

October 10, 2025

Via IZIS

Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210S
Washington, DC 20001

Re: Post Hearing Submission - BZA Case No. 21303 – 1631 A Street, SE

Dear Chairperson Hill and Members of the Board:

The Board has asked for additional information regarding the purpose and intent of the 900-foot rule. Based on the Board's focus on the purpose and intent of the 900-foot rule, we have focused our response on providing further argument and supporting documentation that granting approval for two units in vacant basement space within an existing apartment building will not substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Therefore, we have submitted attachments which further explore the Board's interaction with that question in the context of area variance cases for relief from the 900-foot rule. The additional information provides detail, from full Orders, of the Board's position on how this relief does not substantially impart the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

It is noteworthy that we have found no evidence of the Board ever denying such an application solely because such relief would substantially impair the purpose and intent of the Zoning Regulations. Rather, we have found documentation that the Board has granted 900-foot rule relief many times, going back to at least the 1960's.

In addition to the above-reference attachments, we also attach BZA Order No. 12278 from 1977, the oldest full Order we could find. This was the Order behind the Wolf v. BZA Court of Appeals case that affirmed the Board's decision to grant relief based on market-value practical difficulties. Wolf also affirmed that this relief is an area variance relief requiring the lesser standard of practical difficulty, and not a use variance requiring a more difficult standard of undue hardship.

To be clear, we are not saying that because the Board has approved this relief many times over the last sixty years, it must approve this case for that reason alone. What we are saying is over the last 60 years, this Board has not seen any issue with the impairment of the intent and purpose of the zoning regulations in granting this relief for an additional unit, sometimes more. We are also saying that over the

last 10 years, when faced with the fact pattern before it in this application, the Board has found the area variance test met. To reverse that standard in this Application would be the very definition of an arbitrary decision, in our opinion, and would leave the owner with practical difficulties as previously determined by the board.

The Applicant is including a transcript of the hearing for Case No. 20289 with an IDENTICAL fact pattern (and the same attorney)—except that case no. 20289 was in the R-3 zone, not even RF, which allows apartments. The Board members on that vote included Chairman Hill, Board Member Smith, and Chairman Hood. During the hearing, Ms. Wilson stated:

“While Mr. Young is pulling that up, I’ll start and give some background. The building was constructed in the early 1900’s and is a purpose-built apartment building. When Mr. Barley purchased the property, the C of O was only for 14 units even though there are 15 units in the existing building. I even researched some old C of O’s and found them dating back to the 1970’s showing only 14 units. So this condition has existed for quite a while where the building has a 15th unit that isn’t in the C of O. And now we’re requesting to make that 15th unit legal which requires a variance from E 201.7 as we do not have the 900-square foot per unit existing or proposed. In addition to making the 15th unit legal, we are also requesting to add two units in existing vacant space on the cellar level. And that space is not being used for any purpose right now and has been proven difficult to maintain.” (page 8 of Transcript).

Ms. Wilson continues:

“But even though it’s zoned R-3, the building essentially fronts on Pennsylvania Avenue. It’s at the intersection of Pennsylvania, Seward, and 4th Street, and there are a number of institutional buildings and commercial uses in the area. So there’s a gas station across from Pennsylvania Avenue, a bank across 4th Street, and a number of restaurants and bars on the block. It is a purpose-built apartment building which is a main condition.

The fact that it’s surrounded by commercial uses and fronts on Pennsylvania Avenue on this corner there, combined with the fact that it’s a purpose-built apartment building that became legally nonconforming, creates a unique condition. And there is existing idle cellar space adjacent to those existing units. There was a modernization of the building when Mr. Barley purchased it, and so now all of the units have in-unit laundry and storage space. So this space is currently vacant.

And there have been instances where someone -- there was an instance where someone actually broke into the building. So this space has become difficult to maintain. It's a security issue likely due to its high visibility on the corner of Seward and Pennsylvania and because of the commercial uses in the area. There is a bar, a bank, and a gas station right there. So it's a relatively high-traffic area, and there's already been a security issue where someone broke in and gained access to that vacant space and actually stayed overnight there. So there are proven issues with maintaining this space.

And so instead of leaving it vacant, which would present additional maintenance and security issues that they've already had, the Applicant is proposing to take idle space and put it to a higher and better use as additional housing. And the Applicant can do all of that without the need for an addition, so it's not disruptive to the adjacent neighbors and does not involve exterior construction.” (pages 9-11).

Ms. Elliott from OP states:

“And so the Office of Planning is recommending approval of the area variance relief that's been requested for this application. The building is a purpose-built apartment house. It was constructed prior to the 1958 zoning regulations. And then we do often see this issue, you know, modernizing these buildings over time where it does create, you know, some issues with the floor plan. In particular, the Applicant has mentioned, you know, the issues with maintaining that space because it's not being used for anything. So in this case, you know, all of the laundry has been relocated to individual units, and it's created this awkward space in a prominent location of the building that's difficult to maintain.

The Applicant has also provided floor plans showing the location of load-bearing walls and how that vacant space cannot be combined with other existing units. And then, you know, combining it with upper units would create an issue as well because these are small enough that a lot of that space would be eaten up by circulation, and it would sort of defeat the purpose of incorporating that space into some of the other upper units.

So the Office of Planning is recommending approval.” (p 14).

Deliberations:

Chairman Hill: *“I can go ahead and start. I would agree with the analysis that the Office of Planning has provided. I will also agree with the analysis and the argument that the Applicant has made in*

terms of how they're meeting the standard for us to grant the application. And I am going to be voting in favor of the application.” (Page 15)

Chairman Hood: *“I would agree with your assessment. I think Ms. Elliott's report really convinced me and also the actions -- I'm glad we were able to mitigate some of the actions that were not actually noticed when the Commission first dealt with these regulations. But I think -- on that related point, I think Ms. Elliott actually mentioned and articulated in a very (audio interference) be supporting this case. And I would also incorporate the Office of Planning's recommendation as you mentioned as well as the Applicant's response to moving forward with this case. That's all I have on this, Mr. Chairman.”*
(P. 16)

Board Member Smith: *“I'll second both of your comments about this particular case. I think Ms. Wilson did a great job of articulating the practical hardship of using that space in the basement. And, also, that one of the units was a personal apartment unit that was constructed prior to the implementation of the 1958 zoning regulations. So I am in agreement with both of you, and I will be supporting the variance.”* (page 15).

VC John: *“And I will give great weight to OP's analysis with respect to the first prong, the exceptional condition that this is a purpose- built apartment building from the early 1900's and that the excess space is created because of an attempt to modernize the building and to remove some of the utilities from the basement which is a more efficient use of the building. And so I believe that there are a number of factors that create this exceptional condition. And I believe the Applicant has met the requirement for the regulation, for relief on the regulation. So I -- as I said before, I can support the application.”* (p. 16-17)

Given this information, why would the standard move for this particular property—that has the same conditions related to vacant basement space, security, is arguably more unique than the surrounding uses, is in a zone meant for apartments (unlike the one above which was R-3) and has the same issues with load bearing walls and continued practical difficulties related to security and vacancy. Adding two units in the basement of a pre-1958 purpose-built apartment building unique for the block does not impair the purpose of the zoning regulations and is in line with the District’s overall goals.

Denying this case after granting a nearly identical one would not protect the integrity of the regulations as this is a specific fact pattern that comes up once every 5-10 years (for this particular purpose-built apartment vacant basement scenario). All the denial does is increase costs for these owners, that eventually get passed on to tenants, increasing housing overall, while simultaneously undermining administrative consistency that owners and consultants who have many years of experience in this field rely on when investing in the District. For these reasons, we respectfully request that the Board approve the Application.

Respectfully Submitted,

Alexandra Wilson
Alexandra Wilson
Sullivan & Barros, LLP

Before the Board of Zoning Adjustment, D. C.

Application No. 12278, of David J. Dubois, pursuant to Sub-section 8207.11 of the Zoning Regulations, an area variance from the strict application of Sub-section 3301.1. Applicant seeks to convert a two (2) family flat (basement, 1st and 2nd floors) to use the subject premises for an apartment house consisting of three (3) units (basement, 1st and 2nd floors) in the R-4 District at 1115 Independence Avenue, S. E., Lot 814, Square 990.

HEARING DATE: February 16, 1977
DECISION DATE: March 8, 1977

FINDINGS OF FACT:

1. The subject property is improved with a three-story (basement, 1st and 2nd floors) row dwelling constructed in 1912 as a two-family flat. The building is exceptionally large for the area, having a gross floor area of approximately 4,500 square feet or 1,500 square feet per floor on a lot size of 2,164 square feet. Out of 70 houses within 200 feet, none are as large as the subject property. Fifty of the houses within 200 feet, are less than half as large and 40 have approximately one-third the size.
2. The subject property is presently used as a two-family flat, although the basement is improved to accommodate roomers either accessory to tenant use or as a rooming house as permitted in the R-4 Zoning District. In addition to the two families, roomers in number of approximately four to six could occupy legally the basement.
3. In 1966, the Board granted a variance from the 900 square foot rule for this same property for four units with two units on the first floor and two units on the second floor in B.Z.A. Application No. 9062. However, the owner was not able to obtain financing and the Order expired.
4. In B.Z.A. Application No. 9062, the Board incorporated by reference in the reasons for the grant of the variance the reasoning in Application No. 8631 which provides in pertinent part that "the best practical rule for conversion in the R-4 District is to permit one living unit per floor and we have granted variances from the 900 square feet per unit requirement of Section 3301.1 to permit this in many cases."

5. In 1973, the present owner, knowing of the previous approval for four units, purchased the property and learned that an application to the Board of Zoning Adjustment would be required for three units. Believing the application to be rather simple in view of the previous four-unit approval, the present owner applied for approval of three units to the Board and appeared before the Board without advice on variance matters and without referencing the previous approval for four units. The Board in B.Z.A. Application No. 11444 denied the application for failure to carry the burden of proof. The Board apparently used the test of "hardship". The decision in Case No. 11444 was prior to the decision in Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment, 320 A.2d 291 (D.C. App. 1974), which held that a variance could be based on difficulties inherent in the structure as opposed to difficulties inherent in the land.

6. In keeping with the Board of Zoning Adjustment denial, the owner renovated the property for flat use, including renovation to the basement. The property was offered for rent for two families, including the rental of 3,000 square feet, being the basement and first floor. Restoration to the building cost \$74,376.

7. The subject property has a lot width of 22 feet and a depth of 98 feet. The building is approximately 80 feet in depth, including the porch and front projection. On each floor, with the exception of the basement, there are full living accommodations with six rooms deep, including living room, dining room, bath, kitchen and two bedrooms as well as the porch. In the basement, the front portion is presently devoted to a recreation room. There is also a bar and bedrooms which are readily usable for apartment use with the inclusion of a full kitchen and removal of the stair access to the first floor. All floors have access both front and rear to the street.

8. In November, 1974, the owner advertised the property for tenants. While the owner had no difficulty in renting the top floor, he had difficulty in finding a tenant for the basement and first floor unit containing approximately 3,000 square feet. Finally, the two floors were rented to one person with the understanding that the basement rooms would be sublet. From approximately July of 1976 until present, the basement has been unoccupied.

9. Monthly expenses for the property are approximately \$1,276. Rental on an annual basis for two apartments and rooms would be approximately \$1,250; whereas rental for three apartment would be \$1,350, or a difference of approximately \$100.

10. The applicant's bases for variance are four-fold: (1) size of building, being the only one like it in the neighborhood; (2) layout, having a depth of approximately 80 feet and being six rooms deep; (3) practical difficulties of marketing a 3,000 square foot unit or using the basement for roomers; and (4) the relationship of market and income to cost.

11. The Board finds that the building is exceptional in that it is dissimilar to row house neighbors since it was constructed as a two-family flat, is exceptionally large, has a unique layout and has exceptional quality of workmanship. The rental market for a single unit of approximately 3,000 square feet results in a practical difficulty in that the rental market for that size living unit is restricted to buildings designed for single-family dwellings. While the basement can technically be used for two roomers accessory to the first floor apartment unit, this is a restricted market since such rental is normally restricted to single-family dwellings and is not normally accomplished in rental apartments.

12. With regard to the right to use the basement as a rooming house, which could accommodate up to four or five roomers, we note that the density would be greater for roomers than an apartment use, that such roomers because of transient nature would not be as harmonious as an apartment use and, further, because of the restriction on preparation of meals on roomers results in an inherently difficult problem because of inability to police the use.

13. The owner has canvassed the area for support in the application; and out of properties within 200 feet, 52 properties through owners or residents support the application. Additionally, the Capitol Hill Restoration Society supports the application.

14. The grant of the variance will not require any exterior changes and only minor interior changes in the basement to permit the installation of a full kitchen with stove and the discontinuance of the basement to the first floor access. The change in basement status from permitted rooming house use to apartment will result in a slight increase in income but a marginal profit to the owner. This marginal income will enable the continued maintenance of the building.

15. There was opposition registered at the Public Hearing of this application.

CONCLUSIONS OF LAW AND OPINION:

The Board is of the opinion that the application for variance from the 900 square foot minimum area requirement of the R-4 District for apartment conversion is an area variance as previously found by the Board in BZA Application No. 12100. See page 37 of Statement of Applicant. In Palmer v. Board of Zoning Adjustment, 287 A.2d 535 (1972), the D.C. Court of Appeals adopted for this jurisdiction the dichotomy between area variances and use variances. The Court there noted that a proof of practical difficulty for area variances is appropriate for cases "relating to restrictions such as side yard, rear yard, frontage, setback or minimum lot requirements" Id., 541. Here, in the R-4 District, apartments are permitted as a matter of right so long as the lot contains 900 square feet per unit. Here, the only requirement missing from the conversion in the instant case is the requirement of having 2,700 square feet. Thus, the sole relief relates to the "area" of the lot.

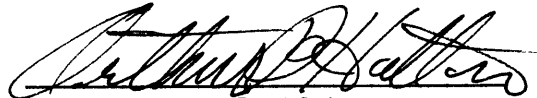
We are further of the opinion that the applicant has met his burden of proof in showing an exceptional situation resulting in practical difficulties. The size, layout of the building together with the marketability and economic aspects clearly show that the restriction would be unduly burdensome unless a variance is granted. Further, since there will be no substantial changes and no substantial increase in density, we see no likelihood of an adverse affect on the neighborhood. We believe that the grant is in keeping with the intent of the Zoning Regulations and Maps. Therefore, it is hereby ORDERED that the above application be GRANTED.

VOTE:

3-0 (Leonard L. McCants, Esq., William F. McIntosh and
Richard L. Stanton to grant, Lilla Burt Cummings, Esq.,
not voting, not having heard the case.)

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED By:



ARTHUR B. HATTON
Executive Secretary

FINAL DATE OF ORDER:

4-11-77

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX
MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY
PERMIT IS FILED WITH THE DEPARTMENT OF HOUSING AND COMMUNITY
DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE
DATE OF THIS ORDER.

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

NOVEMBER 4, 2020

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice at 9:45 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. Hill, Chairperson
LORNA JOHN, Vice-Chair
CHRISHAUN SMITH, Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Chair
PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

DANIEL BASSETT, Esquire
MARY NAGELHOUT, Esquire
ALEXANDRA CAIN, Esquire
JACK RICE, Esquire

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

2 MR. MOY: I don't have any report at this time other
3 than -- other than some preliminary matters that I can raise when
4 I call the specific case, sir.

5 CHAIRPERSON HILL: Okay. I know there seems to be a
6 bunch of little things going on some of the different cases. So,
7 again, Mr. Moy, just kind of remind me because as I've mentioned a
8 few times and will continue to mention throughout the day, I'm
9 having Internet issues. So that being the case, Mr. Moy, if you
10 could call our first hearing case?

11 MR. MOY: Yes. Thank you, Mr. Chairman. So this would
12 be Case Application No. 20289 of 400 Seward Square. That's S-E-W-
13 A-R-D Square, LLC. The caption advertised for area variance from
14 the lot area requirements of Subtitle E, Section 201.7 to permit
15 an addition of 3 units to the existing 14-unit apartment building
16 in the RF-3 Zone at premises 400 Seward Square Southeast, Square
17 819, Lot 28. As the Board will recall, this is continued from the
18 Board's last hearing on this case from October 28th.

19 CHAIRPERSON HILL: Okay.

20 Let's see. Mr. Sullivan, are you there?

21 MS. WILSON: Mr. Sullivan's not going to be joining.
22 But this is Ms. Wilson, and I'm here on behalf of the Applicant.

23 CHAIRPERSON HILL: Okay. Let's see. Ms. Wilson, who is
24 with you guys?

25 MS. WILSON: Matt Lee, the project architect, is with

1 us. And the owner Mr. Barley is unable to join. He's traveling
2 today as he didn't anticipate the hearing would be on November
3 4th.

4 CHAIRPERSON HILL: Okay. All right. Well, Ms. Wilson,
5 I'll let you go ahead. And I know that we had been here a couple
6 weeks before, and there was some work that had gone through the
7 Zoning Commission concerning this case. But if you want to go
8 ahead and present your case, I'm going to put 15 minutes on the
9 clock just so I know where we are. And you can begin whenever you
10 like.

11 MS. WILSON: Great. Thank you so much. And I would
12 first like to say thank you to the Office of Planning, the Zoning
13 Commission, and OAG for acting so quickly to correct the ambiguity
14 in the regulations, and to you all for being patient and working
15 with us. So we really appreciate that, and we're happy to move
16 forward knowing that this is the correct relief, and there won't
17 be any issues in the future. Mr. Young, could you please pull up
18 the presentation when you have a chance?

19 MR. YOUNG: Same presentation as last time?

20 MS. WILSON: Yes. There is a second one we submitted to
21 the record. I think it's Exhibit 39. Yeah.

22 MR. YOUNG: Okay. I'm going to need just a second --

23 MS. WILSON: Yeah.

24 MR. YOUNG: -- to pull it up.

25 (Pause.)

1 MS. WILSON: While Mr. Young is pulling that up, I'll
2 start and give some background. The building was constructed in
3 the early 1900's and is a purpose-built apartment building. When
4 Mr. Barley purchased the property, the C of O was only for 14
5 units even though there are 15 units in the existing building. I
6 even researched some old C of O's and found them dating back to
7 the 1970's showing only 14 units. So this condition has existed
8 for quite a while where the building has a 15th unit that isn't in
9 the C of O. And now we're requesting to make that 15th unit legal
10 which requires a variance from E 201.7 as we do not have the 900-
11 square foot per unit existing or proposed. In addition to making
12 the 15th unit legal, we are also requesting to add two units in
13 existing vacant space on the cellar level. And that space is not
14 being used for any purpose right now and has been proven difficult
15 to maintain.

16 CHAIRPERSON HILL: Ms. Wilson, can you hear me?

17 MS. WILSON: I can, yes.

18 CHAIRPERSON HILL: Can you just kind of argue a little
19 bit the first prong of the variance?

20 MS. WILSON: Sure.

21 CHAIRPERSON HILL: Thanks.

22 MS. WILSON: I do have some photographs that would more
23 clearly show this. But even though it's zoned R-3, the building
24 essentially fronts on Pennsylvania Avenue. It's at the
25 intersection of Pennsylvania, Seward, and 4th Street, and there

1 are a number of institutional buildings and commercial uses in the
2 area. So there's a gas station across from Pennsylvania Avenue, a
3 bank across 4th Street, and a number of restaurants and bars on
4 the block. It is a purpose-built apartment building which is a
5 main condition.

6 The fact that it's surrounded by commercial uses and
7 fronts on Pennsylvania Avenue on this corner there, combined with
8 the fact that it's a purpose-built apartment building that became
9 legally nonconforming, creates a unique condition. And there is
10 existing idle cellar space adjacent to those existing units.
11 There was a modernization of the building when Mr. Barley
12 purchased it, and so now all of the units have in-unit laundry and
13 storage space. So this space is currently vacant.

14 And there have been instances where someone -- there was
15 an instance where someone actually broke into the building. So
16 this space has become difficult to maintain. It's a security
17 issue likely due to its high visibility on the corner of Seward
18 and Pennsylvania and because of the commercial uses in the area.
19 There is a bar, a bank, and a gas station right there. So it's a
20 relatively high-traffic area, and there's already been a security
21 issue where someone broke in and gained access to that vacant
22 space and actually stayed overnight there. So there are proven
23 issues with maintaining this space.

24 And so instead of leaving it vacant, which would present
25 additional maintenance and security issues that they've already

1 had, the Applicant is proposing to take idle space and put it to a
2 higher and better use as additional housing. And the Applicant
3 can do all of that without the need for an addition, so it's not
4 disruptive to the adjacent neighbors and does not involve exterior
5 construction.

6 The Office of Planning is recommending approval. DDOT
7 has no objection. And ANC 6B supports the application. And I'd
8 also like to add that the adjacent neighbor at 404 Seward Street
9 Square Southeast has submitted a letter in support.

10 I think that's our old presentation because we addressed
11 that motion, I think, at the first hearing. It was just about the
12 public notice requirement. If you could go to the next slide?

13 MR. YOUNG: This was the Exhibit 39. Is this incorrect?

14 MS. WILSON: I apologize. It was Exhibit 42. But
15 that's fine. It's roughly the same presentation, if you could
16 just -- next slide please. Thank you.

17 So I've already given an overview and sort of run
18 through the variance requirement. We have the architect here, and
19 he can sort of explain what we're doing with the vacant space that
20 might give a better visual. But let me know if you have any
21 specific questions or if you would like us to run through the
22 whole presentation.

23 CHAIRPERSON HILL: Actually, Mr. Young, I'm sorry. Can
24 you just go ahead and drop that presentation?

25 You guys, I can kind of see you now a little bit. Do we

1 have -- do you guys have any questions right now for the
2 Applicant?

3 VICE CHAIR JOHN: I had a quick question. So the
4 remaining apartment buildings -- I'm sorry -- units, Ms. Wilson,
5 are they the same size as they were before the renovations?

6 MS. WILSON: Mr. Lee is on, and he can talk about those
7 existing apartment units.

8 MR. LEE: Good morning. This is Matt Lee, the architect
9 for the project. We're making a slight variation to one unit to
10 move a bathroom around. But it's maybe a five by seven bathroom
11 that's being shifted around. But for the most part, yes, they're
12 the same.

13 VICE CHAIR JOHN: Thank you.

14 CHAIRPERSON HILL: Anyone else have a question before I
15 turn to the Office of Planning? And if so, speak up because I
16 can't see anybody's face. Okay.

17 I'll turn to the Office of Planning.

18 CHAIRMAN HOOD: Mr. Chairman?

19 CHAIRPERSON HILL: Sure, Mr. Hood. Chairman Hood?

20 CHAIRMAN HOOD: Yeah. I just want to ask Ms. Wilson. I
21 do know in the case file, if I remember correctly, there was a --
22 she didn't mention -- she mentioned the support. She didn't
23 mention the opposition from Capitol Hill Restoration Society. Is
24 there still -- is that still in play, Ms. Wilson?

25 MS. WILSON: It is. So they reached out to us

1 initially, and then we reached out a couple times because we did
2 want to present, but they never got back to us. I'm not -- I
3 assume they're presenting virtually and holding meetings
4 virtually. But we didn't hear anything back until we saw the
5 letter, and it was submitted the Monday before. I'm happy to
6 address the substance of the letter if you would like.

7 CHAIRMAN HOOD: I was just -- no, I think the substance
8 -- I can deal with the substance. But I just wanted to make sure
9 that they have not reconsidered (audio interference) record. But
10 obviously -- I noticed you mentioned all the support. You didn't
11 say anything about the opposition. But I just wanted to note this
12 is still in the file, and I wanted to know where this played in
13 all of this. So I think I'm good. Thank you.

14 MS. WILSON: Thank you.

15 CHAIRPERSON HILL: Okay.

16 The Office of Planning?

17 MS. ELLIOTT: Good morning Mr. Chairman and members of
18 the Board. I'm Brandice Elliott representing BZA Case 20289 for
19 the Office of Planning at 400 Seward Square Southeast. And just
20 to clarify, I know that we had some issues regarding the relief.
21 And I know that the Applicant touched on this, but the Zoning
22 Commission did accept the emergency text amendment that we
23 presented last week. And so, you know, we can confirm that only
24 an area variance is required for this application and not the use
25 variance.

1 And so the Office of Planning is recommending approval
2 of the area variance relief that's been requested for this
3 application. The building is a purpose-built apartment house. It
4 was constructed prior to the 1958 zoning regulations. And then we
5 do often see this issue, you know, modernizing these buildings
6 over time where it does create, you know, some issues with the
7 floor plan. In particular, the Applicant has mentioned, you know,
8 the issues with maintaining that space because it's not being used
9 for anything. So in this case, you know, all of the laundry has
10 been relocated to individual units, and it's created this awkward
11 space in a prominent location of the building that's difficult to
12 maintain.

13 The Applicant has also provided floor plans showing the
14 location of load-bearing walls and how that vacant space cannot be
15 combined with other existing units. And then, you know, combining
16 it with upper units would create an issue as well because these
17 are small enough that a lot of that space would be eaten up by
18 circulation, and it would sort of defeat the purpose of
19 incorporating that space into some of the other upper units.

20 So the Office of Planning is recommending approval. I'm
21 happy to answer any questions that you have.

22 CHAIRPERSON HILL: Okay.

23 Does the Board have any questions for the Office of
24 Planning? And if so, please speak up.

25 Does the Applicant have any questions for the Office of

1 Planning?

2 MS. WILSON: Thank you.

3 CHAIRPERSON HILL: Mr. Young, is there anyone wishing to
4 speak in favor or in opposition?

5 MR. YOUNG: We do not have anyone.

6 CHAIRPERSON HILL: Okay.

7 Does anyone have any questions for anyone?

8 I'm going to close the hearing.

9 Mr. Young, if you could please excuse everyone except
10 for my Board members? I at least see Chairman Hood. So I'm going
11 to assume --

12 Are we ready to deliberate?

13 And Chairman Hood, you can nod your head if you are.
14 Okay. All right.

15 I can go ahead and start. I would agree with the
16 analysis that the Office of Planning has provided. I will also
17 agree with the analysis and the argument that the Applicant has
18 made in terms of how they're meeting the standard for us to grant
19 the application. And I am going to be voting in favor of the
20 application.

21 Chairman Hood, would you like to add anything?

22 CHAIRMAN HOOD: Yes, Mr. Chairman. I just want you to
23 know when I nodded my head, I saw -- I was looking at Vice Chair
24 John and others, and they nodded their heads. So I was nodding my
25 head for all of us to move forward.

1 I would agree with your assessment. I think Ms.
2 Elliott's report really convinced me and also the actions -- I'm
3 glad we were able to mitigate some of the actions that were not
4 actually noticed when the Commission first dealt with these
5 regulations. But I think -- on that related point, I think Ms.
6 Elliott actually mentioned and articulated in a very (audio
7 interference) be supporting this case. And I would also
8 incorporate the Office of Planning's recommendation as you
9 mentioned as well as the Applicant's response to moving forward
10 with this case. That's all I have on this, Mr. Chairman.

11 CHAIRPERSON HILL: Mr. Smith?

12 MEMBER SMITH: I'll second both of your comments about
13 this particular case. I think Ms. Wilson did a great job of
14 articulating the practical hardship of using that space in the
15 basement. And, also, that one of the units was a personal
16 apartment unit that was constructed prior to the implementation of
17 the 1958 zoning regulations. So I am in agreement with both of
18 you, and I will be supporting the variance.

19 CHAIRPERSON HILL: Ms. John?

20 VICE CHAIR JOHN: So I also support the application.
21 And I will give great weight to OP's analysis with respect to the
22 first prong, the exceptional condition that this is a purpose-
23 built apartment building from the early 1900's and that the excess
24 space is created because of an attempt to modernize the building
25 and to remove some of the utilities from the basement which is a

1 more efficient use of the building. And so I believe that there
2 are a number of factors that create this exceptional condition.
3 And I believe the Applicant has met the requirement for the
4 regulation, for relief on the regulation. So I -- as I said
5 before, I can support the application.

6 CHAIRPERSON HILL: Okay. They also make note that the
7 ANC had provided their input and was also in agreement with
8 supporting the application as well as DDOT.

9 So I'm going to make a motion to approve Application No.
10 20289 as captioned and read by the Secretary.

11 And ask for a second, Ms. John?

12 VICE CHAIR JOHN: Second.

13 CHAIRPERSON HILL: The motion made and seconded. Mr.
14 Moy, could you please take a roll call vote?

15 MR. MOY: Thank you, Mr. Chairman. When I call your
16 name, if you would please respond with a yes, or no, or abstain to
17 motion made by Chairman Hill to approve the application for the
18 relief they requested. The motion is seconded by Vice Chair John.
19 Zoning Commission Chair Anthony Hood?

20 CHAIRMAN HOOD: Yes to approve the motion.

21 MR. MOY: Mr. Smith?

22 MEMBER SMITH: Yes to approve.

23 MR. MOY: Vice Chair John?

24 VICE CHAIR JOHN: Yes to approve.

25 MR. MOY: Chairman Hill?

1 CHAIRPERSON HILL: Yes to approve.

2 MR. MOY: And we have a Board seat vacant. This would
3 give a final vote of 4 to 0 to 1. And this is on the motion of
4 Chairman Hill to approve the application for the relief being
5 requested, seconded by Vice Chair John. Also in support, Zoning
6 Commission Chair Anthony Hood, Mr. Smith, and of course Vice Chair
7 John and Chairman Hill. The motion carries, sir, 4 to 0 to 1.

8 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Moy.

9 CHAIRMAN HOOD: Mr. Chairman, I'll be cutting out. You
10 all have a great day.

11 CHAIRPERSON HILL: All right. Chairman Hood, thank you
12 for joining us.

13 CHAIRMAN HOOD: All right. See you all later.

14 CHAIRPERSON HILL: We're getting Commissioner Shapiro
15 added.

16 COMMISSIONER SHAPIRO: I'm here, Mr. Chair.

17 CHAIRPERSON HILL: Okay. Thank you, Commissioner.

18 People popping in and out. I mean, this is a very
19 (audio interference) issue for me.

20 Mr. Moy, you can call our next case when you get a
21 chance.

22 MR. MOY: All right. Thank you, Mr. Chairman. So this
23 next case before the Board is Application No. 20310 of Robert and
24 Stefanie Wehagen, I believe. W-E-H-A-G-E-N. Caption advertised
25 for a special exception under Subtitle E Section 5201 from the lot

CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2025, an electronic copy of this submission was served to the following:

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Respectfully Submitted,

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