

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

JULY 25, 2018

+ + + + +

The Regular Public Meeting convened in the  
Jerrily R. Kress Memorial Hearing Room, Room 220 South,  
441 4th Street, N.W., Washington, D.C., 20001, pursuant to  
notice at 9:30 a.m., Frederick Hill, Chairperson,  
presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson  
LESYLLEE M. WHITE, Board Member  
CARLTON HART, Board Member (NCPC)  
MARCEL ACOSTA, Executive Director, NCPC

ZONING COMMISSION MEMBERS PRESENT:

PETER MAY, Commissioner, NPS  
ROBERT MILLER, Vice Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

HILLARY LOVICK, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEVEN COCHRAN

ANNE FOTHERGILL

JONATHAN KIRSCHENBAUM

STEPHEN MORDFIN

KAREN THOMAS

ELISA VITALE

The transcript constitutes the minutes from  
the Public Meeting held on July 25, 2018.

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

10:37 a.m.

MR. MOY: The time is 10:36, the Board reconvening after a break. So if we can call parties to the table to -- oh, no, no, no. This is a decision case, we're in the decision session, sorry.

All right, Case Application Number 19689 of MIC9 Owner, LLC. Mr. Chair, this application was amended for special exceptions from the private school regulations, Subtitle X, Section 104.1, bulk extension regulations under Subtitle A, Section 207.2, which would construct new office space in a 111 unit apartment house on the campus of an existing adult private school, RA-2 and RA-4 zones, at premises 2300 16th Street, NW, Square 2568, Lot 806, 808 and 809. Participating on this decision is you, the Chair, Vice Chair Hart, Ms. White, Ms. John, Mr. Peter May.

Mr. Chairman, there is a preliminary matter. This morning at 8:30 was a filing from ANC, ANC 1, requesting the Board postpone its decision-making. That's in the case record. There is also a filing from a non-party, a motion to reopen the record. That's also -- the motion itself, I should say, is in the record for viewing.

So that's before the Board, Mr. Chair.

CHAIRPERSON HILL: Okay, great, thank you. So I'm looking to the Board on a couple of things. First of all,

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1 the motion by the non-party to reopen the record, we can only  
2 accept motions by parties. And also, I think, the record was  
3 also open for a long time. But beyond that, we can't accept  
4 motions by people that are non-parties. So I don't think  
5 there's anything that we can even say about that. So I'm  
6 going --- we don't even accept that.

7 As far as the motion to reopen the record by the  
8 ANC, I guess there are a couple of thoughts that I had on it,  
9 and looking to the Board for their guidance as well. As the  
10 Board knows, as, you know, people that are here know but  
11 don't come every day, the decision portion of our hearing is  
12 just for us to deliberate.

13 And so we don't take testimony, we don't reopen the  
14 record. Because all of the parties for the decision might  
15 not have been here. I mean, it's not something that we take  
16 testimony from.

17 However, what I understand from the Office of the  
18 Attorney General is that if there is a motion by the ANC in  
19 this particular case, since it's an argument on the motion,  
20 it's not necessarily reopening the hearing. So we could take  
21 --- we could hear from the ANC, if they're here, on their  
22 particular motion.

23 I do believe they're here, the ANC. But before we  
24 go to that point, is the Applicant here as well? Okay,  
25 perfect. So then could the Applicant and the ANC please come

1 to the table?

2 All right, great. Thank you, good morning. If you  
3 could, please, introduce yourselves from my right to left.  
4 You can start please.

5 MS. FOX PERRY: Amanda Fox Perry for ANC 1C.

6 MR. CUMMINGS: Jonathan Cummings with the  
7 Applicant.

8 MR. AVITABILE: And David Avitabile, with Goulston  
9 and Storrs, as Counsel for the Applicant.

10 CHAIRPERSON HILL: Okay. So, Commissioner Fox  
11 Perry, I'm going to ask you just to give us a little bit of  
12 an explanation in terms of your motion. And then, since the  
13 Applicant hasn't had -- we got it, I don't know if we got it  
14 this morning or last night, but we got it recently. So the  
15 Applicant wouldn't have had a chance to speak to the motion.  
16 So, Commissioner, if you'd just kind of, again, outline your  
17 motion for us?

18 MS. FOX PERRY: Okay. So what the motion does is  
19 it asks that the decision making by the Board just be  
20 postponed until the Office of Planning has had a chance to  
21 do a more comprehensive and complete assessment of the  
22 project's impacts as well as respond to some of our direct  
23 concerns about the comprehensive plan.

24 And it also requests that this matter be taken up  
25 by the Zoning Commission and the Office of Planning to

1 directly address the FLUM issue and states that any motion  
2 or any decision by the Board on that request to shift the  
3 boundary lot line assumes that the RA-4 zoning of that  
4 portion of the lot is valid. And the FLUM clearly indicates  
5 that it's for moderate density. And RA-4 does not comply  
6 with moderate density.

7           So to weigh in on that issue without having some  
8 conclusion as to whether or not the current zoning  
9 designation complies with the FLUM would be a direct  
10 violation of the comprehensive plan.

11           CHAIRPERSON HILL: Okay, Mr. Avitabile, do you have  
12 any comments? Well, actually, before you do that, does the  
13 Board have any questions for the Commissioner?

14           (No response)

15           CHAIRPERSON HILL: Okay. And we'll let Mr.  
16 Avitabile have a second there to look at the motion.

17           MR. AVITABILE: Thank you, members of the Board.  
18 I am responding to this relatively fresh, so forgive if I  
19 vary a little bit. You know, I don't think there's any good  
20 cause for the ANC bringing this up at this late hour. And  
21 I think there's an extreme lack of prejudice to us.

22           We've been at this process with the ANC and the  
23 community for four years. And we've been in the zoning  
24 proceeding, which was filed back in November, for months.  
25 We delayed multiple times to work out an agreement with the

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1 representatives, with the immediately affected neighbors.

2 I do want to note, in the ANC's motion here, they  
3 actually at the end suggest that MOU process was less than  
4 above board, because we were sophisticated, and the community  
5 parties were not. I think that's unfair to the community  
6 parties, one of which was actually represented by Counsel in  
7 reviewing the MOUs.

8 I think they are a fair, balanced work product that  
9 are the result of many, many, many months of hard work.  
10 Commissioner Fox Perry was present for many of those  
11 discussions. And I think she obviously didn't agree with the  
12 results. And I think that's unfair.

13 I also do want to point out that, you know, the  
14 comp plan designation of this property has been the comp plan  
15 designation of this property for quite some time. This is  
16 not new information. None of this is new information.

17 When we were at the hearing on this on June 13th,  
18 there were three people that showed up to speak in  
19 opposition, two members of the ANC, and one member of the  
20 community. That was it. The other people who spoke or were  
21 present were representing the community parties and spoke  
22 about the integrity of that process and the fact that we all  
23 worked together.

24 The ANC clearly, in their resolution in July, they  
25 brought in new issues that they hadn't previously brought up.

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1 I think case law is very clear that those issues are not  
2 before the BZA. The comp plan is not self-executing, it is  
3 guidance and recommendation that ultimately the Zoning  
4 Commission acts on, not the BZA. And, you know, I think --

5 CHAIRPERSON HILL: Okay. All right.

6 MR. AVITABILE: -- those are my initial thoughts.

7 CHAIRPERSON HILL: Okay.

8 MR. AVITABILE: Thank you.

9 CHAIRPERSON HILL: All right, thanks, Mr.  
10 Avitabile. All right.

11 MEMBER MAY: May I ask a question?

12 CHAIRPERSON HILL: Sure, of course.

13 MEMBER MAY: Mr. Avitabile, do you want to speak  
14 specifically to the, I mean, again, I got this very late too,  
15 and I'm just trying to digest it. But it seems the  
16 indication is that the zone shift is not something that the  
17 BZA can do in this case, either because of constrictions of  
18 the comp plan or because of, I don't know, the regulations.

19 But, I mean, can you speak specifically to that and  
20 just remind us why the zone shift is appropriate in this  
21 circumstance, and it's within the powers of the Board to  
22 decide?

23 MR. AVITABILE: Sure. So in that particular case,  
24 there is nothing in the standards relative to that section  
25 of the zoning regulations that says the Board is supposed to

1 consider the comprehensive plan.

2 This is a situation where it's only limited to  
3 where you have a split zone property that's been in existence  
4 since 1958 when the Zoning Commission adopted a regulation  
5 recognizing that the Board should have the limited authority  
6 in those situations to allow for the zone boundary line to  
7 be adjusted to allow for more density or more height to be  
8 shifted to where it should be and less where it shouldn't.

9 It's essentially a mechanism to allow the Board to  
10 allow Applicants to shift density away from communities, away  
11 from areas where there should be less density. What it does  
12 in this case is it actually helps shift and keep, you know,  
13 the moderate density core of the site as moderate density.

14 It is entirely within the Board's purview to review  
15 and approve the application based on the merits and the fact  
16 that we met the standards. And I don't think it's  
17 necessarily possible for the Board to consider the  
18 comprehensive plan. Because it's not one of the standards.  
19 And the Board's jurisdiction is relatively limited. It's  
20 very different from the Zoning Commission which, of course,  
21 can look at these issues on a broader level.

22 MEMBER MAY: Thanks, that was helpful.

23 CHAIRPERSON HILL: Okay. Anybody else have any  
24 questions for either Mr. Avitabile or Commissioner Fox Perry?

25 MEMBER WHITE: Well, I guess it was more of a

1 comment. I thought --- my understanding was that the BZA  
2 does not, you know, have jurisdiction to make interpretations  
3 of the comp plan. Our jurisdiction is to interpret the  
4 specifics of the zoning regulations.

5 So I don't know if, you know, from my perspective,  
6 I don't think we have the jurisdiction to make these types  
7 of interpretations. Maybe OAG could weigh in on it. But  
8 that was my understanding.

9 And I guess the other issue I just had for the ANC,  
10 just to kind of get a sense of the timing of this, why was  
11 this filed today? Was it because this was a new argument  
12 that you felt you needed to make or -- I'm just curious about  
13 the timing of it. Because we were almost in the decision  
14 phase at this point.

15 MS. FOX PERRY: Well, thank you for that question.  
16 I am mortified to have filed a motion of this nature on the  
17 morning of a decision making hearing. And I guess I'll start  
18 by saying that this is the first issue that I personally have  
19 been involved with at the BZA.

20 I didn't realize, at the last hearing, that we were  
21 actually closing the hearing. I thought, when it was coming  
22 back to the ANC, that we were going to have further  
23 opportunity to weigh in, especially in light of the fact  
24 that we were able to file a second resolution, ANC  
25 resolution, as a report in this case.

1 I had some conversations with BZA staff who  
2 indicated that such a motion could be filed, but I also  
3 wanted to touch base the Office of Planning just to raise  
4 this FLUM issue with them and to see what their explanation  
5 was. I didn't hear back from them until yesterday, at which  
6 point -- and that communication is attached as an exhibit to  
7 my motion.

8 The problem here is that we would not be in a  
9 position to even be raising this FLUM issue if the Office of  
10 Planning had addressed it from the get-go. Frankly, as I  
11 read it, I don't know that this issue would even have been  
12 sent to you. But, you know, the communication with Director  
13 Shaw states that, even though the BZA report in this case  
14 doesn't include information on a comp plan, I assure there  
15 are multiple tracts by OP.

16 So I am just confused as to how you have this FLUM  
17 issue where there's clearly a discrepancy. Moderate density  
18 is not --- RA-4 is not moderate density. The definition or  
19 description of the category of moderate density names three  
20 different categories that do comply with moderate density.  
21 And then they cite to, I believe it's R-5-B that is on the  
22 cusp.

23 R-5-B correlates in the new zoning with RA-2 which  
24 is what the rest of this property is. So it seems clear from  
25 the FLUM that this lot is meant to be RA-2 and not RA-4. So

1 again, this is an issue that I would have certainly preferred  
2 to have raised questions on at the hearing.

3 Again, I was unfamiliar with the process. And it  
4 gets back to this concern that the Office of Planning, as  
5 much as they're saying they looked at it, there's no  
6 explanation in the record for how they get around FLUM.

7 MEMBER MAY: So let me ask a couple of questions.  
8 I mean, you understand that the FLUM is not a zoning map,  
9 right?

10 MEMBER WHITE: Yes. No, I understand that.

11 MEMBER MAY: Okay. And it's the Zoning  
12 Commission's job, essentially, to translate that into the  
13 zoning map, and to tweak it and adjust it based on what's in  
14 the zoning map, and tweak the zoning map based on what's in  
15 the FLUM.

16 And when it comes to a number of cases where the  
17 map has changed, there are certainly circumstances where the  
18 map has changed, and what might have been, you know, R4 gets  
19 mapped into an area that's moderate density or something  
20 analogous to that. But that happens on a regular basis.

21 Do you also understand that, I mean, that the idea  
22 of adjusting the boundary with a split zone property is an  
23 established practice within the BZA's authority, that there  
24 are tweaks that can occur.

25 MS. FOX PERRY: No, absolutely, it's clearly a

1 special exception allowable under the law.

2 MEMBER MAY: Right. So, I mean, I can understand  
3 how this may not have gotten onto your radar initially, but  
4 these are all things that are considered in the process. And  
5 the, I mean, I wouldn't expect that the Office of Planning  
6 is going to raise a comp plan consistency issue when that's  
7 not really what the BZA's decision making area is.

8 I mean, if this were an actual remapping in front  
9 of the Zoning Commission, yes, I mean, I think that would be  
10 a consideration. But in this circumstance, the BZA can only  
11 act within the tools --- with the tools that it has. And  
12 this is clearly, you know, certainly the Applicant is arguing  
13 that it's clearly within the set of tools that's available  
14 to the BZA. And you admit kind of as much yourself.

15 MS. FOX PERRY: Well, I understand that the zoning  
16 law allows that. And I guess I would also argue that the BZA  
17 can and should consider the comprehensive plan.

18 Now, my bigger concern is that the Office of  
19 Planning, which is required to review the applications before  
20 it for consistency with the comp plan, I understand that the  
21 issue of actually rezoning that lot to be consistent with the  
22 comp plan is not something that you can do. I get that that  
23 is not within the BZA's authority. But it is within the  
24 Zoning Commission's authority. So the Office of ---

25 MEMBER MAY: But that's not the action that we're

1 contemplating here.

2 MS. FOX PERRY: Right. But to take action on it  
3 when that issue has not been resolved, and where the Office  
4 of Planning clearly did not do the due diligence in reviewing  
5 and vetting this case against the comprehensive plan, which  
6 includes the maps, is --

7 MEMBER MAY: Well, again, I mean --

8 MS. FOX PERRY: I mean, it's based on a foundation  
9 that is potentially invalid.

10 MEMBER MAY: I mean, the Office of Planning should  
11 be living and breathing the comp plan with all the actions  
12 that they take. I mean, that's the guiding, you know, the  
13 guidance from above when it comes to any advice that they  
14 offer either to this Board or to the Zoning Commission.

15 But again, the action that's being considered here  
16 is not a re-mapping. It is an adjustment of the zone  
17 boundary line within a split zone property which is something  
18 that is within the purview of the BZA. And it's not  
19 something where the zoning regulations require the Office of  
20 Planning or even the BZA to consider the comp plan  
21 implications.

22 MS. FOX PERRY: I don't have those regulations in  
23 place to know whether or not the OP should or shouldn't have  
24 done that. But I would say that ---

25 MEMBER MAY: But your argument is that they should

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1 have considered the comprehensive plan?

2 MS. FOX PERRY: Yes. My argument would be that  
3 this should have been something that the OP either raised  
4 directly as a Map Amendment, which they are allowed to do,  
5 or they should have referred this to the Zoning Commission  
6 for the Zoning Commission to weigh in on whether or not they  
7 wanted to sua sponte rezone that lot in accordance with the  
8 moderate density designation.

9 MEMBER MAY: Right.

10 MS. FOX PERRY: And that question is, I mean, now  
11 here we are. I understand that you can't do that. But I  
12 would say that granting a special exception to move the lot  
13 line to shift that RA-4 density into the RA-2 zone, when  
14 we're saying it appears that this lot should not be RA-4, I  
15 would argue that that is an error, that this should be  
16 addressed first, at least by the Office of Planning, to weigh  
17 in on. The Zoning Commission should weigh in on this.

18 MEMBER MAY: I think the thing that's pretty clear  
19 from my perspective is that what you're arguing are things  
20 that are not really within the Board's authority to decide.  
21 We don't have the ability to direct the Office of Planning  
22 to do certain things.

23 The Zoning Commission, and speaking as, you know,  
24 and I am here to represent the Zoning Commission, you know,  
25 this is not something that we would typically be engaging on.



1 Again, because it's a pretty straight forward matter of  
2 adjusting a zone boundary line within a split zone property  
3 which again is ---

4 MS. FOX PERRY: Well, I -- sorry, I understand that  
5 that's probably not something that you typically deal with.  
6 And I understand that you are here today as a member of the  
7 Zoning Commission. And it is well within your right, as a  
8 member of that Commission, to raise the issue sua sponte and  
9 to bring this to the Zoning Commission. So I would hope that  
10 you will.

11 MEMBER MAY: Well, there's no decision yet, so  
12 there's nothing for me to do. And there isn't a -- sua  
13 sponte doesn't even come into play until an order is issued.  
14 So we're a long way away from anything like that.

15 But I expect that we'll make a decision about this  
16 today, and that we'll close the record, and we'll be done.  
17 Well, I don't expect we'll --- we have a motion that we're  
18 considering, that you want us to defer. But we will make a  
19 decision either today or at some later date. We'll see.

20 CHAIRPERSON HILL: Okay, all right. So does the  
21 Board have anymore questions for the people that are here?

22 (No response)

23 CHAIRPERSON HILL: Okay. Thank you guys very much.

24 MS. FOX PERRY: Thank you.

25 CHAIRPERSON HILL: Sure. All right. So let's go

1 ahead and deliberate on this motion that's in front of us.  
2 And then we can see what we're going to do. I mean, I ---  
3 and Commissioner May, I appreciate your expertise in some of  
4 your questioning and discussions.

5 I mean, you know, what I had understood from the  
6 Office of the Attorney General and other --- and reading the  
7 regulations, is that, you know, this is not really areas that  
8 are within our purview and that we are here to look at the  
9 application that is before us and the standards that are  
10 before us with regard to that request.

11 The Office of Planning has provided information to  
12 us with regard to that application. And as I was going to  
13 even kind of go through deliberations, I was in agreement  
14 with the analysis that the Office of Planning had provided.

15 And we had a very full hearing in terms of the  
16 application, what they were trying to do, how they were  
17 meeting the standards, as well as input from the community  
18 that the ANC was opposed, as well other members within the  
19 community. And they gave their reasons for that.

20 I guess I would be, with regards to the motion, I'm  
21 kind of tying this into other discussions I have which is  
22 that we haven't gone to the deliberation yet as to whether  
23 or not we, as a Board, agreed to the application and that the  
24 Applicant had met the standards.

25 For my part, and I would have gone into a little

1 bit more detail as to why, but before we get to that point,  
2 I was going to be in favor of the Application. But I was  
3 confused by all of the information that was put forward to  
4 us with the different MOUs as well as the conditions that we  
5 had asked the Applicant to go back to the community to try  
6 to implement.

7 The conditions that they had set forth were 15  
8 pages worth of conditions where some of those conditions were  
9 zoning related, others were not. And we are only here able  
10 to implement conditions that are concerning zoning, as well  
11 as then they brought up issues of enforcement.

12 And so I was kind of torn, again since this is a  
13 decision making hearing, as to how to address those questions  
14 with the Applicant unless we reopen the hearing just to ---  
15 well, my possible suggestion would have been to reopen the  
16 hearing just to discuss that 15 pages-worth of conditions and  
17 what we, as a Board, thought were zoning related and what we  
18 thought were applicable and enforceable.

19 After this motion, I suppose if we were going to  
20 end up postponing anyway to reopen to go through the 15 pages  
21 of conditions, the Office of Planning could submit a  
22 supplemental report to address the issues that the ANC had  
23 brought up in terms of their motion. So I'm kind of ---  
24 that's where I am. And I'll leave it to somebody else to  
25 give me their opinion.

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1           MEMBER MAY:     Mr. Chairman, I appreciate the  
2 analysis and hearing your thoughts on this. I mean, first  
3 of all, let me say I don't think that what we received from  
4 the ANC this morning is something that warrants deferring the  
5 decision. I mean, I guess I already telegraphed that.

6           Because again, I don't feel like this falls within  
7 the discretion of the Board to either force a consideration  
8 of the comprehensive plan or to refer the matter for a Map  
9 Amendment to the Zoning Commission. I mean, this is all  
10 pretty straightforward within the bounds of the rules by  
11 which the Board operates.

12           With regard to the actual conditions that have been  
13 proposed, I think that we are asking for a final version of  
14 them. I think that everything that we saw in there was  
15 consistent with some of the things that were said or were  
16 part of prior exhibits. So I think that it's all been  
17 memorialized.

18           I think I have only a couple of minor comments on  
19 the proposed conditions having to do with flexibility on  
20 materials. But other than that, I don't see a particular  
21 reason for further discussion or response from the Office of  
22 Planning. But certainly if the rest of the Board feels they  
23 want to have more discussion, I always like talking.

24           (Laughter)

25           MEMBER HART:     Yes. I actually agree with

1 Commissioner May about the motion that is before us regarding  
2 the motion to postpone. I just didn't think that that was  
3 necessarily something that I would support. So I'll just  
4 kind of leave it there, just for the reasons that  
5 Commissioner May raised.

6 Regarding the conditions ---

7 CHAIRPERSON HILL: Can I interrupt just once.  
8 Let's get through that motion. Does anyone have any other  
9 comments on the motion?

10 (No response)

11 CHAIRPERSON HILL: Okay. So then it looks like  
12 that we will be in denial of the motion. So I will go head  
13 and make a motion to deny the motion of the ANC to reopen the  
14 record and ask for a second.

15 PARTICIPANT: Second.

16 CHAIRPERSON HILL: Motion's been made and seconded.  
17 All those in favor, aye?

18 (Chorus of ayes)

19 CHAIRPERSON HILL: All those opposed?

20 (No audible response)

21 CHAIRPERSON HILL: Okay, so the motion passes, Mr.  
22 Moy.

23 MR. MOY: And actually, just so we have it clear,  
24 the motion was --- the request was to postpone the decision  
25 making?

1 CHAIRPERSON HILL: Sorry, thank you.

2 MR. MOY: So you were saying that it was a motion  
3 to ---

4 CHAIRPERSON HILL: Reopen the record. So I'll,  
5 again, make a motion to deny the motion to postpone the  
6 decision making that was presented before the ANC, and ask  
7 for a second.

8 MEMBER MAY: Second.

9 CHAIRPERSON HILL: Motion made and seconded. All  
10 those in favor, aye?

11 (Chorus of ayes)

12 CHAIRPERSON HILL: Aye. All those opposed?

13 (No audible response)

14 CHAIRPERSON HILL: Motion passes. Mr. Moy.

15 MR. MOY: The staff would record the vote as 5-0-0  
16 based on the motion of Chairman Hill to deny the motion to  
17 postpone Board's decision on this application. Second to the  
18 motion by Mr. Peter May. Also support, Ms. White, Vice Chair  
19 Hart, and Ms. John.

20 CHAIRPERSON HILL: Okay, so now we're in  
21 deliberation.

22 MEMBER HART: Yes. Thanks for kind of finalizing  
23 that part of it. With regard to the conditions, I just  
24 thought that there were --- I agree with Commissioner May in  
25 that there were some kind of discussion in the very beginning

1 of the conditions about the materials, and choices, and they  
2 could do this or that. It just seemed like, I don't know,  
3 the flexibility was --- it seemed like the zoning  
4 administrator could kind of deal with that as part of their  
5 approval. It just didn't seem like we should be opining on  
6 that or just including that.

7 MEMBER MAY: If you'd like me to respond, so, I  
8 mean, this is an issue that we've been grappling with with  
9 the Zoning Commission where applicants will put in proposed  
10 conditions that give broad flexibility to modify the design.  
11 And I'm not talking about big things. I mean, I think that  
12 this is not a PUD, so we're not going to put sort of  
13 conditions on this the way we would for a PUD.

14 I think that the extent to which these conditions  
15 are relevant, of course, have to do with the extent to which  
16 the conditions mitigate any impacts associated with the  
17 relief associated with a project.

18 And I think this is a circumstance where it's hard  
19 to very specifically say this particular condition relates  
20 to this particular issue when it comes to the choice of  
21 materials of the building and the materials -- the planting  
22 materials.

23 But really all I'm talking about is saying that,  
24 you know, adding a phrase that the ability to vary the color  
25 or the materials based on, you know, what's available at the

1 time of construction, I think that, you know, to say  
2 something like within specified ranges, or within the  
3 reference ranges that were presented at the Board hearing,  
4 I mean, that's really all I'm talking about.

5           It's not about --- I mean, right now they could  
6 change the whole thing to a big red brick building, according  
7 to the conditions. And, you know, I think that part of what  
8 we are trying to evaluate in the overall picture of this  
9 building has to do with the way it has been sensitively  
10 designed to fit in the context and to mitigate some of the  
11 concerns of the neighbors.

12           So that's why I would --- just that kind of  
13 cautionary language, the same thing for planting materials,  
14 you know, I'm not sure exactly how that gets phrased. But  
15 I think that's something that can be tightened up slightly,  
16 even after we make decision.

17           MEMBER HART: Yes. I mean, the issue though is  
18 kind of, bringing it up with some of the conditions, was once  
19 these conditions are in place, then they are it. And it just  
20 seemed like some of them were really, really specific and  
21 almost, you know, almost too much specificity in some ways.  
22 Because it was, I don't know, you know, some questions  
23 started raising as, well, if they don't meet this, then do  
24 they have to come back for, you know, a change in that?

25           MEMBER MAY: Well, yes. I mean, if for some reason



1 they discover that they cannot meet a particular condition,  
2 then yes, I think they would have to come back for a  
3 modification to change those conditions.

4 But I think that, you know, I'm not going to  
5 suggest that, since these are proffered conditions, this is  
6 what they are, you know, the Applicant is proposing to live  
7 by. I wouldn't want to suggest that we loosen anything. I  
8 think some of the things that are in there, you know, maybe  
9 there's a valid question about whether they are things that  
10 we can impose as conditions under the Board's authority. But  
11 that's a finer point of law that I'm not that well versed on.

12 And besides, they're going to have to come back in  
13 five years anyway. So we'll be looking at it all in five  
14 years again, or at least somebody will.

15 MEMBER WHITE: I will just give some quick  
16 comments. I mean, the conditions that we were looking at  
17 were in Exhibit 87B. So, I mean, you're looking at that  
18 document. And I think there're over maybe 50 conditions, 40  
19 conditions in that document.

20 So, you know, Commissioner May, I mean, he's  
21 correct. You know, they did proffer those conditions. But  
22 I think some of them are outside of our purview as a BZA  
23 organization.

24 And my only concern would be that if, for instance,  
25 they did not meet one of those conditions, there's a

1 possibility that their C of O could be pulled. So I was more  
2 in favor of either having them clarify it or creating  
3 something that was a lot more --- a little shorter and a lot  
4 more focused specifically on the relief that they're seeking  
5 in order to control the adverse impacts to the community.

6 CHAIRPERSON HILL: Okay. Can we do this first,  
7 actually? So we're kind of talking about the conditions.  
8 And I first want to get through whether or not anyone has any  
9 thoughts on the merits of the case first. And I will,  
10 against --- because it seems like no one has gotten past the  
11 conditions insofar as it seems like the decision of --- Well,  
12 so again, back to what I had thought about the analysis that  
13 was provided by the testimony from the Applicant as well as  
14 the community.

15 It was a very big, you know, long hearing where the  
16 Applicant came and gave all of the relief that they were  
17 requesting as well as their analysis for how they're meeting  
18 the criteria for the BZA to grant that relief.

19 The Office of Planning also provided their report  
20 in terms of how they believe the Applicant did or did not  
21 meet the relief requested. The Office of Planning's report  
22 provided us with analysis as to how those criteria were being  
23 met. I am in agreement with how the Office of Planning is  
24 looking at this and how they are coming to the conclusion  
25 that the criteria is being met.

1           So that's kind of the first step. I just want to  
2 understand, again, the conditions. Like, if this gets  
3 denied, then we don't need to worry about the conditions.  
4 So if --- so does anyone have any other comments about  
5 whether or not they would be in support of the application?

6           I would be in support of the application based on  
7 the reasoning that I just put forward. And then we can get  
8 to what I was struggling with, which were the conditions,  
9 because of all the testimony that we heard, in particular,  
10 the way that this facility has been working since the last  
11 time they were here.

12           You know, I mean, that's what the thing was that I  
13 was interested in finding out a little bit more to which was  
14 the key into how, you know, like the traffic pattern, and the  
15 catering trucks, and things like this were going to be dealt  
16 with. So just real quick, I mean, I'm in support of the  
17 application. So does anyone else have anything they'd like  
18 to add in that regard?

19           MEMBER JOHN: Mr. Chairman, I'd just like to add a  
20 few more thoughts. This was a somewhat contentious  
21 application. And just to review what my thought process was,  
22 this is an application for a special exception to expand the  
23 physical space of an existing private school to add meeting  
24 and work spaces, and a 111-unit multi-family building along  
25 16th Street.

1           The Applicant also seeks special exception relief  
2 to shift the RA-4 boundary 35 feet to the west on a split-  
3 zoned lot. I've reviewed the record, and listened to the  
4 testimony of the witnesses. And in applying the regulations  
5 to the facts of this case, I believe the Applicant has met  
6 the criteria for the zoning relief requested. And in  
7 reaching this conclusion, I've given great weight to the  
8 thorough analysis and recommendations of the Office of  
9 Planning.

10           The BZA is also required to give great weight to  
11 the issues and concerns of the ANC. And in summary, the ANC  
12 continues to object and states that the office of Planning,  
13 as we heard in discussion on the motion, the Office of  
14 Planning improperly assessed the project's impacts, noise,  
15 emergency response, the environment, light and air emissions,  
16 refuse, and other basic land use planning impacts.

17           The Board relied on the assertions made in the  
18 Applicant's statement and in the provisions of the MOUs in  
19 endorsing this project for BZA approval instead of conducting  
20 its own studies. The BZA must consider the comprehensive  
21 plan, and this project violates many provisions of the  
22 comprehensive plan. Meridian is not a private school. The  
23 impacts of this project will be substantial and cannot be  
24 fully mitigated by the MOUs.

25           While I appreciate the ANC's concerns about the

1 application of the comprehensive plan as previously stated,  
2 the comprehensive plan is an important policy document.  
3 However, the BZA is required by law to apply the applicable  
4 regulations to the facts of each case. And under Subtitle  
5 X 104.2, the Board may approve the operation of the private  
6 school at that location if, among other criteria, it is not  
7 likely to become objectionable because of noise, traffic,  
8 number of students, or other objectionable conditions.

9           The Applicant represents, and we have no other  
10 reason to doubt, that the level of activity will not increase  
11 and there will be no increase in students and staff. The  
12 Applicant has also stated that it will not use the new  
13 conference room for weddings which was a concern of the  
14 community.

15           With regard to traffic related to school and the  
16 condominium building, the Applicant conducted extensive  
17 research, I'm sorry, extensive outreach in discussions with  
18 the community and redesigned the project to meet those  
19 concerns.

20           The most significant improvement was moving the  
21 parking garage to Belmont Street entrance where there's two-  
22 way traffic. And so traffic to the school would no longer  
23 need to circle the neighborhood to exit at Crescent Place.  
24 The ANC cites congestion at that location, and the Applicant  
25 agreed to conduct a traffic signal study and improve the

1 signage and pavement markings.

2 With respect to noise, the Applicant agreed to  
3 reduce noise impacts by limiting when music can be played.  
4 Other potentially objectionable impacts are addressed by the  
5 MOU between the parties, such as the size and nature of  
6 events and the operation of one of the condominium buildings.

7 The Applicant has also agreed to a condition  
8 limiting the operation of the private school to five years.  
9 If the community is able to demonstrate at that time that the  
10 school is not meeting its obligations, and its operations  
11 become objectionable as specified in the regulations, the  
12 community may raise those concerns with the Board at that  
13 time.

14 The special exception to move the zone boundary in  
15 a split zone from the RA-4 zone to the first 35 feet of the  
16 RA-2 zone is authorized by the regulations. And it is not  
17 necessary to try to interpret the comprehensive plan because  
18 the regulations themselves are clear that the Board has the  
19 discretion to grant that type of relief.

20 As the Applicant has shown and OP has stated, this  
21 change will not increase the overall density of the project.  
22 Instead, it will shift density along the 16th Street corridor  
23 and away from the historic buildings. I would also rely on  
24 DDOT's analysis and the recommendations contained by DDOT.

25 And I do not recommend the flexibility criteria

1 requested, and I am open to discussion of the conditions.  
2 I'm sorry this was so long.

3 CHAIRPERSON HILL: No, that was great, thank you so  
4 much. Anyone else?

5 MEMBER MAY: I think that was a terrific recap of  
6 all the issues. And I don't have much to add except to say  
7 that, I think, I thought from the last hearing that the case  
8 for the zoning relief specific to the building was pretty  
9 clearly made, and that the only question was the special  
10 exception related to the operation of the school, and the  
11 concerns that were raised by the community in the Applicant's  
12 willingness to very strictly address those with all the  
13 events that were happening.

14 And I feel like what we have received in the  
15 proposed conditions in the MOUs at this point have addressed  
16 that. And the Applicant otherwise has addressed the concerns  
17 that we raised at that hearing. So I'm in favor, again,  
18 except for just the little tweaks to the conditions that I  
19 suggested earlier.

20 MEMBER WHITE: I concur with Board Member John's  
21 comments. Those were excellent in terms of all the issues  
22 that popped up in this case. Because, you know, you're  
23 weighing the concerns of the community, but you also have to  
24 look at the criteria within the special exception relief that  
25 they're requesting.

1           So I believe that they met that criteria. I think  
2 the final part of this analysis is just incorporating all the  
3 conditions that will protect the community, as well as  
4 conditions that the Applicant has agreed to comply with, and  
5 incorporate it into the order.

6           CHAIRPERSON HILL: Okay. So we're back now to ---  
7 thank you all very much --- back now to the conditions and  
8 still kind of what I suppose there was. There was something  
9 that Commissioner May had mentioned in terms of his changes  
10 to the conditions. I'm still kind of where --- and I'm going  
11 to turn this over. I know that Vice Chair Hart, you've  
12 looked at the conditions a little bit more. I would have  
13 been just accepting Exhibit 87D as it was, all 15 pages, in  
14 terms of --- and then left it at that.

15           And so, or I'm still saying, you know, come on back  
16 and understand the detail of how the mechanics of it are a  
17 little bit more. Because the main thing that I had issue  
18 with was, again, the things that the community had brought  
19 up with the way the facility was being run now.

20           And to mitigate those adverse impacts of this new  
21 requested relief, I think, without just taking it  
22 wholeheartedly in 87D, I would look to the Board to see if  
23 there are any other options or things that you would  
24 consider. Otherwise, I would just be going with 87D as the  
25 conditions.



1           MEMBER HART: Yes, I mean, I am in support of the  
2 application. I didn't have a particular issue with that.  
3 I know that there is opposition to the case from some in the  
4 community.

5           And the reason that I was really looking at the  
6 conditions was really, it just seemed really, really long.  
7 I mean, it was, you know, they were talking about a lot of  
8 stuff that I was, like, oh, my gosh. Okay, so how do we kind  
9 of relate that to, you know, to the zoning that was actually  
10 being --- the relief that was being requested. And so that  
11 was really the concern that I had.

12           I mean, I had gone through and actually kind of  
13 paired it down to about two pages. But the problem is that  
14 it's stuff that is, you know, I know that there's been a lot  
15 of kind of discussion and everything that's gone on with it.  
16 So that was -- the reason that I was thinking that we might  
17 have to have another discussion was really because of the  
18 change from the 15 pages to two pages.

19           And really it wasn't about trying to make it easier  
20 for them. It was more just trying to see if I could focus  
21 in on things that I thought were more zoning related, at  
22 least that was my initial idea of it. So that's kind of  
23 where I am with it.

24           And it was, like I said, it was just a little bit  
25 hard to try to go through some of this that was, okay, so,

1 you know, some of kind of the liaison stuff, the number of  
2 people I thought was fine. The events I thought was  
3 generally fine. But when it started to get into you know,  
4 talking about, well, is it a 30-foot truck, or a 24-foot  
5 truck, and I'm, like, well, who's actually going to be, you  
6 know, is the neighborhood then kind of saying, well, this is  
7 a 30-foot truck, and you can't do that here?

8 And I don't know. That's the part that I was just  
9 trying to --- I was having a hard time with it, because I was  
10 trying to figure out how do you deal with that.

11 Go ahead.

12 CHAIRPERSON HILL: Can I change on this one thing?  
13 So who would be in objection to including all the conditions  
14 as they are in Exhibit 87D?

15 MEMBER MAY: I support them all. I just want to  
16 tweak the two relating to building materials and plant  
17 materials so that there are some controls over that.

18 CHAIRPERSON HILL: Okay. So other than that, does  
19 anybody have any objection to the conditions?

20 MEMBER JOHN: Mr. Chairman, I am torn about  
21 including that lengthy MOU with all of these non-zoning  
22 related issues. But I can be persuaded otherwise.

23 MEMBER MAY: So 87D is just the conditions that  
24 have been abstracted from all of the MOUs. So we would not  
25 be incorporating all off the MOUs. They're just part of the

1 record, right?

2 CHAIRPERSON HILL: Yes. It'd just be 87D would be  
3 the conditions. But what Board Member John is saying is that  
4 a lot of those MOU conditions are in 87D.

5 MEMBER MAY: Correct.

6 CHAIRPERSON HILL: And still, and we're kind of  
7 talking through this now because, like, I don't feel  
8 comfortable just picking --- I mean, with regard to the  
9 issues that Commissioner May is speaking to, I'm comfortable  
10 with his suggestion.

11 I'm not necessarily comfortable with going through  
12 this in this way so that I don't feel that there are teeth --  
13 I thought in the 15 pages there were teeth connected with  
14 what it was that I thought that the community had their most  
15 concerns. And so that's why I was --- so if we did, if you  
16 guys wanted to go through this again, then I would suggest  
17 that we bring them back and that we just talk about the  
18 conditions. But that's --- okay.

19 MEMBER MAY: You know, actually, honestly I think  
20 that we need to kind of move forward with this. And as I  
21 said, I had made an attempt to do that. I think that it  
22 would be a protracted discussion to try to get to that. And  
23 it sounds like there's --- and I know that there's been a lot  
24 of discussion to get to this point. So I'm not going to  
25 maintain a, you know, I'm not going to dig my heels in or

1 anything. I mean, we can move forward today if the rest of  
2 the Board wants to do that.

3 MEMBER WHITE: Yes. I would be okay with just  
4 incorporating 87D as part of the list of conditions and maybe  
5 tweaking it with Mr. May's language. Because, I mean, at the  
6 end of this document the parties are going to be signing  
7 this. So obviously they've been having some discussions  
8 regarding these items. So that might be the fastest way to  
9 do it.

10 If they're zoning related, then I imagine that they  
11 could come back and have some discussion with us about it.  
12 But in the interest of time, I think it might be easier to  
13 just incorporate that exhibit.

14 MEMBER JOHN: So I have been persuaded, Mr.  
15 Chairman.

16 CHAIRPERSON HILL: Okay. All right. So then, Mr.  
17 May, would you be able to articulate the --- would you be  
18 able to make a motion and then articulate the conditions the  
19 way that you are suggesting in terms of the flexibility and  
20 then including all of the rest of the conditions in from 87D?

21 MEMBER MAY: Yes, I think so. I mean, I think I  
22 saw nods of agreement from the Applicant about tweaking the  
23 conditions regarding building materials and plant materials.  
24 So I would just suggest that, on 87D -- let me pull it back  
25 up --- that on conditions 2B and 2G, that we incorporate

1 language that says essentially vary the selection of colors  
2 and exterior materials within the range of materials  
3 presented to the Board and included in the drawings based on  
4 the availability at the time of construction, or some version  
5 of that.

6 I mean, there's a little bit of legal tweaking that  
7 might be necessary in the final order and then a similar  
8 insertion of that language on --- that was for B, and for G  
9 it would be a similar insertion of language. Vary the final  
10 landscaping materials in the project, excuse me, consistent  
11 with the range of materials that were presented to the Board  
12 or included in the drawings, and based on availability and  
13 suitability at the time of construction, so something like  
14 that.

15 CHAIRPERSON HILL: All right, so there's ---

16 MEMBER MAY: It looks like it varies widely.

17 CHAIRPERSON HILL: Okay. Because I'm going to make  
18 motion. And then I'm going to ask Commissioner May to  
19 clarify the condition again, including all the other  
20 conditions in ---

21 MEMBER MAY: We can't just say -- I can't just say  
22 all that stuff, say the stuff I just said ---

23 CHAIRPERSON HILL: Okay. Give me a second. I just  
24 want to make sure the Board doesn't have any issues with your  
25 two little tweaks.

1 MEMBER MAY: Okay, okay.

2 CHAIRPERSON HILL: Does the Board have any issue  
3 with Mr. May's tweaks?

4 MEMBER HART: No, but I wanted to ask Commissioner  
5 May about the 2D and E regarding the final number of  
6 residential units, plus or minus ten percent. I mean, can  
7 we just give them an upper limit, just say, like, they can  
8 have up to, you know, 120 units or whatever? I'm just saying  
9 ---

10 (Simultaneous speaking)

11 MEMBER MAY: You know, again, I mean, this is  
12 something that's typical in a PUD to have a flexibility to  
13 vary the number of units. And that's, I mean, this is  
14 relevant when it comes to sort of the number of parking  
15 spaces and things like that, and to vary the number of  
16 parking spaces. But it's already parked well over what is  
17 required under the zoning regulations. So I don't see any  
18 reason to be concerned about that level of flexibility.

19 MEMBER HART: So that giving them that --- because  
20 I guess the BZA would be able to give them, like, two  
21 percent. But they're looking for something that's a little  
22 bit beyond that.

23 MEMBER MAY: Well, if we were silent on it, I don't  
24 think -- well, sorry. Yes, I have no problem with ten  
25 percent as opposed to what the ZA might ordinarily be able

1 to do.

2 MEMBER HART: Okay. And then C, the minor  
3 refinements to exterior details, and dimensions, and all that  
4 sort of stuff that's kind of included with that, why does it  
5 need to be said?

6 MEMBER MAY: You know, I mean, again this is like  
7 it's become --- it's morphed into something that's very much  
8 like a PUD. And this is standard language from PUD cases.

9 MEMBER HART: Oh, okay.

10 MEMBER MAY: Because there're always these little  
11 bits and pieces of buildings that have to be tweaked when you  
12 go from the level of design that you're at now until you get  
13 to construction documents. That's all. So, I mean, I think  
14 they're just trying to be very thorough. Maybe they are too  
15 thorough, but I'd rather have too thorough in this case than  
16 not thorough enough.

17 MEMBER HART: Okay, all right.

18 CHAIRPERSON HILL: Okay, we'll see if I can get  
19 through this motion. Commissioner May, I'm still going to  
20 need your help with those two slight changes to your  
21 condition --- to the condition.

22 Before I make a motion, does anybody have any other  
23 questions?

24 (No response)

25 CHAIRPERSON HILL: Okay, all right. So I'm going

1 to make a motion to approve Application Number 19689, as  
2 captioned and read by the Secretary, including the conditions  
3 that are in Exhibit 87D except for what the comments are of  
4 Commissioner May at this point.

5 MEMBER MAY: And I would suggest that we insert  
6 language in B and G to clarify that the flexibility is to  
7 vary these materials within the range of materials that have  
8 been presented to the Board and included in the presentation  
9 documents.

10 CHAIRPERSON HILL: And that's in 2 ---

11 MEMBER MAY: 2B and G, sorry.

12 CHAIRPERSON HILL: 2B and G.

13 MEMBER MAY: 2B and G.

14 CHAIRPERSON HILL: Okay. All right. So the motion  
15 has been made. Ask for a second?

16 MEMBER WHITE: Second.

17 CHAIRPERSON HILL: Motion made and seconded. All  
18 those in favor, aye?

19 (Chorus of ayes)

20 CHAIRPERSON HILL: All those opposed?

21 (No audible response)

22 CHAIRPERSON HILL: The motion passes, Mr. Moy.

23 MR. MOY: Staff would record the vote as 5-0-0.  
24 This is on the motion of Chairman Hill to approve the  
25 Application for the relief requested along with conditions



1 as the Chair has just cited, and second to the motion, Ms.  
2 White, also in support, Mr. Peter May, Ms. John, and Vice  
3 Chair Hart. Motion carries.

4 CHAIRPERSON HILL: Thank you, Mr. Moy. Full order?  
5 Okay. We're going to take a five minute break. Thank you.

6 (Whereupon, the above-entitled matter went off the  
7 record at 11:32 a.m. and resumed at 11:42 a.m.)

8 CHAIRPERSON HILL: All right, Mr. Moy, whenever you  
9 like. At least I think I know where we are. We're in the  
10 last hearing case of at least the agenda thing, and then  
11 we're going to jump back up to the beginning --- I'm sorry,  
12 meeting case, and then we're going to jump back up to the top  
13 of the meeting case agenda.

14 MR. MOY: Yes, sir. So next case application for  
15 decision making, Number 19739 of Ben Safran and Margot  
16 Locker, is amended for special exceptions under Subtitle E,  
17 Section 5201, from the occupancy requirements of Subtitle E,  
18 Section 404.1, and under Subtitle E, Section 5007 from the  
19 accessory building rear-yard setback requirement, Subtitle  
20 E, Section 5004.1, which would construct a two-story rear  
21 addition to an existing principal dwelling unit, and to  
22 construct a two-story accessory structure, RF2 zone, at 1828  
23 15th Street, NW, Square 191, Lot 58.

24 CHAIRPERSON HILL: Okay, right. Thank you, Mr.  
25 Moy. Just to let everybody know in the audience here, so

1 this is our last day before we go on break. And so everybody  
2 is trying to get in and finish before we go on break. So  
3 we're here very late today.

4 So probably we're going to take a lunch at, like,  
5 1 o'clock. And then we're going to come back, and I  
6 certainly hope we don't have to take a dinner, but I suppose  
7 that's possible. So I'm just kind of throwing all that out  
8 there.

9 Is the Board ready to deliberate? Okay. I can  
10 start.

11 I think that, so okay, so OP's initial report did  
12 not analyze the access variance, because it was added late  
13 by the Applicant, but recommended approval of the special  
14 exception relief provided the Applicant obtain a written  
15 statement from FEMS that it would have adequate access to the  
16 accessory dwelling unit.

17 DC FEMS provided a letter in Exhibit 55 stating the  
18 location of the accessory dwelling unit would not hamper the  
19 fire code access. And this was all addressed in OP's  
20 supplemental report in Number 59 where, again, they  
21 recommended approval of the request for relief.

22 ANC 2B, in Exhibit 36, did not state any issues or  
23 concern related to the Application. After reading the record  
24 and reviewing the record during the deliberation portion of  
25 this, as well as the testimony, I would agree with the

1 analysis of the Office of Planning. And I would be in  
2 support of this application specifying that, again, this is  
3 not for an apartment. We're not approving an apartment, so  
4 just to be clear. And I look to anyone from the Board as to  
5 comments.

6 MEMBER MAY: Mr. Chairman, you know, I think that  
7 this case is now something that we can approve. Because it's  
8 not about approving an accessory dwelling unit on an alley  
9 of sufficient width. And it doesn't, you know, because I  
10 didn't see how it could ever meet the requirements of that.

11 The drawings that we have show that they have  
12 stripped away enough, I assume, to have the zoning  
13 administrator approve it as simply an accessory building  
14 with, you know, whatever stuff is in it.

15 There is a bit of a glitch, a disagreement between  
16 what's labeled as a presentation and then the drawings,  
17 because the presentation shows a lot more kitchen stuff than  
18 the drawings do. It actually really doesn't matter that  
19 much, because we're not granting relief for the accessible  
20 dwelling unit.

21 And if the zoning administrator determines there's  
22 so much stuff in there that it has become a dwelling unit,  
23 then they don't have relief for it. They can't do it. So  
24 if it has be stripped down further, so be it, whatever it is.  
25 So I'm fully in favor of it as it is now presented to us.

1 CHAIRPERSON HILL: Okay, anyone else?

2 MEMBER JOHN: So, Mr. Chairman, I just wanted to  
3 clarify that we are not approving the accessory structure  
4 dwelling access on the U301.1@ which the application now is  
5 asking for. As amended, that relief was added, I believe.

6 CHAIRPERSON HILL: Yes.

7 MEMBER JOHN: Thank you.

8 CHAIRPERSON HILL: Okay, anyone else?

9 (No response)

10 CHAIRPERSON HILL: Okay. I'm going to go ahead and  
11 make a motion to approve Application Number 19739 as  
12 captioned and read by the Secretary and ask for a second.

13 MEMBER HART: Second.

14 CHAIRPERSON HILL: Motion made and seconded. All  
15 those in favor, aye?

16 MEMBER MAY: I'm sorry, I just wanted --

17 CHAIRPERSON HILL: Sure.

18 MEMBER MAY: -- to clarify again. I mean, it is  
19 not the relief necessary for the accessible dwelling unit.  
20 That's what Ms. John was referring to.

21 CHAIRPERSON HILL: Yes, thank you.

22 MEMBER JOHN: There's an accessory structure.

23 MEMBER MAY: It is an accessory structure. They  
24 need relief from the setback for that. And then they need  
25 lot occupancy relief for the addition to the building. And

1 those are the only two areas of relief that we're granting.

2 CHAIRPERSON HILL: Yes.

3 MEMBER JOHN: Yes.

4 CHAIRPERSON HILL: I was just waiting for  
5 acknowledgment. Okay, so once again, I'm going to make a  
6 motion to approve Application Number 19739, as captioned and  
7 read by the Secretary and clarified by both Board Member John  
8 as well as Commissioner May, and ask for a second.

9 MEMBER HART: Second.

10 CHAIRPERSON HILL: Motion made and seconded. All  
11 those in favor?

12 (Chorus of ayes)

13 CHAIRPERSON HILL: All those opposed?

14 (No audible response)

15 CHAIRPERSON HILL: Motion passes, Mr. Moy.

16 MR. MOY: Staff would record the vote as 5-0-0,  
17 based on the motion of Chairman Hill to approve the  
18 Application for the relief as stated in your motion. Second  
19 to the motion, Vice Chair Hart, also in support Mr. Peter  
20 May, Ms. White, and Ms. John. Motion carries.

21 CHAIRPERSON HILL: Thank you. Summary order, Mr.  
22 Moy?

23 MR. MOY: Thank you.

24 CHAIRPERSON HILL: We're going to bring in another  
25 Commissioner here, so call in the bullpen.

1 All right, Commissioner Miller, welcome. And while  
2 you get settled in, Mr. Moy, if you want to go ahead and call  
3 our next meeting case.

4 MR. MOY: Yes. Thank you, Mr. Chairman, with  
5 pleasure. The Board's still in its decision making session.  
6 And the next up is --- this is a two-case application, Number  
7 19124A of MR 622 Eye Street, Land LLC, et al.

8 This a request for a two-year time extension of BZA  
9 Order Number 19124 that approved a variance from the closed  
10 court width, and area requirements under Section 776, and a  
11 special exception from the penthouse setback requirements  
12 under Sections 411 and 777.1 allowing construction of a new  
13 mixed-use residential building DD/C 3@ District at Square  
14 453, Lots 40, 50, 815 through 819, 821, 835, and portions of  
15 a public alley to be closed.

16 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy. Is  
17 the Board ready to deliberate? Okay.

18 I was here for this hearing, actually, and I  
19 remember it being a really full hearing and quite a bit of  
20 testimony. I reviewed the application, and I reviewed their  
21 request for the two-year time extension and the reasons why.  
22 I believe they meet the criteria for us to grant that time  
23 extension.

24 In addition to this, the Office of Planning has  
25 also provided their analysis and are also in agreement to how

1 the reasons for the time extensions are being met. And so  
2 I'd be voting in favor. Does the Board have any other  
3 thoughts or questions?

4 MEMBER WHITE: I have a couple of thoughts. The  
5 Applicant put in information, after I reviewed the full  
6 record, explaining why they need the two-year time extension  
7 because of a combination of issues, including litigation, and  
8 the fact that they needed public reviews, and public  
9 approvals, including approval from the Mayor's agent for  
10 Historic Preservation, which delayed the Applicant obtaining  
11 building permits.

12 They now expect to receive these permits relatively  
13 soon, but they explained in the record that they needed to  
14 have that two-year time extension.

15 So in looking at whether the Applicant meets the  
16 zoning regulations for a time extension under Y705, we do  
17 have the authority of extend the period of validity of an  
18 order for good cause so long as there is no substantial  
19 change in the material facts upon which the Board based its  
20 original approval of the application.

21 So the Applicant has provided substantial evidence,  
22 including inability to obtain project financing beyond their  
23 control, inability to secure government approvals by the  
24 expiration date of the Board's order beyond the Applicant's  
25 control, and because of the litigation and opposition that

1 required them to suspend development.

2 So OP was also in support. ANC 2C voted in support  
3 as well, of the application on July 19th. Therefore, I also  
4 recommend that we grant the two-year time extension.

5 CHAIRPERSON HILL: Thank you. And I guess, Ms.  
6 White, you've read into the record for the original case,  
7 correct?

8 MEMBER WHITE: Absolutely.

9 CHAIRPERSON HILL: Okay. All right, anyone else?

10 MEMBER MILLER: Mr. Chairman, I also read into the  
11 record from the original case, which I wasn't on, but I read  
12 the record. I'm ready to move forward and agree with Board  
13 Member White's analysis.

14 CHAIRPERSON HILL: All right, thank you  
15 Commissioner Miller. All right, then I'm going to go ahead  
16 make a motion to approve Application Number 19124A for the  
17 two-year time extension, as captioned and read by the  
18 Secretary, and ask for a second.

19 MEMBER WHITE: Second.

20 CHAIRPERSON HILL: Motion has been made and  
21 seconded. All in those in favor, aye.

22 (Chorus of ayes)

23 CHAIRPERSON HILL: All those opposed?

24 (No audible response)

25 CHAIRPERSON HILL: Any in abstention?



1 MEMBER HART: Aye.

2 MR. MOY: Staff would record the vote as four, to  
3 zero, to one. This is on the motion of Chairman Hill to  
4 approve the request for a time extension. Second to the  
5 motion, Ms. White, also in support Mr. Rob Miller, Ms. John,  
6 and we have Vice Chair Hart abstaining. The motion carries.

7 CHAIRPERSON HILL: Thank you. Summary order, Mr.  
8 Moy.

9 MR. MOY: Thank you, sir.

10 CHAIRPERSON HILL: All right, Mr. Moy, whenever you  
11 like.

12 MR. MOY: The next application for decision is  
13 Application Number 19748A of Acton Academy Foundation. This  
14 is a request from the Applicant for a minor modification to  
15 the Student drop-off and pickup approved by BZA Order Number  
16 19748 that permits a private school in the R-17 zone at  
17 premises 2430 K Street, NW, Square 28, Lots 172 and 846.

18 Mr. Chairman, there is a preliminary matter in this  
19 case. There is a filing from ANC-1A and, let's see ---

20 MEMBER HART: It's ANC-2A.

21 MR. MOY: 2A?

22 MEMBER HART: Yes.

23 MR. MOY: Okay. Well, I apologize. I have a typo  
24 here. And, well, let me just leave it at that.

25 CHAIRPERSON HILL: Okay, all right. Okay. All

1 right, thank you, Mr. Moy. Is the Board ready to deliberate?

2 MEMBER HART: Sure.

3 CHAIRPERSON HILL: Okay.

4 MEMBER HART: I can start.

5 CHAIRPERSON HILL: Okay, sure.

6 MEMBER HART: Yes. First, I'll note that the  
7 Applicant submitted this for a minor modification. And I  
8 think it's actually a --- give me a second --- it's a  
9 modification of, excuse me, of consequence. And this is  
10 because they're requesting a change to one of the orders of  
11 the condition under Subtitle Y, 703.4.

12 The term modification of consequence shall mean a  
13 proposed change to a condition cited by the Board in the  
14 final order, or the redesign or relocation of architectural  
15 elements and open spaces from the final design approved by  
16 the Board. So it seems like it clearly goes to that.

17 The Applicant actually noted in their pre-hearing  
18 statement that that's kind of what they --- they understood  
19 that it might actually be a modification of consequence. So  
20 they were kind of basically covering their bases with that.  
21 That's Exhibit 3 on Page 2.

22 But with regard to the actual -- what it is that  
23 they are requesting, after reviewing the record and looking  
24 at, in particular, the Office of Planning report, I would be  
25 supportive of their modification. And I think that, excuse

1 me, that the Office of Planning report, it's not extremely  
2 detailed, but it does go through why they thought that it  
3 should be --- why they would be able to support it.

4 The ANC also, ANC-2, I just said it, 2A also  
5 submitted their report on this and said that they supported  
6 the Academy, Acton Academy's obligation for modification and  
7 for the student drop-off and pickup area. So I would be in  
8 support of this. And I'll leave it there.

9 CHAIRPERSON HILL: Okay. Anyone else? Okay, sure,  
10 Commissioner.

11 MEMBER MILLER: Thank you, Mr. Chairman. This is  
12 another case which I --- no, yes --- that I've read into the  
13 record. Because I wasn't on the original case. You know,  
14 I watch all of your cases, so I think I'm on them, even when  
15 I'm not here. So I wasn't here, but I watched it. So I've  
16 read into the record, and I agree with Board Member Hart's  
17 analysis.

18 And I would note that we did receive the West End  
19 Citizens Association letter dated July 20th, I believe, which  
20 also noted that they thought it was a modification of  
21 consequence. And they attached testimony, which they thought  
22 should be part of the record, which is a part of the record  
23 at Exhibit 8. And I've read that.

24 But I still think the condition as revised, with  
25 the revised drop-off and pickup plan, which is subject to

1 DDOT approval, addresses that concern. And that plan was  
2 developed in consultation with FEMS and DDOT. And it won't  
3 go forward at the permit level if it doesn't meet those  
4 agencies' concerns. So I'm ready to move forward.

5 CHAIRPERSON HILL: Okay. Well, I also agree that  
6 it's a modification of consequence. And I don't need to add  
7 anything beyond what my colleagues have stated. So unless  
8 anyone has anything else to add, I'll go ahead and make a  
9 motion to approve Application Number 19748A, as captioned and  
10 read by the Secretary, and --

11 MEMBER HART: With the caveat that it's a  
12 modification of consequence and not a --- it says a minor  
13 modification.

14 CHAIRPERSON HILL: Oh, I'm sorry, yes. Sorry.  
15 Thank you. Make a motion to approve Application Number  
16 19748A of Acton Academy Foundation wherein the Secretary has  
17 read and captioned, other than this is a modification of  
18 consequence, not a minor modification, and ask for a second.

19 MEMBER HART: Second.

20 CHAIRPERSON HILL: Motion made and seconded. All  
21 those in favor?

22 (Chorus of ayes)

23 CHAIRPERSON HILL: All those opposed?

24 MEMBER JOHN: I'm abstaining.

25 CHAIRPERSON HILL: Okay, we have one abstention.

1 All right. Board Member John did not read into the record.  
2 And the motion passes. Mr. Moy.

3 MR. MOY: Before the Staff gives a vote count, Mr.  
4 Chair, I just wanted to correct for the record that I had  
5 misstated the ANC filing. I actually had meant the West End.  
6 I was looking at a different case so I apologize for that.

7 CHAIRPERSON HILL: That's right, we also did get an  
8 ANC filing.

9 MR. MOY: Thank you. So the Staff would record the  
10 vote as four to zero to one. This is on the motion of  
11 Chairman Hill to approve the request and this is for a  
12 modification of consequence.

13 Seconding the motion is Vice Chair Hart, also in  
14 support, Mr. Rob Miller, Ms. White, we have Ms. John  
15 abstaining. The motion carries.

16 CHAIRPERSON HILL: Okay, great. Summary order, Mr.  
17 Moy?

18 MR. MOY: Thank you.

19 CHAIRPERSON HILL: Thank you. Commissioner Miller,  
20 I didn't realize you watch every day. You watch it every  
21 time? That scares me a little bit but we'll give you a  
22 shout-out there more often during the Wednesday hearings.  
23 Mr. Moy, whenever you're ready.

24 MR. MOY: Yes, sir. So, the next application for  
25 a decision is Application Number 19762 of AMT Varnum LLC.

1           This is captioned and advertised for special  
2 exception under the residential conversion requirements of  
3 Subtitle U Section 320.2, to construct a three-story rare  
4 addition and convert the existing principal dwelling unit to  
5 a three-unit apartment house, RF-1 Zone, at 1521 Varnum  
6 Street, NW, Square 2698, Lot 47.

7           And participating on the decision is Chairman  
8 Hill, Vice Chair Hart, Ms. White, Ms. John, and Mr. Miller.

9           CHAIRPERSON HILL: Okay, great, thank you. Is the  
10 Board ready to deliberate? Mr. Moy, we don't have any pre-  
11 hearing items before this, correct, that I've missed?

12           MR. MOY: There's the post-hearing filing from the  
13 Applicant under Exhibit 55 and 55B response from ANC-4C under  
14 58, Exhibit 58.

15           CHAIRPERSON HILL: Okay, all right. So, this has  
16 been a pretty unique case in that, again, what the Board is  
17 charged with doing is looking at each individual property and  
18 how that individual property either does or does not comply  
19 with the standards we look at in order to grant or deny an  
20 application for special exception or variance.

21           I'm just mentioning this to refresh the Board's  
22 memory as well as mine. We had an appeal last week for the  
23 property that is next-door, however, that is not something  
24 that we as a Board take into account when deliberating and  
25 determining whether or not this property has met the

1 standard.

2 I still continue to think that it's a pretty clever  
3 kind of way of developing these properties, however, I think  
4 in this case with regards to this one property, I do believe  
5 that they have met the standard for us to grant it.

6 Again, it's interesting, they didn't go back any  
7 farther than ten feet, they didn't go any higher than they  
8 were able to go. It's the conversion that we are providing  
9 analysis towards.

10 Now, that being the case, I do, however, think that  
11 there was a lot of testimony provided from the community, in  
12 particular the immediate next-door neighbor, concerning  
13 privacy.

14 And I even at one point tried to determine whether  
15 or not to call the Applicant back to even clarify some of the  
16 suggestions that the Applicant has made to the Board that we  
17 might end up making a condition on approval with regards to  
18 mitigating privacy concerns.

19 I did feel that Exhibit 55B, in terms of the  
20 privacy concerns for the immediate next-door neighbor, as  
21 well as some of the other issues that were brought on from  
22 other community Members in that row, did seem to mitigate  
23 some of those concerns.

24 Again, us looking at this, and I just continue to  
25 repeat this because it's this one lot that we're looking at

1 and this one development, as to whether or not it's meeting  
2 the criteria.

3 The Office of Planning has provided their analysis  
4 as to how this property does meet the criteria to grant the  
5 special exception for the residential conversion under  
6 U320.2.

7 And I would agree with their analysis, however, in  
8 terms of my comfort with approving this property, it would  
9 be based upon the condition that the Applicant constructs or  
10 mitigates the adverse impact in terms of privacy as it does  
11 in Exhibit 55B.

12 And in 55B it specifies or shows balcony, privacy  
13 fence -- I'm sorry, the privacy fence is on the balcony as  
14 well as a privacy fence and landscaping that runs back  
15 through the property.

16 And I feel in this particular case that the  
17 landscaping is something that I would want to be clear on  
18 with the Applicant that it adheres to Exhibit 55B as the  
19 condition. And I would look to anyone else to add anything.

20 MEMBER MILLER: Mr. Chairman, I would agree with  
21 your statement about adding as a condition of approval the  
22 privacy measures that were submitted with the Applicant's  
23 post-hearing submission at 55B.

24 So the condition could read, if it has not already  
25 been submitted, the Applicant shall install privacy measures



1 as shown on Exhibit 55B, including screens on the eastern  
2 side of each balcony, a privacy fence, and adequate  
3 landscaping, which shall be maintained in a healthy  
4 condition.

5 I wonder whether we also should include as an  
6 additional condition a measure to address the security  
7 concern raised at the hearing by both the Board, one of the  
8 Members of the Board, and a neighbor.

9 So as a result, in the Applicant's post-hearing  
10 submission at 55A where they showed the Chavez studies, they  
11 also showed a six-foot security fence, the addition of the  
12 six-foot security fence, and two eight-foot roll-up security  
13 doors at the entrance to the properties in order to address  
14 and alleviate any potential concerns of security.

15 So, that's in the Applicant's post-hearing  
16 submission at 55A. So, similar to the privacy condition,  
17 which is the measures set forth in 55B, we could include a  
18 condition, perhaps, that the Applicant shall install the  
19 security measures, the six-foot security fence and two eight-  
20 foot roll-up security doors at the entrance to the properties  
21 as shown in Exhibit 55A.

22 So I thought I'd just make that suggestion as  
23 a way to alleviate that concern as well.

24 CHAIRPERSON HILL: Okay, anyone else?

25 MEMBER HART: No, Mr. Chairman, I think we've gone

1 through the case. I would also be in support of the case in  
2 that I do believe they've met the zoning regulations as  
3 stipulated or described or demonstrated, I guess, in the  
4 Office of Planning report. Exhibit 33. And the supplemental  
5 report from Exhibit 40.

6 CHAIRPERSON HILL: Anyone else? I'm going to make  
7 a motion to approve Application Number 19762 as captioned and  
8 read by the Secretary, including the privacy measures that  
9 the Applicant has proposed in Exhibit 55B, including the  
10 privacy screening and landscaping running to the rear of the  
11 property, as well as the security concerns that the Applicant  
12 has proposed in 55A, which would be a six-foot security  
13 fence, as well as two eight-foot roll-up security doors.

14 I'd ask for a second?

15 MEMBER HART: Second.

16 CHAIRPERSON HILL: Motion made and seconded. All  
17 those in favor?

18 (Chorus of ayes.)

19 CHAIRPERSON HILL: All those opposed?

20 (No audible response.)

21 CHAIRPERSON HILL: The motion passes, Mr. Moy.

22 MR. MOY: The Staff would record the vote as five  
23 to zero to zero. This is on the motion of Chairman Hart to  
24 approve the application for the relief requested, as well as,  
25 as conditioned, as you cited going to Exhibit 55B and 55A.

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1 Seconding the motion of Vice Chair Hart, also in support, Mr.  
2 Rob Miller, Mr. White, and Ms. John. The motion carries.

3 CHAIRPERSON HILL: Thank you, Mr. Moy, full order?

4 MR. MOY: All right, the last case for a decision  
5 in this section is Case Application Number 19781 of ROK  
6 Development LLC, caption, advertised for special exception  
7 under the residential conversion requirements of Subtitle U  
8 Section 320.2 to construct a third story and rare addition  
9 to an existing principal dwelling unit, and convert it to a  
10 three-unit apartment house, RF1 Zone. This is at 524  
11 Jefferson Street, NW, Square 3209, Lot 102.

12 Participating on the decision is Chairman Hill,  
13 Vice Chair Hart, Ms. White, Ms. John, and Michael Turnbull.  
14 Please note that there is a filing in the record that was  
15 filed yesterday, July 24th, which I believe is the  
16 Applicant's agreement with ANC-4D as well as the revised 4D  
17 report I believe withdrawing their opposition.

18 CHAIRPERSON HILL: Thank you, Mr. Moy. Is the  
19 Board ready to deliberate?

20 We took a lot of testimony on this and before I  
21 even get to some of my thoughts on the testimony, the Office  
22 of Planning had recommended approval and provided analysis  
23 as to how the standards were being met for the application  
24 to be granted.

25 I actually was in agreement with the Office of

1 Planning's analysis, however, the sticking point that I was  
2 having was the light and air to the immediate neighbor that  
3 did come to testify.

4 The Applicant went back and did a redesign of what  
5 was going to be a light and air effect to that immediate  
6 neighbor. I thought the Applicant had actually, as is what  
7 has been put forth in the record, the Applicant states they  
8 have done a pretty extensive and costly redesign to what they  
9 had tried to accomplish and do. And I would agree with that.

10 I do think that, again, the redesign does more for  
11 the immediate neighbor than even perhaps the by-right option.  
12 The by-right option would have come right up to the kitchen  
13 window and I think the record shows how this increased court  
14 gives more light and air to the immediate neighbor.

15 And I guess as Mr. Moy had mentioned, the ANC was  
16 here, I think the Commissioner had been here and provided a  
17 very good analysis as to how the ANC was in opposition,  
18 however, are now working with the Applicant.

19 The ANC has withdrawn their opposition and I do  
20 appreciate that because we are appreciative as a Board that  
21 the community is able to work with the developers or whoever  
22 is trying to do what they're trying to do. However, it's not  
23 necessary that they do come to an agreement.

24 However, it is nice in this case that they have and  
25 so I would be in agreement with the Office of Planning's

1 analysis and I would also be in agreement now with the design  
2 that has been put forth by the Applicant to mitigate the  
3 adverse impact of the immediate neighbor.

4 Does anyone have anything they'd like to add?

5 MEMBER HART: I believe, Mr. Chairman, that the  
6 Applicant also provided a sun study to help to look to see  
7 where the shadows were hitting. And I think that's helpful  
8 with the inclusion of this court.

9 I think that does move the building, the new  
10 addition, away from the neighbor to the south and it does  
11 provide some light and air that we were requesting at the  
12 last Meeting.

13 So, I would also be in support and I would also  
14 cite the Office of Planning report in just looking through  
15 and listening to the testimony from the Applicant that I  
16 would be able to support the application as well.

17 I think that they have gone back and really looked  
18 at that, including that court, so that it would help to move  
19 a portion of the proposed expansion away from that building,  
20 from the adjacent building. And I think that's actually a  
21 helpful addition to the design.

22 And that's it.

23 CHAIRPERSON HILL: Any other Board Members?

24 MEMBER WHITE: I wanted to just add to what you  
25 said, this was a very good example of neighbors working

1 together. Because I had a lot of hesitancy in supporting the  
2 relief that they were seeking because of that rear addition  
3 in terms of how it was impacting the apartment house.

4 And the testimony from the ANC and the neighbors  
5 did have an impact and just for the record, those types of  
6 comments are very helpful.

7 So, the fact that the Applicant revised the plans  
8 to address the light and air to the residents of the  
9 adjoining apartment house, I think it was 608 Jefferson, the  
10 rear addition is still going to extend 18 feet beyond the  
11 rear wall. But they did a cut-out of a court which really  
12 allowed a better flow of light and air for those residents  
13 in that condo unit.

14 So, from my perspective, they met the special  
15 exception criteria, and the support of the ANC, even though  
16 it came in today it was great to see that they're withdrawing  
17 their opposition and OP is also supportive as well. So I  
18 would be in support of the application.

19 CHAIRPERSON HILL: All right, unless there's anyone  
20 else, I'm going to make a motion. I'm going to make a motion  
21 to approved Application Number 19781 as captioned and read  
22 by the Secretary and ask for a second?

23 MEMBER HART: Second.

24 CHAIRPERSON HILL: Motion has been made and  
25 seconded. All those in favor, aye?

1 MEMBER JOHN: Mr. Chairman?

2 CHAIRPERSON HILL: Yes?

3 MEMBER JOHN: One question. We want to incorporate  
4 the settlement with the ANC because the ANC had conditioned  
5 for withdrawing its opposition, which include changes to the  
6 design to move the spiral staircase, let's see, a \$5000  
7 payment, a \$5000 payment to I'm not sure who.

8 \$5000 towards decorative enhancements to the party  
9 line wall on 524 Jefferson Street facing the 608 Jefferson  
10 Street property to be used for agreed painting, design,  
11 mural, or similar visual enhancements.

12 The total dimension of the area in question is  
13 estimated to be approximately 10 feet wide by 33 feet high.  
14 Those were the two main conditions.

15 CHAIRPERSON HILL: All right, thank you Board  
16 Member John. Since this came in when we did get it, I don't  
17 think the Applicant has had an opportunity to respond to the  
18 ANC's application. I wouldn't be comfortable.

19 MEMBER JOHN: It's in agreement.

20 CHAIRPERSON HILL: No, I appreciate that. It's so  
21 funny how this works. Just for the audience here, again, I  
22 think it's clear enough in the record here now what's going  
23 on but I have tried to get testimony from people before in  
24 the audience and I've been told that opens more problems than  
25 it helps. Let's just get a chance to look at this real

1 quick.

2           Okay, these were both signed. This is an agreement  
3 that was signed by the development company. What does the  
4 Board think? I'd be fine including these as conditions then.  
5 Do any other Board Members have any thoughts?

6           MEMBER WHITE: Since the Applicant signed -- it was  
7 signed by Mr. Allad from ROK Development LLC on July 18th.

8           CHAIRPERSON HILL: Then I can see how some of these  
9 have adverse impact, although I don't know -- well, so does  
10 anyone have any thoughts on the conditions? We'll include  
11 them as conditions?

12           MEMBER HART: Yes, they're fine, it just looks a  
13 little -- they're fine. I think the first two were fine, the  
14 third one, I don't know if we would necessarily need to do  
15 that one. It doesn't seem like it's pertinent.

16           CHAIRPERSON HILL: So I'm going to change my motion  
17 here to include conditions that are in --

18           MEMBER JOHN: Six to three. Six to two? Okay, six  
19 to two.

20           CHAIRPERSON HILL: All right, so I'll go ahead and  
21 make a motion to approve Application Number 19781 as  
22 captioned and read by the Secretary including Conditions 1,  
23 2, and 3 that are in Exhibit 62 and ask for a second?

24           MEMBER HART: Second.

25           CHAIRPERSON HILL: Motion has been made and



1 seconded. All those in favor, aye?

2 (Chorus of ayes.)

3 CHAIRPERSON HILL: All those opposed? The motion  
4 passes, Mr. Moy.

5 MR. MOY: Before I give a final count, Mr.  
6 Chairman, we do have an absentee ballot from Mr. Michael  
7 Turnbull and his vote is to deny the application.

8 And I'd like to read his brief remark, which states  
9 that he cannot approve the 18-foot rare addition, period.  
10 The circular stair added onto the addition further  
11 exacerbates the problem, pushing it further into rear yard  
12 beyond the 18 feet requested. So that would give a final  
13 vote of four to one to zero.

14 This is on the motion of Chairman Hill to approve  
15 the application with the three conditions noted under Exhibit  
16 62, seconding the motion is Vice Chair Hart, also in support  
17 is Ms. White, Ms. John, Mr. Turnbull opposed. The motion  
18 carries.

19 CHAIRPERSON HILL: Thank you, summary order, Mr.  
20 Moy?

21 MR. MOY: Yes, sir.

22 CHAIRPERSON HILL: OAG, can I ask a question? I  
23 guess I could ask because I'm trying to find clarification  
24 in terms of when we can ask questions from people of the  
25 audience, such as if it's something from the ANC or if the

1 ANC submits something and they're here?

2 MS. LOVICK: If the record is closed at the end of  
3 hearing and the case is set for decision, then you cannot  
4 accept additional testimony without reopening the record and  
5 re-advertising for a public hearing.

6 CHAIRPERSON HILL: But the motion that was done  
7 earlier on in our other decision case, since it was a motion,  
8 we could hear arguments on the motion?

9 MS. LOVICK: Correct, because that didn't affect  
10 the record. You close the record at the end of hearing but  
11 then a legal issue came up so you heard argument on a legal  
12 issue without reopening the record on the merits of the case.

13 CHAIRPERSON HILL: Okay, thank you. So, Mr. Moy,  
14 we're going to take a quick three-minute break, which means  
15 probably five minutes but we're going to go fast and then  
16 we're going to start our hearing cases.

17 (Whereupon, the above-entitled matter went off the  
18 record at 12:26 p.m.)  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DC BZA

Date: 07-25-18

Place: Washington, DC

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

  
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Court Reporter

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