

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

JANUARY 30, 2019

+ + + + +

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 L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
LORNA JOHN, Board Member
CARLTON HART, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

PETER MAY, Zoning Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN
JOEL LAWSON

The transcript constitutes the minutes from the
Public Meeting held on January 30th, 2019.

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

9:42 a.m.

CHAIRPERSON HILL: The hearing will please come to order. Good morning, ladies and gentlemen. We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street NW.

This is the January 30, 2019 public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Fred Hill, chairperson. Joining me today is Carlton Hart, vice chair, Lorna John, board member, and representing the Zoning Commission is Peter May.

Copies of today's hearing agenda are available to you located on the wall bin near the door. Please be advised this proceeding is being recorded by a court reporter and is also webcast live.

Accordingly we must ask you to refrain from any disruptive noises or actions in the hearing room. When presenting information to the board please turn on and speak into the microphone first stating your name and home address.

When you're finished speaking please turn off the microphone so that your microphone is no longer picking up sound or background noise.

1 All persons planning to testify either in favor
2 or in opposition must have raised their hand and been
3 sworn in by the secretary.

4 Also, each witness must fill out two witness
5 cards. These cards are located on the table near the door
6 and on the witness table.

7 Up coming forward to speak to the board please
8 give both cards to the reporter sitting at the table to my
9 right.

10 If you wish to file written testimony today or
11 additional supporting documents today please submit 1
12 original and 12 copies to the secretary for distribution.

13 If you do not have the requisite number of
14 copies you can reproduce copies on an office printer in
15 the Office of Zoning located across the hall. Please
16 remember to collate your set of copies.

17 The order of procedures for special exceptions
18 and variances pursuant to -- the order of procedures for
19 special exceptions and variances are also listed as you
20 come walking into the hall -- the room there on the right.

21 The record shall be closed at the conclusion of
22 each case except for any materials specifically requested
23 by the board.

24 The board and the staff will specify at the end
25 of the hearing exactly what is expected and the date when

1 the persons must submit the evidence to the Office of
2 Zoning.

3 After the record is closed no other information
4 shall be accepted by the board.

5 The board's agenda includes cases set for
6 decision. After the board adjourns the Office of Zoning
7 in consultation with myself will determine whether a full
8 or summary order may be issued.

9 A full order is required when the decision it
10 contains is adverse to a party including an affected ANC.
11 A full order may also be needed if the board's decision
12 differs from the Office of Planning's recommendation.

13 Although the board favors the use of summary
14 orders whenever possible an applicant may not request the
15 board to issue such an order.

16 The District of Columbia Administrative
17 Procedures Act requires that the public hearing on each
18 case be held in the open before the public pursuant to
19 section 405(b) and 406 of that act.

20 The board may consistent with its rules and
21 procedures and the act enter into a closed meeting on a
22 case for purposes of seeking legal counsel on a case
23 pursuant to D.C. Official Code section 2-575(b)(4) and/or
24 deliberating on a case pursuant to D.C. Official Code
25 section 2-575(b)(13) but only after providing the

1 necessary public notice and in the case of an emergency
2 closed meeting after taking a roll call vote.

3 The decision of the board in cases must be
4 based exclusively on the public record. To avoid any
5 appearance to the contrary the board requests that persons
6 present not engage the members of the board in
7 conversation.

8 Please turn off all beepers and cell phones at
9 this time so as not to disrupt this proceeding.

10 Preliminary matters are those which relate to
11 whether a case will or should be heard today such as
12 requests for postponement, continuance or withdrawal, or
13 whether proper and adequate notice of the hearing has been
14 given.

15 If you're not prepared to go forward with the
16 case today or if you believe that the board should not
17 proceed now is the time to raise such a matter.

18 Mr. Secretary, do we have any preliminary
19 matters?

20 MR. MOY: Good morning, Mr. Chairman, members
21 of the board. I have a brief announcement. The first is
22 clarification on what's before the board in today's
23 docket.

24 Appeal number 19877 and 19895 of ANC 3C and
25 Neighbors for Responsive Government has been withdrawn by

1 the appellants.

2 Secondly, application number 19899 of AMM2
3 Investments has been postponed, rescheduled to March 27,
4 2019.

5 And case application number 19897 of Coloma
6 River Capitol has been postponed and rescheduled to
7 February 27, 2019.

8 Other than that there are some preliminary
9 matters but staff would suggest that the board address
10 those when I call each case separately.

11 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
12 Moy. So good morning, everybody. Sorry we're getting
13 started a little late. The cold kind of put a little kink
14 in some travel plans.

15 We're going to follow -- just so everybody
16 knows we're going to follow the agenda the way that you
17 see it from -- we're not changing anything in terms of the
18 order from the meeting cases as well as the hearing cases.

19 If anyone is here planning to testify if you
20 wouldn't mind please standing and taking the oath
21 administered by the secretary to my left.

22 MR. MOY: Or even if you think you might
23 testify.

24 CHAIRPERSON HILL: Yes, if you think you might
25 have anything to say it doesn't matter, just go ahead and

1 take the oath here administered by the secretary to my
2 left.

3 (Whereupon, the witnesses were sworn.)

4 CHAIRPERSON HILL: Mr. Moy, you can call our
5 first case whenever you like.

6 MR. MOY: Thank you, Mr. Chairman. So in the
7 public decision meeting session the first before the board
8 is an expedited review request for case application number
9 19893 of Elderidge Nichols and Lauren Santabar.

10 Captioned and advertised for special exceptions
11 under subtitle E section 5201 from the lot occupancy
12 requirements of subtitle E section 304.1 rear yard setback
13 requirement subtitle E section 306.1.

14 This would construct a rear deck addition to an
15 existing attached principal dwelling unit. RF-1 zone.
16 This is at 1210 Maryland Avenue NE square 1005 lot 80.

17 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.
18 Is the board ready to deliberate? Okay. I can start.

19 Really after reviewing the record and the
20 application I agree with the Office of Planning and their
21 analysis. I agree that they meet the standards for us to
22 grant the special exception.

23 I also agree with the report that was provided
24 by the ANC. I'm glad to see that they're in support, but
25 I do agree with their recommendation as well as DDOT.

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1 I don't really have anything particular to add
2 other than that. Does the board have anything they'd like
3 to add?

4 All right, in that case I'm going to go ahead
5 and make a motion to approve application number 19893 as
6 captioned and read by the secretary and ask for a second.

7 VICE CHAIRPERSON HART: Second.

8 CHAIRPERSON HILL: Motion made and seconded.
9 All those in favor say aye.

10 (Chorus of ayes)

11 CHAIRPERSON HILL: All those opposed? Motion
12 passes, Mr. Moy.

13 MR. MOY: Staff would record the vote as 4-0-1.
14 This is on the motion of Chairman Hill to approve the
15 application for the relief requested. Seconding the
16 motion Vice Chair Hart. Also in support Ms. John and Mr.
17 Peter May. And we have a board member not present with us
18 today. The motion carries.

19 CHAIRPERSON HILL: Thank you, Mr. Moy. You can
20 call the next case whenever you can.

21 MR. MOY: All right, that would be case
22 application number -- or rather 12099A of the VIP Room
23 captioned for a request for a modification of consequence
24 to condition number 1 in BZA order number 12799 in order
25 to permit the sale and storage of alcohol at the

1 commercial establishment in the MU-3 zone.

2 This is at 6201 3rd Street NW square 3342 lot
3 813.

4 CHAIRPERSON HILL: Okay. Is the board ready to
5 deliberate? Okay. I'm going to go ahead and start if
6 you'd like.

7 At the last hearing the board determined that
8 the request met the definition for modification of
9 consequence and we had asked for the ANC to weigh in, or
10 at least give an opportunity for the ANC to weigh in.

11 We have received their feedback and they are in
12 support of this modification.

13 We also did have a lot of testimony in terms of
14 in the record for both support and opposition to this
15 application. I thought there was -- there was a lot of
16 personal letters in support and some in opposition. I'm
17 glad we got so much information with the community.

18 At this point, however, I am in agreement with
19 the Office of Planning's report and would be in support of
20 their analysis.

21 One thing that they did, the Office of Planning
22 mentioned was there was a condition that -- concerning
23 ABRA. And in my opinion in terms of the condition it
24 seems like they'll have to go through ABRA either way.

25 And so I wouldn't want to put a condition on

1 that in terms of this application because I think they
2 have to go through ABRA.

3 So basically based on the information in the
4 record I'm in support of the application, the
5 modification. Does anyone have anything they'd like to
6 add?

7 COMMISSIONER MAY: Yes. Mr. Chairman, I hate
8 to be a problem in this case.

9 First of all, we don't actually have evidence
10 of the ANC voting in favor of this, at least that's not
11 what I saw in the record and I just checked with Mr. Moy
12 and couldn't tell me that.

13 We did receive some additional information that
14 was helpful. A lot of it pointed back to the previous
15 information.

16 I went back and looked through and reread
17 everything in this record. And the more I read it the
18 more troubled I am by it.

19 The original approval included conditions that
20 it appears may not have been met over time. The
21 circumstances.

22 I mean, one of the conditions was that it's --
23 it was not transferrable and yet it was transferred from
24 the original holder of the approval.

25 It was not conditioned on having 19 parking

1 spaces but at the time it was approved there were
2 supposedly 19 parking spaces. Now there are something
3 like five.

4 There are a whole set of issues that go back to
5 that original case that I think lend credence to the
6 issues that have been raised by the community.

7 Not to say that I am opposed to this. I have
8 not concluded that I'm opposed to granting this change of
9 conditions, but I have become more convinced that this is
10 a modification of significance and that the board should
11 consider public testimony before coming to a conclusion
12 about it.

13 There was a lot of information that was
14 received and I think some very important positive
15 testimonials about the operator of this facility. And I
16 think that's very good.

17 We also had some to say the least strange
18 submissions with odd comments in them about -- not just
19 about -- well, about how this whole thing came to pass and
20 people casting aspersions on the opposition. And I think
21 in inappropriate ways.

22 So I do feel like I need to hear directly from
23 the community on this. And again lacking an actual ANC
24 report to which we could give great weight I am not
25 inclined to move forward to approve this.

1 So I don't know what the rules are and whether
2 we can move something from modification of consequence to
3 a modification of significance, whether it takes a single
4 member objecting as it does with a minor mod, or whether
5 it's something that we all have to vote on.

6 But that's where I stand at this moment. I
7 mean, I really was hoping that we would get an endorsement
8 from the ANC that was clear and that we could understand
9 all this. But it just raised more questions for me. It
10 was very troubling.

11 CHAIRPERSON HILL: Okay. Well, I apologize. I
12 misspoke. I got information that the ANC had voted in
13 favor and so -- but I agree that it's not here in the
14 record.

15 However, I'm still fine where I am. But what
16 do the other board members -- and if OAG can look and see
17 if one person can move it off of the modification of
18 consequence to modification of significance which then has
19 a hearing, or if it has to be a vote. And I guess you're
20 looking at that, is that correct? All right.

21 Other than that does anyone else have thoughts?

22 VICE CHAIRPERSON HART: Yes. I mean, I would
23 have liked to have understood what the ANC has, where they
24 kind of are in this.

25 I understand that they had a letter, or at

1 least had a vote on it, but we don't have that vote in our
2 exhibits and it makes it harder to base -- and we have
3 people that are in support and people that are in
4 opposition to this.

5 And so I'm at a -- somewhat of a crossroads in
6 terms of if we had gotten the ANC letter and they were in
7 support then again like Commissioner May said we could
8 have been seeing that and giving that great weight.

9 But it's hard to -- it's hard right now to just
10 say sure if I don't have that letter in hand. And so I'm
11 just trying to see where we end up with this. So those
12 are thoughts. I know it's not necessarily helpful one way
13 or the other but it's where I am.

14 MEMBER JOHN: So, Mr. Chairman, I reviewed the
15 record and I was unclear as to why this particular
16 provision was put in the order.

17 And I wasn't sure how it related to the zoning
18 issue. In my view this is a matter for ABRA. I mean,
19 ABRA has the resources to determine whether a particular
20 establishment should be able to serve alcohol or operate
21 as some of the opposition says as a tavern.

22 The issues that right now liquor is consumed on
23 the premises. So whether it's purchased outside on the
24 street or through advance tickets or some other method
25 there is alcohol being served on the premises.

1 So I was inclined to approve the request and
2 send it back to ABRA for them to make a determination if
3 this is an appropriate facility for serving alcohol. So
4 that's where I was.

5 I don't think that the BZA should be in the
6 middle of that dispute. And that was my common sense view
7 of the matter.

8 CHAIRPERSON HILL: Okay. I just want to see if
9 somebody's going to get the phone. It's somebody calling
10 in.

11 MR. RITTING: I reviewed the regulations and I
12 have an answer to Mr. May's question.

13 CHAIRPERSON HILL: Sure.

14 MR. RITTING: Subtitle Y 703 --

15 CHAIRPERSON HILL: Just pick it up and hang it
16 up.

17 MR. RITTING: -- states that any member of the
18 board may remove any item from the consent calendar for
19 any reason. So if only one member of the board wants it
20 removed from the consent calendar and have it heard as a
21 modification of significance that's sufficient. That's
22 the answer. You don't need to vote on it.

23 CHAIRPERSON HILL: Okay. I was torn at the
24 beginning when we were talking about this the first time I
25 suppose. And I know that some of us were, right, which is

1 that whether or not this was a modification of consequence
2 or whether it was a modification of significance.

3 And so once we got past that point then -- and
4 I agree, I'm not disagreeing with you, Commissioner May,
5 in terms of your opinion that we don't have something from
6 the ANC and we did want something from the ANC.

7 My disappointment I suppose is that if we were
8 going to do this it would have been better had we done it
9 the first time. Then we're back here having a hearing.

10 So we are now going to have a hearing. And if
11 we have a hearing now how does that work?

12 MR. RITTING: There's a rule 703.13(a) that
13 says that once you've determined that a request is
14 actually a modification of significance in which case an
15 application for such a modification must be filed pursuant
16 to subtitle Y section 704. So that puts the burden on the
17 applicant to file the modification of significance request
18 in accordance with that rule.

19 CHAIRPERSON HILL: Okay. So, do we have to
20 make a motion or anything or that's just?

21 MR. RITTING: Well, it does say that at the
22 request of a single board member you can remove the item
23 from the consent calendar.

24 So if Mr. May, I don't know if he formally
25 stated it, but if he states that he wants it removed from

1 the consent calendar that's the end.

2 COMMISSIONER MAY: Perhaps I should restate.

3 And I will respond to some of the other concerns.

4 I agree absolutely if we were going to make
5 this a modification of significance we should have decided
6 that last time around. And I'm sorry I did not make a
7 bigger issue of it.

8 It was the very first thing I wrote in my notes
9 is that this probably should be considered a modification
10 of significance. I went along and that was a mistake. I
11 should have stuck with my original impression of it.

12 I think that this is very clearly and
13 absolutely a matter for the Board of Zoning Adjustment and
14 not one that we can simply leave to ABRA.

15 Decisions about serving alcohol go beyond the
16 question of whether alcohol is served and go into the
17 questions of how many people will be there, what the hours
18 of operation will be and so on.

19 And those are things that are commonly dealt
20 with in zoning cases and BZA cases. So I think this is
21 very much in the domain of the BZA to weigh in on this
22 condition.

23 Again, I would point to the fact that I am very
24 concerned about the applicant's compliance with the
25 original conditions because I saw at least three where

1 there is a question about whether the conditions continue
2 to be met. Including even the sale of alcohol because in
3 their statement they said that there is a way by which
4 they sell alcohol which does not seem to be permitted
5 under the terms of the original order.

6 What was originally -- the original case was
7 that whenever there was liquor there it would be brought
8 in by the people having the party or the event. That is
9 not what is happening now.

10 They said it in their own statement, the
11 applicant's statement that they sell alcohol using this
12 particular type of license which to me seems to be a
13 violation of the original order.

14 I don't know why that was not raised earlier.
15 I don't know why parking was not raised earlier. And I
16 think that if in fact the applicant files for a
17 modification of significance that we will need a more
18 thorough examination of those issues by the Office of
19 Planning.

20 So, for those reasons -- I mean, again, I'm
21 very sorry. I hate to -- clearly this is -- for many,
22 many people this is a beloved institution and many people
23 want to see them continue to operate.

24 Even some of the opposition want to see them
25 continue to operate more or less the way they do right

1 now. But lifting this condition opens the door for a
2 different type of operation that could have potentially
3 much greater impact and therefore I think that it must be
4 considered as a modification of significance and not just
5 a modification of consequence.

6 CHAIRPERSON HILL: Okay. So, there we go. So
7 there's no motion -- we haven't done this before so I
8 don't know. That's it, right?

9 MR. MOY: If you're thinking about a timeline,
10 Mr. Chairman, what I would suggest is I need to double
11 check whether I need to have the applicant -- to meet with
12 the applicant for a re-filing for public notice which
13 could be another 40 days.

14 But in any regards I'll insert an OZ memorandum
15 into the record, into this case record as to a future date
16 for a hearing for the modification of significance.

17 CHAIRPERSON HILL: Okay. Let's see. All
18 right. And then we'll go ahead and see where we go with
19 that.

20 And Mr. May, in terms of this, even -- I do
21 remember when we were going through this and the
22 hesitation that the board had.

23 And I also should have just not -- should have
24 dealt with that hesitation at that time. And that was
25 also a mistake on my part.

1 Okay, so we're going to go ahead and do that.
2 So that's that. Unless the other board members have
3 anything else they'd like to add. Okay.

4 VICE CHAIRPERSON HART: So, Mr. Chairman, since
5 you're not on the next case. Mr. Moy, if you could call
6 the next case, please.

7 MR. MOY: Thank you. The next case for
8 decision-making is application number 19751 of MED
9 Developers LLC as amended for a special exception under
10 the use provisions subtitle U section 203.1(f) to
11 construct a new continuing care retirement community in
12 the R-1-B zone.

13 This is at 2619-2623 Wisconsin Avenue NW square
14 1935, lots 44 and 812.

15 VICE CHAIRPERSON HART: Thank you. Is the
16 board -- and I guess it's just Ms. John and myself, Board
17 Member John and myself.

18 So, this was an application as the secretary
19 just read for a special exception to permit a memory care,
20 continuing care retirement community at this location.

21 There were two parties that were in opposition,
22 the Massachusetts Avenue Heights Citizens Association or
23 MAHCA as well as the ANC 3C who are of course
24 automatically a party in this case.

25 There were a considerable number of filings in

1 the record and I would like to thank both the applicant
2 and the parties in opposition for their time and efforts
3 in this case as well as the numerous neighbors who took
4 the time to testify before us.

5 I realize that it was a contentious effort and
6 I think it was helpful to hear all the sides in this case.

7 The relief that was requested, this was a self-
8 certified application. It was for the special exception
9 under subtitle U 203.1(f).

10 And I'll note that the applicant did withdraw
11 the originally requested parking relief under subtitle C
12 701.5 and they submitted a new -- they submitted new
13 plans, exhibits number 483A and B.

14 These plans included underground parking and
15 they did this to meet the parking -- have sufficient
16 parking for the site.

17 So, under subtitle U 203.1(f) there are six
18 criteria that the applicant had to meet to operate a
19 continuing care retirement community.

20 And these are that the use shall include one or
21 more of the following services, dwelling units for
22 independent living, assisted living facilities, or a
23 licensed skilled nursing care facility.

24 Number two is that the use does not include
25 assisted living or skilled nursing facilities, that the

1 number of residents shall not exceed eight.

2 Number three is the use may include ancillary
3 uses for the future employment, service, or care of the
4 residents.

5 And four which is the use and related
6 facilities shall provide sufficient offstreet parking
7 spaces for employees, residents and visitors.

8 And five, the use including any outdoor spaces
9 provided shall be located and designed so that it is not
10 likely to become objectionable to neighbors' properties --
11 neighboring properties because of noise, traffic, or other
12 objectionable conditions.

13 And then finally that the BZA may require
14 special treatment of the building as it deems necessary.

15 While all of these criteria apply I do believe
16 that the two that are most relevant here are four and five
17 which pertain to the adequate parking and -- which is
18 number four, and the use being designed not likely to
19 become objectionable to the neighbors.

20 So after reviewing the record I believe that
21 the applicant has provided sufficient information to show
22 how they meet the criteria under subtitle U 203.1
23 including four and five.

24 While I understand that this is a contested
25 project I was persuaded by the applicant's argument that

1 they met the criteria after hearing their testimony and
2 reviewing the record. I did find their testimony
3 reasonable.

4 They stated that they will provide 19
5 underground spaces which are offstreet and their experts
6 testified that these would be sufficient for their needs.
7 DDOT was in agreement that their analysis was appropriate.

8 I also agree with the Office of Planning and
9 DDOT reports which both state that their parking would be
10 sufficient for the project.

11 DDOT had no objection but they conditioned that
12 on the applicant following its TDM plan which is exhibit
13 399. It's part of exhibit 399.

14 I'd also like to incorporate -- excuse me, and
15 DDOT also wanted to incorporate the conditions included in
16 page 7 of this document. And I'll go over these
17 conditions in a minute.

18 Now, regarding the subtitle U 203.5 -- excuse
19 me, 203.1(f) -- regarding subtitle U 203.1(f)(5), the
20 criteria that's in that piece, I find that the applicant
21 has provided sufficient information for me to be able to
22 support the application as well.

23 I'll note that the neighborhood described
24 concerns about the building massing and appearance.
25 However, the applicant is not requesting relief from

1 setbacks, height, or number of stories, or any other
2 physical aspect of the project.

3 Rather, it is seeking to allow this use at the
4 location.

5 So the applicant states that only the employees
6 and some occasional visitors will be arriving at the
7 facility as well as some weekly deliveries. The residents
8 themselves are not permitted to use vehicles.

9 I'll also point out that the applicant has
10 provided a traffic analysis and TDM plan, and DDOT stated
11 in its supplemental report that it had reviewed the TDM
12 plan and it had no objection to the project provided that
13 these following conditions are included.

14 Condition number one is that the applicant will
15 offer full-time and shift employees a transit subsidy --
16 excuse me, a transit, yes, subsidy of no less than \$10 per
17 week which equates to 50 percent of the weekly cost of a
18 standard Metrobus or Capital Bikeshare commute.

19 That the applicant will identify TDM leaders
20 for planning, construction and operations, and they will
21 work with employees in the development and distributing
22 marketing various transportation alternatives and options.

23 That the applicant will work with DDOT and Go
24 DC Go which is a DDOT TDM program to implement TDM
25 measures at the proposed development.

1 That the applicant will share the full contact
2 information of the TDM coordinator for the proposed
3 development with DDOT and Go DC Go.

4 That the applicant will provide facility
5 employees who wish to carpool with detailed carpooling
6 information and will be referred to other carpooling match
7 services sponsored by the Metropolitan Washington Council
8 of Governments.

9 That the applicant will install a
10 transportation information center display within the lobby
11 of the building containing information related to local
12 transportation alternatives.

13 And that the applicant will identify with
14 nearby parking garage facilities that they can provide
15 additional parking for guests and staff.

16 There were a few other conditions that were
17 offered by the applicant regarding the loading management
18 of the rear of the building. I also think that these are
19 helpful and they can provide some assurance to the
20 neighbors and that they will have a point of contact to
21 address any loading issues that may arise.

22 And these were that the applicant would
23 designate a loading manager for the building and the
24 manager would schedule deliveries and would be on duty
25 during delivery hours.

1 That the dock manager would coordinate with
2 trash pickup to help move loading expeditiously between
3 the storage area inside the building and the curb and
4 loading area to minimize time that trash trucks need to be
5 in the loading area.

6 Trucks using the loading area would not be
7 allowed to idle and must follow all District guidelines.

8 And then the loading manager would be
9 responsible for disseminating DDOT's freight management
10 and commercial vehicle operations documents to drivers as
11 they need to encourage compliance with the District laws
12 and DDOT's truck routes.

13 And the dock manager would also provide these
14 documents in the prominent location within the service
15 area.

16 I again would like to -- so those were the
17 conditions. I thought they were helpful to help deal with
18 the TDM issue as well as the loading, any loading concerns
19 there might be.

20 The loading is of course along the alley which
21 is on the I guess east side of the building.

22 And I felt that they would help as the project
23 moves forward in dealing with any particular issues that
24 might come up for transportation, in this case people
25 getting to the site and then people accessing the site for

1 loading purposes, for trash pickup or other deliveries and
2 things.

3 So, I didn't know if you had any other items to
4 add to that? I know that was a little long-winded.

5 MEMBER JOHN: No, Mr. Vice Chair, thank you
6 very much. You've covered most of the ground that I had
7 planned to do so I don't think it's necessary for me to
8 repeat what you said.

9 I think this is a very full record and while
10 there was considerable opposition to this project our role
11 is to look at the regulations and to determine if the
12 facts as presented to us support the request for special
13 exception.

14 And in this case I believe there is enough
15 information in the record as you've reviewed the facts so
16 far to find that the applicant has made a good case for
17 the special exception and I can support it.

18 I do note that there were issues raised that
19 were not related to zoning such as stormwater issues and
20 the question of whether or not this would operate as a
21 viable facility.

22 And that issue really is not germane to
23 granting the special exception.

24 I appreciate all of the testimony from the
25 neighbors and obviously this is a matter of great concern.

1 However, I think based on the regulations and what the
2 board is required to do even if some of us can sympathize
3 with the loss of a very -- well, the increased use of the
4 alley as some of the neighbors complained about, or the
5 massing of the building and some of those issues, the
6 point is that this particular facility meets all of the
7 developmental standards and the only -- and with the
8 addition of the underground parking garage and the fact
9 that a lot of the traffic that would ordinarily be in the
10 alley would be moved underground.

11 There's also the loading area. There's a
12 buffer to the east of the property which should mitigate
13 some of the noise.

14 So, based on all of those issues I again
15 empathize with the neighbors but on balance the facts
16 support granting this application.

17 VICE CHAIRPERSON HART: So, thank you, Board
18 Member John. So with that I would make a -- I would say
19 that I'd like to approve application 19 --

20 MEMBER JOHN: Mr. Vice Chair, I had one
21 question. I wanted to be clear that we were not proposing
22 that we include the condition number one in the
23 applicant's request which is for flexibility to --

24 VICE CHAIRPERSON HART: Yes. I'm glad you
25 brought it -- no, we are not including that as a

1 condition. So yes, that was the -- and the second one is
2 the change in use including --

3 MEMBER JOHN: Yes, I believe OP had recommended
4 a condition which I need to pull it up, but essentially it
5 requires a new application if there is a new -- let me
6 read it so I don't misstate what it says.

7 It's in the OP report at --

8 VICE CHAIRPERSON HART: I think I have one
9 here.

10 MEMBER JOHN: Okay.

11 VICE CHAIRPERSON HART: Is it any change in use
12 including to a different form of continuing care
13 retirement community --

14 MEMBER JOHN: That's it.

15 VICE CHAIRPERSON HART: -- would require a new
16 application to the BZA for reevaluation against the
17 relevant regulations.

18 MEMBER JOHN: That's it.

19 VICE CHAIRPERSON HART: And that was the other
20 one that was suggested by OP. I don't think that the
21 applicant had any particular issue with that. So I'm okay
22 with it.

23 So with the -- so now I'd like to make a motion
24 to approve application 19751 of MED Developers as read and
25 captioned by the secretary with the conditions that I read

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1 and not including that condition number one which is the
2 flexibility of use.

3 MEMBER JOHN: That's correct.

4 VICE CHAIRPERSON HART: Okay. So, I make a
5 motion to approve this application. Do I hear a second?

6 MEMBER JOHN: Second.

7 VICE CHAIRPERSON HART: All those in favor say
8 aye.

9 MR. RITTING: Can I make a quick correction? I
10 noticed you stated that you were including the -- I think
11 you meant to say that you were not including the condition
12 one regarding the flexibility of internal floor layout.

13 VICE CHAIRPERSON HART: That's correct.

14 MR. RITTING: I think you inadvertently said
15 that you were not including the OP condition related to
16 the change in use which I believe you did include.

17 VICE CHAIRPERSON HART: Okay. Well, if I did
18 say that I apologize for that. I'll restate it. So let's
19 make that clear, sorry.

20 So, I'll make a motion to approve application
21 number 19751 of MED Developers as read and captioned by
22 the secretary and include the conditions including the any
23 change in use condition that was suggested by OP as well
24 as all of the other TDM and loading management conditions.
25 And do I have a second on that? Is that clear?

1 MEMBER JOHN: Yes. Second.

2 VICE CHAIRPERSON HART: Having heard a second
3 all those in favor say aye?

4 (Chorus of ayes)

5 VICE CHAIRPERSON HART: Any opposed?

6 MR. MOY: Mr. Vice Chair, before I give a final
7 vote count we do have two absentee ballot votes that have
8 been submitted to me.

9 The first is from Ms. White and her vote is to
10 approve the application with such conditions as the board
11 may impose.

12 The other ballot vote is from Mr. Robert Miller
13 and his vote is also to approve with such conditions as
14 the board may impose.

15 If I may, he has a very brief comment that I'd
16 like to read into the record.

17 VICE CHAIRPERSON HART: Sure.

18 MR. MOY: Where he states I generally concur
19 with the rationale provided in the applicant's draft
20 proposed findings of fact and conclusions of law.

21 So that would give a final vote of 4-0-1. This
22 is on your motion, Mr. Vice Chair Hart, to approve the
23 application with the conditions as you've stated.

24 And seconding the motion, Ms. John. And of
25 course also in support of the motion Ms. White and Mr.

1 Robert Miller. The motion carries.

2 VICE CHAIRPERSON HART: Thank you. So thank
3 you and I hand it back over to you, Mr. Chairman.

4 CHAIRPERSON HILL: Great, thanks. Okay. Mr.
5 Moy, get kind of all settled in there and call our next
6 when you get a chance.

7 MR. MOY: Thank you, Mr. Chairman. Here we go.
8 Okay. The next application for the board's decision is
9 case application number 19820. This is of Cambridge
10 Holdings LLC.

11 Captioned and advertised for a special
12 exception under the residential conversion requirements of
13 Subtitle U section 320.2. This would convert an existing
14 principal dwelling unit to a three-unit apartment house in
15 the RF-1 zone at 1128 Buchanan Street NW square 2918 lot
16 113.

17 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
18 Moy. Is the board ready to deliberate? Okay, great. All
19 right.

20 So, let's see. As I recall the reason why we
21 didn't have -- we were waiting on some information from
22 the testimony here, or to finish the testimony.

23 We took a lot of testimony in this application.
24 It's been revised several times. The Office of Planning
25 has submitted supplemental reports.

1 In their reports they continue to support this
2 application.

3 I'm disappointed the ANC has had objection to
4 this project. We took a lot of testimony from them.
5 Their objection to me seems to be based primarily on the
6 effects of the next door neighbors rather than the overall
7 impact of the neighborhood.

8 But I was not convinced that the neighbors'
9 light and air would be unduly affected. It seems to me
10 that the ANC was more concerned about the conversion in
11 terms of the three units and so I was not in agreement
12 with their opinion in terms of the conversion itself.

13 So based on the testimony and the facts of the
14 application I would again agree with the Office of
15 Planning and their analysis.

16 The applicant had to take care of an issue with
17 a chimney. And they have now redesigned the building so
18 that that chimney will not be affected.

19 In terms of any effect that could have been on
20 the chimney at 1130 Buchanan Street those are things that
21 will be dealt with in terms of when the building permit is
22 taken care of if there are any issues at that point. That
23 will be brought to bear at that time.

24 So, based upon the testimony and again the
25 Office of Planning's analysis I would be in support of

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1 this application. Do you have anything else you'd like to
2 add?

3 MEMBER JOHN: Just briefly, Mr. Chairman,
4 without repeating everything you've said which I agree
5 with.

6 I'd just like to note that this particular
7 applicant worked to try to bring the project within a
8 matter of right developmental standard. It's just a 10
9 foot addition.

10 And based on the sun studies there didn't seem
11 to be any significant impact on the neighbor next door and
12 on the adjacent neighbor.

13 And the opposition seemed to be as I understood
14 it to the conversion itself.

15 And because the conversion is allowed in that
16 zone our job then is to look at the adverse impacts and
17 the record did not indicate that there were any adverse
18 impacts from a 10 foot addition.

19 And so I would be able to support the
20 application based on the record, OP's analysis and DDOT
21 had no objection as well. Thank you.

22 CHAIRPERSON HILL: Thanks. So I'm going to go
23 ahead and make a motion to approve application number
24 19820 as captioned and read by the secretary and ask for a
25 second.

1 MEMBER JOHN: Second.

2 CHAIRPERSON HILL: Motion made and seconded.

3 All those in favor say aye.

4 (Chorus of ayes)

5 CHAIRPERSON HILL: Mr. Moy, you have some
6 absentees.

7 MR. MOY: Yes, I do, Mr. Chairman. I have two.
8 The first one is from Ms. Lesyllee White who participated
9 and her absentee vote is to approve the application with
10 such conditions as the board may impose.

11 I'd like to read her brief comment if I may.
12 She states, quote, "If the relief is granted please note
13 that the applicant would need to demonstrate at the time
14 of building permit application that the proposed addition
15 would not block or impede the functioning of the existing
16 neighbor's chimney," end quote. Her vote as I said before
17 is to approve.

18 The second vote is from Mr. Peter Shapiro who
19 participated. And again his vote is to approve with such
20 conditions as the board may impose. That's it.

21 So that would give a final vote of 5-0-0. This
22 is on the motion of Chairman Hill to approve the
23 application for the relief requested. Seconding the
24 motion Ms. John and of course in support Vice Chair Hart,
25 Ms. White and Mr. Peter Shapiro. Motion carries.

1 VICE CHAIRPERSON HART: Just one thing, Mr.
2 Moy. I did not participate in this.

3 MR. MOY: Oh, I'm sorry.

4 VICE CHAIRPERSON HART: That's okay.

5 MR. MOY: You did not.

6 VICE CHAIRPERSON HART: No.

7 MR. MOY: Okay, well, we'll strike that. Then
8 the vote count then would be 4-0-1. Motion still carries.

9 CHAIRPERSON HILL: Okay. All right, Mr. Moy.
10 Call our next when you get a chance.

11 MR. MOY: All right, sorry about that pause.
12 All right, before the board for decision again application
13 number 19828. This is of 3423 Holmead Place LLC as
14 amended for special exceptions under the non-residential
15 conversion requirements Subtitle U section 320.3, and
16 Subtitle A section 5201 from the minimum court requirement
17 Subtitle E section 203.1 and non-conforming structure
18 requirements of Subtitle C section 202.2, and pursuant to
19 Subtitle X chapter 10 for variances from the front setback
20 requirement Subtitle B section 315.1(c).

21 This would limit -- and the limit on number of
22 stories under Subtitle E section 303.1 to convert an
23 existing church to a seven-unit apartment house RF-1 zone
24 at 3423 Holmead Place NW square 2834 lot 163.

25 CHAIRPERSON HILL: All right, Ms. John, are you

1 ready?

2 MEMBER JOHN: Yes.

3 CHAIRPERSON HILL: Okay. So, just so everybody
4 knows you were on furlough and you were on furlough. So
5 this is all just -- it's like and somebody's sick today so
6 there's only a couple of people. Okay, all right.

7 So I'm glad you guys -- we get to have you for
8 the next three weeks at least. So, all right. Let's see.

9 The plans had been revised several times. We
10 went through this application. We took a lot of
11 testimony. And the board determined that the criteria for
12 the additional story was not met. And so we denied the
13 additional story.

14 So then the applicant came back and changed the
15 design in terms of the additional story. So they changed
16 the design. They got rid of the relief that they were
17 requesting for the additional story.

18 We the board were in agreement with all of the
19 other criteria when we deliberated the last time about
20 whether or not they met the standards for all of the other
21 criteria.

22 So, after taking a look at the design again I
23 think the last time we were here we didn't have enough
24 people because of the -- the furlough I think.

25 So based upon the new design and the analysis

1 from the Office of Planning in addition to the fact that
2 the ANC now is unanimously in support and they agree with
3 the standards that are being met for this new design I
4 agree that they meet the standard and would be voting to
5 approve.

6 And I'm sorry, you were going to start the
7 deliberation I just realized. So please, Ms. John, go
8 ahead if you have anything to add.

9 MEMBER JOHN: Mr. Chairman, I have nothing to
10 add. When we deliberated initially we were in agreement
11 that the applicant met the conditions for the special
12 exception and the variance for the court, both courts.

13 And so based on the revised design I can
14 support this application based on the record and the
15 analysis of the Office of Planning and the fact that there
16 was no opposition in the neighborhood to the project.

17 As a matter of fact there was strong support
18 for the fact that the applicant was revitalizing this
19 structure and that it would add value to the community.

20 So I am able to support the application.

21 CHAIRPERSON HILL: Okay. I'm going to make a
22 motion to approve application number 19828 of 3423 Holmead
23 Place LLC pursuant to 11 DCMR Subtitle X chapter 9 for
24 special exception under the non-residential conversion
25 requirements of Subtitle U 320.3 and under Subtitle E

1 502.1 from the minimum court requirements of Subtitle E
2 203.1 and the non-conforming structure requirements of
3 Subtitle C 202.2 and pursuant to Subtitle X chapter 10 for
4 variances from the front setback requirement of Subtitle B
5 315.1(c) to convert an existing church to a seven-unit
6 apartment house in the RF-1 zone at premises 3423 Holmead
7 Place NW square 2834 lot 13 with the architectural
8 drawings that were in exhibit 51 limiting them to three
9 stories. And I ask for a second.

10 MEMBER JOHN: Second.

11 CHAIRPERSON HILL: Motion made and seconded.
12 All those in favor say aye.

13 (Chorus of ayes)

14 CHAIRPERSON HILL: All those opposed? Mr. Moy,
15 you've got some absentees.

16 MR. MOY: Yes, I do, Mr. Chairman. Thank you.
17 So before I give a roll call vote the first absentee
18 ballot is from Ms. Lesyllee White who participated and her
19 absentee vote is to approve the application.

20 The second absentee ballot vote is from Mr.
21 Anthony Hood and also his vote is to approve the
22 application for the relief requested as well.

23 So that would give a final vote of 4-0-1. This
24 is on the motion of Chairman Hill to approve the
25 application for the relief requested. Seconding the

1 motion Ms. John and also in support Ms. White, Mr. Hood
2 and the motion carries 4-0-1.

3 CHAIRPERSON HILL: All right, Mr. Moy, thank
4 you.

5 MR. MOY: The next application for decision is
6 number 19887 of Marjorie Hutchinson. This is a request
7 for a use variance from the use provisions of Subtitle U
8 section 301 to permit the conversion of an existing non-
9 conforming non-residential use to a restaurant in the RF-1
10 zone.

11 This is at 1724 North Capitol Street NW square
12 3105 lot 72.

13 This application, Mr. Chairman, has a number of
14 preliminary matters. There are requests to reopen the
15 record and those pertain to exhibit 56 and 57, Ms. Bethune
16 and Ms. McDaniels respectively.

17 There was also a filing from the applicant and
18 the ANC under exhibit 55. And as well, finally, a filing
19 from the Office of Planning, supplemental report which the
20 board requested at its hearing on December 19.

21 I should also add the other second request from
22 the board at that time was that the applicant continue to
23 work with Office of Planning and neighbors in opposition.

24 There are other filings in the record but
25 that's being held depending on how the board -- whether

1 the board accepts those filings into the record or not.

2 CHAIRPERSON HILL: Okay. Let's do this first.
3 Let's go ahead and deliberate as to where we are first and
4 then we'll talk about reopening the record.

5 Let's see. So we took a lot of testimony for
6 this application. There was a lot of people that were
7 here to provide feedback from the community.

8 There was the ANC commissioner was here. There
9 were other members of the public that were in support.

10 There was a letter from Council Member McDuffie
11 in terms of support of this application.

12 The Office of Planning is opposed to the second
13 story use variance. And where I was with this is that I
14 did actually from all the testimony think that the
15 applicant did meet the test of undue hardship with regard
16 to the past reconfiguration of the space for the second
17 story for the previous owners.

18 I thought there would be an undue hardship to
19 convert it to a residential use in order for them to
20 convert that second story.

21 I'd like to emphasize that each case we look at
22 is -- we look at each individual case. And so while I
23 agree with -- while I understand the analysis of the
24 Office of Planning in this particular case I would think
25 that I agree with the testimony that the applicant had

1 provided in terms of the undue hardship to convert that
2 second story.

3 If we were to -- so that's my vote. I'm going
4 to be voting to approve this. And so then after that
5 depending upon where we are as a board we can discuss
6 whether or not there are conditions, there aren't
7 conditions and how we get through that process.

8 So, who would like to go next?

9 MEMBER JOHN: I'll go next, Mr. Chair. I also
10 would support the application and I accept the Office of
11 Planning's analysis as to the first floor.

12 However, I believe that there's sufficient
13 information in the record to believe that there was a
14 commercial use on the second floor as well.

15 And I would point to the sign on the second
16 floor on the outside of the building which announced that
17 there was a hairdressing salon in that building. It's
18 prominently displayed on the outside of the building.

19 I can't say that that definitively states --
20 would indicate that there was a salon on the second floor.
21 However, the applicant testified that she had lived in the
22 neighborhood -- the applicant's daughter, that she had
23 lived in the neighborhood for a long time and had been in
24 that facility and that it was being used as a hairdressing
25 salon on the second floor.

1 There is also a letter in the record from a
2 contractor who was hired by the operator of the beauty
3 salon to do renovations to the building and his letter
4 indicated that it had a commercial configuration.

5 There is also information in the record that
6 the applicant would find it financially burdensome to
7 convert the commercial use to a residential use. And
8 there was a figure of \$150,000 thrown out.

9 So I believe that based on the record and on
10 balance that the applicant has shown undue hardship for
11 the use on the second floor as well as the first floor.

12 And I would also note that there would still be
13 a residential unit on the third floor because -- on the
14 third floor because the owner's daughter intends to reside
15 on the third floor. So I would support the application.

16 VICE CHAIRPERSON HART: I didn't want to add
17 too much to it. I would concur with my fellow board
18 members.

19 I do want to note that I would support the
20 application. I do want to note that there are a number of
21 conditions that have been put forward by the Office of
22 Planning, by the applicant and some of the neighbors are
23 saying that they are just not in support of some of the
24 conditions. And I think that that's an issue that we're
25 going to have to kind of work through. So that's my two

1 cents.

2 COMMISSIONER MAY: Okay. So resuming my role
3 as the contrarian of the day I think that the case for
4 undue hardship is most minimally met for the first floor.
5 And there is no way that it is met for the second floor.

6 I mean, I'm not in the majority here, but I
7 just don't see it. Undue hardship has to do with --
8 basically is there anything else that they can do with
9 that property that is viable and affordable that is a
10 permitted use in that zone. And only then can we consider
11 that there would be sufficient hardship to allow a
12 variance on the use.

13 I just don't see them on the second floor.
14 It's a gutted space. Almost every renovated townhouse,
15 and they're happening all over the city, goes through that
16 phase where everything gets gutted out. Some of them,
17 they cut out all the floor joists and everything else and
18 they build the whole thing up inside of a brick shell.
19 And somebody's still making money off of it.

20 So I don't buy the argument that it's not
21 feasible to simply convert that first floor into a
22 residence and still be a profitable venture for the owner
23 of the property.

24 So I'm not convinced of that. I mean, maybe if
25 there's additional information that's going to be

1 submitted into the record I would be more -- I could
2 somehow be convinced.

3 I also think that -- I would note that the
4 council member's support of this was contingent on
5 addressing the concerns of the neighbors who were
6 concerned about the operation of this, and the noise and
7 the trash and so on.

8 So I would hope that if the board decides to
9 approve this variance for both the first and the second
10 floor that they take heed of that and take heed of the
11 concerns of the neighbors and do place appropriate
12 conditions on the operation of the restaurant on the
13 second floor including things like not allowing use of
14 the, quote, "terrace" in the back for outdoor dining
15 space.

16 Anyway, so.

17 (Simultaneous speaking)

18 CHAIRPERSON HILL: Right. So, well first of
19 all I respect your opinion and appreciate it. I also
20 obviously respect the opinion of the Office of Planning
21 and rarely vote against them.

22 But that discussion didn't change my mind. Did
23 it change anyone else's mind? Okay.

24 So then that would mean that it would pass.
25 And then if it were to pass, however, then there are --

1 there was the preliminary matter about letting information
2 into the record and then all of the different conditions.

3 So the Office of Planning did propose some
4 conditions. And they provided a supplemental report that
5 also did outline the differences of the conditions with
6 those proposed by the applicant.

7 At this point I didn't really know how to walk
8 through those conditions other than to perhaps have
9 another hearing just with the applicant and the Office of
10 Planning and I guess the public in terms of the
11 conditions.

12 So since this is another new thing for me right
13 now I'm not clear as to whether we vote to approve and
14 then come back. Probably not. We would just have a
15 limited scope hearing on the conditions.

16 So we would not be having -- and I'm looking to
17 my fellow board members, we would not be having a hearing
18 on anything other than for me -- anything other than the
19 conditions.

20 Now, if Mr. May would like to hear other
21 things. I don't know. We're currently voting against Mr.
22 May and so I don't need to hear -- unless we the board who
23 are voting in favor of this need to hear anything other
24 than the conditions. I just need to hear about the
25 conditions. So I'll let the board give their opinion.

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1 MEMBER JOHN: Mr. Chairman, I was fine with the
2 conditions that OP recommended on pages 2 and 3 of its
3 report I think.

4 But it would be helpful to hear what the ANC's
5 position is at this point because the ANC was a very
6 strong -- is a very strong supporter of this restaurant
7 operating on the first and second floors, and is also very
8 mindful of the concerns of the community.

9 So it might be helpful to have a limited scope
10 hearing to go through the conditions.

11 COMMISSIONER MAY: Mr. Chairman, again I don't
12 think any of this is going to change my position that we
13 should not be approving this variance, but just in terms
14 of process I think what we had tried to suggest at the
15 previous -- when we had our hearing on this was that the
16 applicant, the ANC and the neighbors could work together
17 on a set of conditions.

18 And I think that there was some effort to do
19 that. It was clearly not successful because we don't have
20 evidence in the record that they have all come to
21 agreement on this.

22 But I think that we could put the burden on the
23 applicant to work with the Office of Planning and the ANC
24 to come up with an acceptable set of conditions and then
25 simply submit that into the record rather than necessarily

1 having to have another hearing about it.

2 Now, if they cannot come to conclusion about it
3 then we could reopen the case then and have a more
4 thorough hearing on the conditions.

5 Again, I'm just trying to provide an option for
6 a more expedited process and put the burden on the
7 applicant, the ANC, particularly the commissioner, the SMD
8 commissioner and the Office of Planning to figure out what
9 the right conditions are.

10 CHAIRPERSON HILL: Okay. I'm only smiling
11 because I think it's so funny that this all happens in the
12 public. Like this is how we discuss things, right.

13 So, I don't -- so I guess my hesitation with
14 that is that if they -- I just want to get this finished
15 with. And if they aren't -- if they were able to get
16 together and figure it all out and then submit something
17 into the record then we could just review that.

18 But if they -- it just seems like it's another
19 step, actually, to not have the hearing. But I'm open to
20 that as well.

21 I mean, we can put the burden on them. Then I
22 guess they're not here. And then, Mr. Moy, you'd have to
23 talk to the applicant about working with the ANC and
24 everything and then come up with a timeline as to when --
25 or we would now come up with a timeline as to when they

1 would submit conditions that -- I mean, I just think. I
2 don't know. What does -- oh my gosh. Something just
3 appeared out of nowhere.

4 Okay, so now I don't know what's happening
5 because we're in a meeting decision-making. And so now
6 the Office of Planning has just popped up.

7 And so first I'm going to see, Carlton, hold on
8 one second. All right, so the Office of Planning has
9 something they'd like to share and I'd like to hear
10 whatever it is that the Office of Planning would like to
11 share.

12 MR. LAWSON: I appreciate the chair recognizing
13 OP. OP, you're right, typically does not participate in
14 meeting decisions or discussions by the board.

15 In this case I just wanted to provide a little
16 bit of clarity because I think there's a little bit of
17 confusion.

18 Office of Planning has not recommended
19 conditions associated with this report -- with this case.
20 We issued a supplemental report where we reiterated that
21 we were opposed to the use of the second floor.

22 However, noted that if the board was inclined
23 to approve it as it appears you are and we fully respect
24 the board's decision on this that various conditions had
25 been raised in a number of submissions from members of the

1 public and those are the kinds of conditions that maybe
2 should be or could be considered.

3 So we really don't have a recommendation on
4 conditions because we weren't recommending approval of the
5 case. And that was made clear I think in our supplemental
6 report and in our second supplemental report.

7 So I just wanted the neighborhood because I
8 think there was a lot of confusion about that OP report.
9 And we'll learn from that report for future cases.

10 We were just trying to move the conversation of
11 conditions along for the neighborhood. We understand that
12 there have been conditions proposed.

13 The ANC representative worked very hard in
14 organizing a meeting with the neighborhood from our
15 understanding -- we weren't at that meeting -- to have
16 this discussion.

17 We understand that meeting happened. There was
18 extensive discussion. I don't know who attended that
19 meeting.

20 But it appears that that did lead to a lot of
21 discussion about conditions and that may be what's in some
22 of the submissions that the applicant has requested the
23 record be reopened to receive.

24 So I just wanted to provide that clarification
25 so that people understand. Thank you. If you have

1 questions I'm happy to take them.

2 CHAIRPERSON HILL: Okay, thank you. Thank you.
3 So, I'm so torn. I'm back to where I think that if we had
4 a clear understanding of a list of conditions.

5 Because even if we reopen the record to include
6 the things that were now in the record it seems to me that
7 there's some confusion as to I'm not clear as to what the
8 actual end result of the conditions were.

9 So on the table currently is a suggestion by
10 Commissioner May that we ask the -- put the burden on the
11 ANC and the applicant to come up with a list of conditions
12 that the community has agreed to and then keep the record
13 open for those list of conditions.

14 I would think also then we would leave the
15 record open for -- the problem that I'm confused about is
16 that are we cutting off anybody from submitting anything
17 about those conditions.

18 We're going to get an exhibit stating that
19 these are all the conditions the ANC and the community has
20 agreed to. And then we as a board can determine whether
21 or not we think those conditions are necessary to mitigate
22 adverse impact.

23 Or do we have a hearing just on the conditions.
24 And I'm a little bit torn. Mr. May seems to be of the --
25 even though he's going to get out voted is in the putting

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1 the burden on the ANC and getting some submissions in
2 writing.

3 Does this side of the table have any comments?

4 MEMBER JOHN: Mr. Chairman, this side of the
5 table thinks -- one person on this side thinks that we can
6 do both.

7 We could ask the ANC and the applicant to come
8 up with a set of conditions then set a date for a limited
9 scope hearing to determine if we're going to -- which
10 conditions would mitigate the adverse impacts.

11 CHAIRPERSON HILL: Okay. All right. So then,
12 Mr. Hart. Thanks.

13 VICE CHAIRPERSON HART: That guy that's over
14 there next to me. I'm fine with having a limited scope
15 hearing.

16 I think that it's probably better to do that
17 because I think if we get just the document that we may
18 get somebody that says they wanted to submit something, or
19 they didn't like a particular thing in the conditions.

20 It's better when we have an ability to have a
21 back and forth with the -- or at least the ability to ask
22 questions of anyone, the ANC or the applicant or some of
23 the neighbors if they choose to come.

24 But I'm fine with having a hearing.

25 CHAIRPERSON HILL: Okay. So then, Mr. Moy, we

1 would ask the applicant to work with the community to come
2 up with a list of conditions. And then we're going to
3 have a limited scope hearing on that list of conditions.

4 And we would also take public testimony at that
5 time in favor and opposition to those conditions. And
6 would we hear from the Office of Planning or the Office of
7 Planning provide comment on those conditions.

8 I guess would the Office of Planning be willing
9 to provide a supplemental to the conditions that come in?

10 MR. LAWSON: If the board wishes us to.

11 CHAIRPERSON HILL: The board seems to wish you
12 to. So you'll have another supplemental.

13 So, Mr. Moy, can you give us some dates?

14 MR. MOY: All right, Mr. Chairman. Given the
15 coordination the applicant is going to have to undertake
16 staff would suggest at least a month time.

17 And according to the schedule I have, and of
18 course in this instance I was looking for the next
19 opportunity when Mr. May would be available. He's not
20 available between now and March 6 but after that I have no
21 assignment so I would have to defer to Peter May which
22 dates in March, starting with March 6 when he would be
23 available to attend.

24 COMMISSIONER MAY: So, I'm sorry, no one's
25 assigned March 6?

1 MR. MOY: Correct.

2 COMMISSIONER MAY: I can do that day. Assuming
3 the federal government is operating.

4 MR. MOY: We'll be optimistic with that. So
5 then, Mr. Chairman, then I would suggest if we set a
6 continued hearing limited scope on March 6 then if we
7 could ask the applicant to make their filing by -- get my
8 calendar out here -- March 6. If the applicant can make
9 their filing by February -- Monday, February 25.

10 That would give ample time for review for the
11 board and the staff.

12 CHAIRPERSON HILL: Can you tell me the dates
13 again? I'm sorry.

14 MR. MOY: Okay. So the applicant would submit
15 their filing by Monday, February 25. And the Office of
16 Planning -- let's give Office of Planning a full week,
17 would be March 4 which is a Monday.

18 And then the continue hearing limited scope
19 Wednesday, March 6. Is that a good timeline for the
20 board?

21 CHAIRPERSON HILL: That sounds great. Thank
22 you, Mr. Moy.

23 MR. RITTING: Before we move on I just wanted
24 to remind the board members that there's still the
25 outstanding request to reopen the record if you want to

1 decide those now. I think it makes a lot of sense for you
2 to do it now.

3 CHAIRPERSON HILL: Okay. I guess we can just
4 go ahead and reopen the record for those three items that
5 were in there.

6 One item was about the conditions. The other
7 item I think was about their issue with those conditions.
8 And now we're asking the applicant to go back out to the
9 community and figure it out.

10 And so hopefully -- and this is why we're going
11 to have the limited scope hearing which is that hopefully
12 they will go back to the community, figure it out. We'll
13 get like one set of conditions and then that will be it.

14 And so I would say we go ahead and reopen the
15 record for the items that came in, the request that came
16 forward to reopen the record. We'll reopen the record to
17 allow those items in unless the board has any other
18 thoughts. Okay, so consensus seems to be that we'll do
19 that.

20 MR. MOY: Okay. I'll confirm that. I just
21 want to make the board aware there were a good six to
22 eight supplemental filings, post hearing documents. So
23 for the record that would all be logged into the record.

24 CHAIRPERSON HILL: All right, Mr. Moy, if you -
25 - actually give me a second. All right, Mr. Moy, whenever

1 you like.

2 MR. MOY: Thank you, Mr. Chairman.

3 CHAIRPERSON HILL: And just so everybody knows
4 we're going to take a break after this next one before we
5 go into our hearing cases. Thank you.

6 MR. MOY: All right, this is the last case for
7 decision-making and it happens to be an appeal of number
8 19818 of Stephen Cobb.

9 This is an appeal from the decision made on May
10 18, 2018 by the Zoning Administrator, Department of
11 Consumer and Regulatory Affairs to issue building permit
12 number B1804093 to construct a third floor and a three-
13 story rear addition and convert the existing principal
14 dwelling unit to a flat. RF-1 zone.

15 This is at 1267 Penn Street NE square 4060 lot
16 233.

17 CHAIRPERSON HILL: Okay. Is the board ready to
18 deliberate? Okay. So there are some preliminary matters
19 that we kind of need to tidy up. I think we did speak to
20 those during the actual appeal.

21 It was a really long appeal and we had -- not
22 that any appeal has been particularly short. And though I
23 appreciate -- I just want to point out I do appreciate the
24 testimony and the professionalism that all parties had
25 shown. I thought that we went through the process

1 smoothly.

2 The preliminary matters were about the timely
3 filing and the unduly broadening of the appeal based upon
4 the intervener. And in particular the discussion about
5 the side yard.

6 Oh, that's right Commissioner May had asked
7 some questions and then had to leave. And after he had
8 left we spoke about how -- at least I think in our
9 opinion, the board's opinion that that was unduly
10 broadening the appeal.

11 The intervener was intervening as -- to the
12 items brought up by the appellant at the time the
13 appellant filed its appeal.

14 And so what I did see in the findings of fact
15 and conclusions of law from the intervener that I do -- am
16 again disappointed about is that the intervener was always
17 talking about the side yard and nothing really had been
18 brought up about that point until the fact of the actual
19 hearing.

20 And the only response I have to that is that
21 it's really not until the actual hearing that we get an
22 opportunity to delve into the appeal itself.

23 So we thought that they as a next door neighbor
24 to the project should have status as an intervener and
25 therefore we allowed that. And it wasn't until we

1 actually delved into the items of the appeal and the
2 actual testimony that we found out about the unduly
3 broadening of that particular appeal.

4 So I would agree that the appeal itself is only
5 on the merits that the appellant had brought up. And I
6 don't know if that needs to be a motion or not, Mr. Moy.

7 So we are only going to -- so the preliminary
8 matter is we are only going to be discussing the merits
9 from the original appeal.

10 So I see everybody shaking their heads in
11 agreement so that's consensus. So that being the case I'm
12 going to let somebody else start on the merits of the
13 appeal if they -- oh, Mr. May?

14 COMMISSIONER MAY: Yes, that's fine. So, I
15 would agree. It was helpful to me to have the discussion
16 that we had while I was here for that hearing.

17 And I do think that the intervener brought up
18 important issues, but I think unfortunately that it would
19 be considered an undue broadening of the appeal.

20 I would take this moment to point out my
21 disagreement with the Zoning Administrator on this topic
22 because I do believe that the rules by which they treat
23 existing structures and how much can be demolished and
24 rebuilt and so on is simply incorrect.

25 I think the argument that you can basically

1 tear down 60 percent of a building and then rebuild it in
2 a non-conforming way so long as you follow the original
3 footprint is crazy.

4 I mean, we have development standards for
5 buildings and there's no reason why a reasonable
6 development of this property could not have been
7 accomplished consistent with those development standards.

8 And yet they get to erase it all and because
9 there was this side porch that got filled in they're able
10 to make that into a large bay structure that encroaches
11 upon a required side yard.

12 It's ridiculous in my view and I think it is
13 something that we -- the Zoning Commission should be
14 looking at to provide more clear guidance to the Zoning
15 Administrator about how to treat circumstances like this.

16 Because clearly the rules they are using are
17 nonsensical.

18 That all being said, it is an undue broadening
19 of the appeal and the original issues of the appeal having
20 to do with the roof deck, the architectural element, the
21 setbacks, things like that I do not believe have any
22 merit.

23 A parapet in itself is not I think an
24 architectural element as we conceived it when we wrote the
25 regulations for how we treat additions to buildings in RF-

1 1 zones.

2 We were thinking of things that were more
3 distinctive than simply a parapet. And that's -- so I
4 think that argument fails.

5 I cannot accept the notion that a roof deck is
6 somehow a penthouse. A roof deck is still a roof deck and
7 there are requirements for setbacks of rails and so on
8 that have to be met. And that's not really the issue
9 here.

10 And I think that as far as the appropriateness
11 of the third story addition it has to be considered
12 appropriate because it complies with the other development
13 standards.

14 So I just, I cannot accept the appeal of Mr.
15 Cobb on this, but I do want to take up the issue of how we
16 treat circumstances like this up with the rest of the
17 Zoning Commission to see what further guidance we might
18 provide to the Zoning Administrator. So, that's it for
19 me.

20 VICE CHAIRPERSON HART: I would concur with
21 Commissioner May on this. I did not -- I would also deny
22 the appeal for the reasons that he stated.

23 And I don't have a whole lot more to add to it,
24 but just wanted to say that I would be in denial of --
25 denying the appeal.

1 I think that the issue about the permitting
2 issue, I didn't think that was -- the permit was issued to
3 a particular person and I don't think that's a zoning
4 issue.

5 And with regard to the third story and roof
6 deck construction, removing the existing parapet I also
7 agree that it's -- parapets are not the special things,
8 they're not architectural elements. They are
9 architectural elements. They're not the special element
10 that are kind of called out in the zoning regs.

11 I agree that the roof deck is a roof deck and
12 not a penthouse. And the roof deck itself being
13 detrimental to the neighborhood of the -- the
14 neighborhood's character. I disagree with that. There
15 are roof decks all over the city and I just think that
16 that doesn't have any -- there's no merit to it, to the
17 argument.

18 With that I'll just conclude and say I would be
19 denying the application as well.

20 MEMBER JOHN: Mr. Chairman, I agree with what's
21 been discussed so far. I believe that the applicant did
22 not meet the standard of proof for all of those three
23 elements and that -- those three issues, and that to have
24 granted intervener status in this case would be to unduly
25 broaden the scope of the appeal.

1 And I agree that the ZA's interpretation of
2 when there's a demolish or raze of a building is not
3 captured in a regulation. However, I would respect the
4 authority of the ZA to make a reasonable determination or
5 interpretation of the regulations as he understands it.

6 But I do agree that there is room for
7 clarification and that would be something that the
8 commission could take up.

9 CHAIRPERSON HILL: Okay. I have nothing to
10 add. I agree with all of the discussion that my
11 colleagues just brought forward.

12 I'm going to go ahead and make a motion to deny
13 appeal number 19818 as captioned and read by the secretary
14 and ask for a second.

15 VICE CHAIRPERSON HART: Second.

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

18 (Chorus of ayes)

19 CHAIRPERSON HILL: All those opposed? Motion
20 passes, Mr. Moy.

21 MR. MOY: Before I read a final vote count, Mr.
22 Chairman, I have an absentee ballot vote from Ms. Lesyllee
23 White who participated. And her vote is to deny the
24 appeal.

25 So that would give a vote of 5-0-0. This is on

1 your motion, Chairman Hill, to deny the appeal. Seconding
2 the motion Vice Chair Hart. Also in support Ms. John and
3 Mr. Peter May. And of course Ms. White. The motion
4 carries.

5 CHAIRPERSON HILL: Okay, great. Thank you.
6 We're going to take a 15-minute break. Thank you very
7 much.

8 (Whereupon, the above-entitled matter went off
9 the record at 11:16 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DC BZA

Date: 01-30-19

Place: Washington, DC

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