAKE: Second.

1 BZA CHAIR HILL: Motion made and seconded. Madam  
2 Secretary, if you would take a roll call?

3 MS. MEHLERT: When I call your name, please  
4 respond to the Chair's motion to approve the application with  
5 the condition regarding the site and landscaping plans as  
6 listed in the OP report. Chairman Hill?

7 BZA CHAIR HILL: Yes.

8 MS. MEHLERT: Mr. Smith?

9 (No audible response.)

10 MS. MEHLERT: Mr. Blake?

11 MEMBER BLAKE: Yes.

12 MS. MEHLERT: Chairman Hood?

13 (No audible response.)

14 MS. MEHLERT: Staff would record the vote as three  
15 to one to zero to approve application 21065 with the  
16 condition on the motion made by Chairman Hill and seconded  
17 by Board Member Blake, also in support is Mr. Smith, and  
18 Chairman Hood is opposed to the motion, with one Board member  
19 not participating.

20 BZA CHAIR HILL: Okay, great. All right, thank  
21 you, Madam Secretary. And I guess we have one more decision  
22 case, I think. Let's see, if you could let me know. I think  
23 that's right.

24 ZC CHAIR HOOD: There's one more, Mr. Chairman,  
25 21037. I believe I'm on that one as well.

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1 BZA CHAIR HILL: Yes.

2 Madam Secretary, if you want to go ahead and call  
3 21037?

4 MS. MEHLERT: Yes, sorry. Were you waiting for  
5 me?

6 BZA CHAIR HILL: Yeah, I was waiting for you,  
7 sorry.

8 MS. MEHLERT: Okay, my apologies.

9 BZA CHAIR HILL: That's all right.

10 MS. MEHLERT: The next, the last case in the  
11 Board's meeting agenda is application number 21037 of  
12 Nathaniel and Patricia Robb. This is an application pursuant  
13 to Subtitle X, Section 901.2 for special exceptions under  
14 Subtitle E, Section 5201 from the lot occupancy requirements  
15 of Subtitle E, Section 210.1 and the rear yard requirements  
16 of Subtitle E, Section 207.1.

17 This is to construct a rear deck addition to an  
18 existing three-story attached building used as a two-unit  
19 flat in the RF-1 zone. It's located at 1361 Oak Street, NW,  
20 Square 2835, Lot 73. The Board heard this case at the March  
21 20 and April 10 hearings.

22 The Chair also recently granted the ANC 1A's  
23 motion to reopen the record for supplemental filings, which  
24 were added to the record on April 23, and there is also a new  
25 zoning administrator memo in the record that was added late

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1 today. Participating are Chair Hill, Mr. Blake, Mr. Smith,  
2 and Chairman Hood.

3 BZA CHAIR HILL: Okay, so I don't know about you  
4 guys, but, you know, just now we got this revised memo from  
5 the zoning administrator that came in that now seems to be  
6 increasing the relief needed from, I think, I thought it was  
7 just -- I thought the additional lot occupancy originally was  
8 only --

9 Right, it went from 60 percent to 60.4 percent.  
10 Now it looks like it's going from 60 percent to 64 percent.  
11 And then the rear yard originally was 20 feet required and  
12 16 feet proposed, and now it looks like it's 20 feet required  
13 again and seven proposed if I'm correct, and so I need time  
14 to look through this again.

15 And I don't know, we might even want to see if the  
16 applicant wants to submit anything. We can leave the record  
17 open for that, but I at least need another week now to kind  
18 of like take a look at the new information and also kind of  
19 figure out the Office of Planning's new report. Their  
20 supplemental report now seems to indicate that it would be  
21 something that perhaps the Department of Buildings would be,  
22 you know, reviewing in terms of if we were to approve a  
23 certain amount of relief and they needed more relief.

24 So, really, I think at the very minimum, the  
25 applicant would have to come back and ask for the correct

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1 amount of relief requested, and so I think that what we  
2 should probably do is allow the applicant an opportunity to  
3 reach back out to the Office of Planning to understand what  
4 their needed relief is, and then I'm at a little bit of a  
5 loss. I don't know what to do next to be quite honest, and  
6 so I'll ask my fellow Board members a little bit. I'll go  
7 around the table in my normal way. Mr. Smith?

8 MEMBER SMITH: I agree, because we've gotten this,  
9 say, late-breaking memo from the Office of Planning, I think  
10 I will need some time to digest it, and also probably we  
11 should let the applicant digest it a little bit given that  
12 this may effect, this may have a major effect on their  
13 application, so I'm comfortable with waiting a week.

14 BZA CHAIR HILL: Okay, Mr. Blake, what are your  
15 thoughts?

16 MEMBER BLAKE: We've struggled with this  
17 information for a while to get accuracy there. I was pleased  
18 with the pictures we received, but this, I think -- I mean,  
19 the relief that's still being requested is the same type of  
20 relief, but it's much more significant, and I would be  
21 concerned about how all of the drawings actually shape -- I'd  
22 like a nice, clean set of everything that reflects these  
23 numbers and the requested relief.

24 BZA CHAIR HILL: Okay, Chairman Hood?

25 ZC CHAIR HOOD: Mr. Chairman, I would agree with

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1 everything I have heard and I don't have anything to add.

2           BZA CHAIR HILL: Okay, so then Madam Secretary,  
3 what I would propose is that we ask -- well, the applicants,  
4 I would imagine, are watching. I think we need a revised  
5 self-cert that asks for the relief that's reflected in the  
6 zoning administrator's letter.

7           Then we would need a supplemental report from the  
8 Office of Planning as to their concerns, or not their  
9 concerns, their thoughts on the new numbers, and then a set  
10 of plans, as Mr. Blake had referenced, a clean set of plans  
11 all in one place with the new numbers.

12           And, I mean, Madam Secretary, I'm at a little bit  
13 of a loss as to if you could help me right now as to how we  
14 might be able to get this stuff and whether we're coming back  
15 here, and I'm looking for my fellow Board members again,  
16 whether we're coming back here for a decision or a  
17 supplemental hearing again on these new numbers.

18           ZC CHAIR HOOD: Mr. Chairman, I would think we  
19 might need a limited scope if we have questions, but I'll  
20 leave that up to --

21           BZA CHAIR HILL: No, that's fine. I need somebody  
22 to help me out here. So, I'm looking at a calendar. So, if  
23 -- that would mean that the applicant has to get with the  
24 Office of Planning. The Office of Planning has to give us  
25 a new report, right? So, Madam Secretary, just on that

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1 alone, I guess maybe we're looking at the 15th or the 22nd  
2 for a limited scope hearing. Do you have numbers of cases  
3 for me on the 15th and the 22nd?

4 MS. MEHLERT: Those days are pretty busy. You  
5 have an appeal on the 15th, plus four hearing cases and four  
6 decision cases, and the 22nd, you have three expedited review  
7 cases and six hearing cases. If you could, the 5th, June 5  
8 might be a little bit better if you wanted to push it that  
9 far out.

10 BZA CHAIR HILL: What -- how many cases do we have  
11 on June 5?

12 MS. MEHLERT: So, there's two applications, two  
13 decision cases, then two cases, and then two appeals that may  
14 or may not actually happen on that date.

15 BZA CHAIR HILL: Okay, well, I hope the may not  
16 is what you're really talking about. So, you think that it  
17 may not, we may not have two appeals?

18 MS. MEHLERT: I mean, right now, we do.

19 BZA CHAIR HILL: Okay, all right, so tell me about  
20 the 29th again of May?

21 MS. MEHLERT: We don't have a hearing on the 29th.

22 BZA CHAIR HILL: Oh, yeah, Labor Day, or Memorial  
23 Day. What did you say on the 22nd?

24 MS. MEHLERT: The 22nd, you have six hearing  
25 cases.

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1           BZA CHAIR HILL: Okay, let's put it on the 22nd  
2 because I just want to find out where we are with this. And  
3 Chairman Hood, do you know when you are back with us, or  
4 would the 22nd work for you if we did this first thing?

5           ZC CHAIR HOOD: I'll make the 22nd work. I'm not  
6 sure when I'm back. I think it's next month, but I'll make  
7 it work.

8           BZA CHAIR HILL: Okay, then what I need is the  
9 applicant to revise their application to reflect the new  
10 numbers, work with the Office of Planning, and we need a new  
11 Office of Planning report to get back here by the 22nd.  
12 Madam Secretary, I'm turning to you to tell me what dates or  
13 when everything might be necessary.

14           MS. MEHLERT: Sure, so perhaps we could give the  
15 applicant until next Friday, the 10th, and then have a report  
16 from OP by the 17th, the Friday before the 22nd, and as well  
17 as any response from the ANC.

18           BZA CHAIR HILL: Great, and then we'll have a  
19 limited scope hearing on the 22nd. And they can let -- and,  
20 you know, if something changes, or if the applicant needs  
21 more time or whatever, they can let us know, but we'll  
22 tentatively put it for a limited scope hearing for 11/22, I'm  
23 sorry, not 11/22, what is it, 5/22. Okay, great, all right,  
24 let's see, it's up to you all. So, now we're done with our  
25 -- we've literally just finished our decisions.

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1           So, there's one, two, three cases that are still  
2 hearing cases. Do we want to take lunch and then come back  
3 for our three cases? Okay, all right, that's what we'll do  
4 then. All right, let's take lunch. It's 11:47, I'm sorry,  
5 12:47. Let's try to get back here by 1:30. Thank you.

6           (Whereupon, the above-entitled matter went off the  
7 record at 12:47 p.m.)

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C E R T I F I C A T E

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In the matter of: Public Meeting

Before: DC BZA

Date: 05-01-24

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