

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

DECEMBER 18TH, 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:

ROBERT MILLER, Commissioner
PETER MAY, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALEXANDRA CAIN, ESQ
MARY NAGELHOUT, ESQ
DANIEL BASSETT, ESQ

The transcript constitutes the minutes from the Public Meeting held on December 18th 2019.

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

9:45 a.m.

1
2
3 CHAIR HILL: Good morning, the hearing will please
4 come to order. We're located in the Jerrily R. Kress
5 Memorial Hearing Room at 441 4th Street, N.W. This is the
6 December 18th, 2019 public hearing of the Board of Zoning
7 Adjustment. My name is Fred Hill, Chairperson. Joining me
8 today is Carlton Hart, Vice Chair and Lorna John, Board
9 Member, representing the Zoning Commission. On some cases
10 will be Rob Miller and later for the rest of day will be
11 Peter May.

12 Copies of today's hearing in general are available
13 up here and located in the wall bin near the door. Please
14 be advised that this proceeding is being recorded by a court
15 reporter and is also webcast live. Accordingly, we must ask
16 you to refrain from any disruptive noises or actions in the
17 hearing room. When presenting information to the Board,
18 please turn on and speak into the microphone, first stating
19 your name and home address.

20 When you're finished speaking, please turn your
21 microphone off so that your microphone is no longer picking
22 up sound or background noise. All persons planning to
23 testify either in favor or in opposition must have raised
24 their hand and been sworn in by the Secretary. Also, each
25 witness must fill out two witness cards. These cards are

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1 located on the table near the door and on the witness table.

2 Upon coming forward to speak to the Board, please
3 turn -- please give both cards to the reporter sitting at the
4 table to my right. If you wish to file written testimony or
5 additional supporting documents today, please submit one
6 original and 12 copies to the Secretary for distribution.
7 If you do not have the requisite number of copies, you can
8 reproduce copies on our office printer in the Office of
9 Zoning located across the hall. Please remember to collate
10 your set of copies.

11 The order of procedures for variances, special
12 exceptions and appeals are also listed as you come in through
13 the door. The record shall be closed at the conclusion of
14 each case, except for any materials specifically requested
15 by the Board. The Board and the staff will specify at the
16 end of the hearing exactly what is expected and the date when
17 the persons must submit the evidence to the Office of Zoning.
18 After the record is closed, no other information shall be
19 accepted by the Board.

20 The Board's agenda includes cases set for
21 decision. After the Board adjourns, the Office of Zoning,
22 consultation with myself, will determine whether a full or
23 summary order may be issued. A full order is issued when the
24 decision it contains is adverse to a party, including an
25 affected ANC. A full order may also be needed if the Board's

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1 decision differs from the Office of Planning's
2 recommendation.

3 Although the Board favors the use of summary
4 orders, whenever possible an applicant may not request the
5 Board to issue such an order. District of Columbia
6 Administrative Procedures Act requires that the public
7 hearing on each case be held in the open before the public.
8 Pursuant to Section 405 --

9 I'm sorry, 405(b) and 406 of that Act the Board
10 may, consistent with its rules of procedure and the Act,
11 enter into a closed meeting on a case for purposes of seeking
12 legal counsel on a case, pursuant to D.C. Official Code
13 Section 2-575(b)(4) and/or deliberating on a case pursuant
14 to D.C. Official Code 2-575(b)(13), but only after providing
15 the necessary public notice and in the case of an emergency
16 closed meeting after taking a roll call vote.

17 The decision of the Board in cases must be based
18 exclusively on the public record. To avoid any appearance
19 to the contrary, the Board requests that persons present not
20 engage the members of Board in conversation. Please turn off
21 all beepers and cell phones at this time so as not to disrupt
22 the proceeding. Preliminary matters are those which relate
23 to whether a case will or should be heard today, such as
24 request for postponement, continuance or withdrawal, or
25 whether proper and adequate notice for the hearing has been

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1 given.

2 If you're not prepared to go forward with the case
3 today or you believe that the Board should not proceed, now
4 is the time to raise such matters. Mr. Secretary, do we have
5 any preliminary matters?

6 MR. MOY: Good morning Mr. Chairman, members of
7 the Board. For the record related to today's docket, we have
8 one case that has been rescheduled, and that is Case Number
9 20163 of 719 6th Street, LLC, rescheduled to January 15th,
10 2020. Other preliminary matters, Mr. Chairman, staff would
11 suggest that the Board address those when I call those cases
12 case by case.

13 CHAIR HILL: Okay great. Thank you, Mr. Moy.
14 Good morning everybody, if you would please, if you plan on
15 testifying, if you would please stand and take the oath
16 administered by the Secretary to my left.

17 MR. MOY: Good morning.

18 [WITNESSES SWORN.]

19 MR. MOY: Thank you ladies and gentlemen. You may
20 consider yourselves under oath.

21 CHAIR HILL: Okay, great. Thank you. Well
22 welcome everyone. This is our last hearing of the calendar
23 year. We have a pretty full day, and so at some point we'll
24 take a morning break and then we'll also take a lunch break,
25 and we might move a couple of cases around, but we'll see how

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1 it goes. But as of now, we're going to stick with the agenda
2 the way it is. So Mr. Moy, you can go ahead and call our
3 first meeting case when you get a chance.

4 Application No. 19943-A

5 MR. MOY: Thank you, Mr. Chairman. So that would
6 be Application No. 20143 -- no, no, no, no. Wrong sheet.
7 Here were go. Let's see, okay. Case Application No. 19943-
8 A. This is the Mills Building Associates LLC. This is a
9 request for a minor modification to plans shown in BZA Order
10 No. 19943 in the application of the Mills Building Associates
11 LLC, pursuant to 11 DCMR Subtitle Y, Section 703 for a minor
12 modifications to the plans.

13 This would permit minor adjustments to the
14 interior layout of the buildings, setbacks and massing of the
15 proposed penthouse in an existing mixed use building, D-5/D-6
16 zones at 1700 Pennsylvania Avenue, N.W., Square 168, Lot 50.

17 CHAIR HILL: Okay, great. Thank you Mr. Moy. The
18 people that are on the case with me today are Lorna John,
19 Carlton Hart and myself, because we were all on the
20 underlying case. Is the Board ready to deliberate? Okay.
21 So after reading through the record, I also would agree with
22 the Office of Planning's analysis, that this is a more a
23 modification of consequence rather than a minor modification,
24 and I think that even though it is a minor --

25 I'm sorry, a modification of consequence and not

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1 a minor modification, we can still deliberate on this and
2 decide in the meeting agenda. In terms of the record, I
3 would agree with the Office of Planning in terms of their
4 analysis, and also the ANC originally did approve this. They
5 didn't have any thoughts that didn't apply or anything in
6 terms of the modification of consequence. But I don't think
7 it really changes the underlying issue, and I don't have any
8 issue with again the modification.

9 So I'm going to be voting to approve. Is there
10 anything else anyone would like to add?

11 VICE CHAIR HART: No, only that just a little.
12 Only that I would agree with you regarding it being a
13 modification of consequence. One of the things that I was
14 just I guess pleased to see was the evolution of the drawings
15 and the massing. I think that the work that they did was
16 very helpful.

17 I know that we had talked about this actually
18 having some -- us giving a little bit of leeway to allow the
19 applicant to, you know, kind of continue doing some work on
20 this. I think it's probably better that we actually saw this
21 again, so that I'm glad that we are seeing this again, and
22 I would support the application.

23 So I thought there were, there were good changes
24 that have happened to the project since we last saw it. But
25 I will be in support of it, so that's it.

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1 CHAIR HILL: Okay great, thank you. And actually
2 there was something that we did get from ANC 2A. It came
3 into the record last night, where they had voted to 8 to 0
4 to 0 to approve. Ms. John, is there anything you'd like to
5 add?

6 MEMBER JOHN: Not much, Mr. Chairman. I agree
7 with your comments and those of Mr. Hart, and I can concur
8 with the Office of Planning's analysis that this really is
9 a modification of consequence, because the changes do
10 redesign or relocate architectural elements. But there is
11 no material change on which -- to the facts on which the
12 Board granted the original relief for the penthouse and the
13 penthouse setback. So I can support the application.

14 CHAIR HILL: Okay. I'm going to make a motion to
15 approve Application No. 19943-A, pursuant to 11 DCMR Subtitle
16 Y-703, for a modification of consequence to the plans
17 approved by BZA Order No. 19943, to permit minor adjustment
18 to the interior layout of the building, setbacks and massing
19 of the proposed penthouse in an existing mixed use building
20 in the D-5/D-6 zones on premises 1700 Pennsylvania Avenue,
21 N.W., Square 168, Lot 50 and ask for a second.

22 VICE CHAIR HART: Second.

23 CHAIR HILL: Motion has been made and seconded.
24 All those in favor say aye?

25 (Chorus of ayes.)

1 CHAIR HILL: All those opposed?

2 (No response.)

3 CHAIR HILL: Motion passes. Mr. Moy.

4 MR. MOY: Staff would record the vote as 3 to 0
5 to 2, this on the motion of Chairman Hill to approve the
6 request for minor modification to plans. Seconding the
7 motion Vice Chair Hart. Also in support Ms. John. No other
8 Board members participating. The motion carries, sir.

9 CHAIR HILL: All right, thank you Mr. Moy.

10 Appeal No. 20141 of ANC 7D

11 MR. MOY: Okay, the next and final case for
12 decision-making is Appeal No. 20141 of Advisory Neighborhood
13 Commission 7D. This is the appeal from the determination
14 made on October 16, 2018 by the Zoning Administrator,
15 Department of Consumer and Regulatory Affairs, to allow a
16 fire station as a matter of right use in the R-2 zone at 4409
17 Minnesota Avenue, N.E., Square 5097, Lot 846.

18 CHAIR HILL: Okay, great. Is the Board ready to
19 deliberate?

20 VICE CHAIR HART: Yes.

21 CHAIR HILL: Okay. So there's a bunch of issues
22 we need to kind of get through on this. The first I guess
23 is a motion to strike some of the exhibits that were put in
24 by the appellant from the property owner, I believe, and what
25 we had asked for and I recall again what we had asked for

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1 from the different parties, one of the things that we had
2 pointed out was that we didn't want to hear any new
3 arguments, as well as any duplicative documents from the
4 parties.

5 I think that some of the items that the appellant
6 had put into the record was actually duplicative and also was
7 kind of new information. And so what I was having kind of
8 difficulty then was kind of figuring out what was information
9 that we had requested, and then also what was new information
10 or duplicative information. So I would think that we should
11 strike everything except, and I thank very much OAG staff to
12 help us get through this.

13 But we would strike all of the documents except
14 pages 1 and 2, and 27 through 29 of Exhibit 85, and then we
15 would strike all the other exhibits, which were -- so there
16 was Exhibit 85 through 85B-2. So of all of that information,
17 I would think that we would strike everything except for
18 pages 1 and 2 and 27 through 29 of Exhibit 85. So that's
19 first, my first thought. Does anybody have any comments on
20 that?

21 VICE CHAIR HART: I would agree with that.

22 MEMBER JOHN: I agree with that, Mr. Chairman.
23 Most of the information was irrelevant or repeated
24 information previously submitted.

25 CHAIR HILL: Okay, and/or they were talking about

1 the Supreme Court case that was going on and like other
2 things that -- and again environmental issues. They again
3 were things that weren't within our purview and/or are in
4 different areas within the District government right now.

5 VICE CHAIR HART: And there's another piece, which
6 is that you cannot add to an appeal. You know, the appeal
7 initially sets out what it is that they're appealing, and
8 then you can't add to that at a later date. So some of this
9 was actually adding more information that I just think that
10 it was just not appropriate to do that, and per our regs it's
11 not something that appellants are really allowed to do. So
12 I think that that is -- you know, what you said is true in
13 addition to trying to add something new to it, and so that's
14 it.

15 CHAIR HILL: Right, which is something we spoke
16 to at the end of the case, which was that, you know, they
17 can't bring in new arguments about whatever they thought was
18 an error by the ZA. The appeal was set when the appeal comes
19 before us. So Mr. Miller, do you have any comments?

20 ZONING COMMISSIONER MILLER: Thank you, Mr.
21 Chairman. Yeah, I would agree that the only issue before us
22 is whether the permitting of a construction of a fire station
23 as a local government use, and any evidence not related to
24 that really is not germane, so I agree.

25 CHAIR HILL: Okay. So I'm going to go ahead and

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1 grant, and I don't know Mr. Moy how this kind of works. But
2 I'm going to go ahead and grant the motion to strike
3 everything in Exhibits 85 through 85B-2 other than -- except
4 for pages 1 and 2 and 27 through 29 of Exhibit 85, and I
5 guess ask for a second?

6 VICE CHAIR HART: Second.

7 CHAIR HILL: Motion has been made and seconded.
8 All those in favor say aye?

9 (Chorus of ayes.)

10 CHAIR HILL: All those opposed?

11 (No response.)

12 CHAIR HILL: Okay. So that's that. So then the
13 other issue was whether or not this was untimely or not, and
14 I guess this is something that we should -- we could talk
15 about a little more, because there's the determination letter
16 and/or building permit, right? And so what -- and this is
17 kind of for I guess a discussion even that we've been having
18 on the Board for a while, is that I've seen it where we have
19 argued that the determination letter was actually the
20 instrument that we were using to determine whether something
21 was timely or not.

22 However, this particular determination letter, at
23 the very bottom of the determination letter, and I don't have
24 it in front of me, it had language again that said this is
25 not to think that you will get a permit. So it's not

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1 something that I thought that was something that the clock
2 would necessarily start, or that people would necessarily
3 know that a determination has been made.

4 And so I would think that this actually is timely
5 before us because they, the appellant, put forward the appeal
6 based upon when the building permit was set forward, and
7 therefore was timely if that's what we were using as the
8 basis for whether it was timely or not. So does anyone have
9 any other thoughts on that?

10 VICE CHAIR HART: Yeah, only that -- yeah. I
11 think that the -- in this case and other cases, we looked at
12 whether or not when was a party understanding that there was
13 a decision that had been made by the Zoning Administrator.
14 The determination letter was not something that was actually
15 sent out to anybody. I mean this was something that was kind
16 of put in the file for the -- for the appellee I guess, the
17 folks that are trying to build. I guess it was the D.C.
18 government, DGS, that are trying to build this.

19 The building permit was the first time that the
20 applicants or the appellants were aware that there was a
21 -- that this was actually something that has been -- that a
22 decision had been made and that they could kind of act upon
23 it. You know, they made their appeal within a timely fashion
24 after that building permit was issued.

25 So I think if you look at that part of it, I think

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1 we can say yes, that it is -- it was timely filed. So the
2 first writing would have been the permit, and then the actual
3 appeal would have been filed within that time frame to be
4 able to be considered timely as it being filed. So I would
5 agree. I think that it is timely, but it is a little bit
6 confusing.

7 I think that there was some discussion that had
8 gone on between -- or at least some understanding between the
9 community and DGS about this particular facility coming. It
10 just wasn't clear as to when that was finalized and for the
11 community. I think that the building permit is that one
12 period that kind of -- or that one point in time that you can
13 look back and say well this is something that was definitely
14 happening, as opposed to some conversation that was going on,
15 because it seems like there was some conversation going on
16 prior to that.

17 But this building permit I think is that kind of
18 point in time, to be able to look back and say yeah, this is
19 a time that we can count from. They were within the 60 day
20 barely, but within that 60 day time frame. So I think that
21 I do agree that it is timely.

22 MEMBER JOHN: So I agree with everything so far,
23 and for me the critical issue is that the determination
24 letter itself, as you noted Mr. Chairman, stated that it is
25 not -- and this the exact language, I believe. It is not a

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1 final decision of the Administrator that may be appealed
2 under Section Y302.1, and is an advisory statement.

3 So the DCRA and the property owner can't have it
4 both ways. Here, DCRA says explicitly that this is an
5 advisory opinion, and so based on that statement,
6 notwithstanding all of the history of activity between the
7 property owner and the ANC and DCRA, I don't think that that
8 activity is sufficient notice that would prevent the appeal
9 from going forward.

10 And so I believe that, because the appeal was
11 filed within 59 days of the issuance of the permit, that the
12 appeal was timely.

13 ZONING COMMISSIONER MILLER: I would agree with
14 my colleagues on the Board with everything that they've said.
15 I would acknowledge that the appeal refers to the
16 determination letter, but I think for purposes of this case,
17 for all the reasons that my colleagues have said, that it's
18 the permit that gave official notice to the ANC that -- from
19 DCRA. So I think for purposes of this case, that's what's
20 being appealed here.

21 I just think we can go forward with the merits of
22 the case opposed to dismissing it on timeliness.

23 CHAIR HILL: Okay.

24 MEMBER JOHN: I agree on that point, and it's
25 something that I struggled with as well. But in reading the

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1 statement of appeal, it correctly cited the regulatory
2 provisions that were at issue. And so I did not think, as
3 you did, that that would prevent the appeal from going
4 forward.

5 ZONING COMMISSIONER MILLER: I agree.

6 CHAIR HILL: Okay. And Mr. Moy, actually I know
7 we have a training coming up, but can we look at again the
8 first writing rule again a little bit, because I know that's
9 what happened with this, and I think that there's a little
10 bit -- we just like to be a little bit more clear.

11 I'd like to be a little more clear as to again the
12 determination letter versus the building permit because we
13 have had arguments both ways, and there's things in the
14 regulations that state that, you know, whether you should
15 have had had notice, which is also what the argument was
16 before us, was that there was the determination letter and
17 there was plenty of information to everyone around that this
18 was actually happening.

19 So it's a little bit -- it can be a little
20 confusing, and I think that everybody should know what's
21 going on including us. So --

22 ZONING COMMISSIONER MILLER: I've seen a draft
23 agenda of that training session, and that is on the agenda.

24 CHAIR HILL: Oh great, wonderful.

25 ZONING COMMISSIONER MILLER: I don't know when it

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1 was happening.

2 CHAIR HILL: Yeah. When is that happening Mr.
3 Moy?

4 MR. MOY: It's going to be a date on February sir.

5 CHAIR HILL: Okay, all right. Okay. So then I'm
6 going to go ahead and then dismiss the motion, and I don't
7 know which one, I think the property owner and DCRA, that
8 this was untimely, and just on consensus, okay. So
9 everyone's nodding their heads yes. So we're going to
10 dismiss that motion, okay.

11 So now to the merits of the appeal. I think that
12 the appellant seemed to be bringing up issues under
13 D5201.3(b), as well as U202.1(i). With regard to D5201.3(b),
14 it seemed that that was like special exceptions for accessory
15 building uses or accessory buildings, and I didn't think that
16 that -- that D5201.3(b) had anything to do with the appeal
17 at all. I mean it seemed like it was just, you know,
18 misplaced information.

19 So I mean I think that that's just -- I wouldn't
20 be in agreement, that this is the right place for that. I
21 mean I do understand what they're bringing in terms of the
22 -- so appeal. So anyway, so D5301.3(b) I didn't think
23 applied. So I did think in terms of the discussion about
24 U202.1(i), where they're speaking to whether or not this fire
25 station is kind of --

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1 Well, there's a variety of issues. One was
2 whether this was a fire station per the definition, and then
3 whether or not the Zoning Administrator erred by issuing the
4 building permit for the fire station. After hearing all the
5 testimony and all of the arguments from the appellant, DCRA
6 and the property owner, I didn't think that the appellant
7 made the case that the Zoning Administrator erred.

8 I mean I did think that per the regulations, this
9 is a -- I thought this was a fire station. Like I didn't
10 think that after we also got the additional plans, I didn't
11 get any indication from the plans that this was like a
12 training facility, that this was like something that was not
13 anything other than a fire station for the immediate
14 community, and whether that also meant serving however far
15 those fire stations --

16 You know, I don't know the boundary of that
17 particular fire station, but it is a fire station that's for
18 the community. It is a by right thing that the District
19 government can put there, and I didn't think that the
20 appellant made the argument that the Zoning Administrator
21 erred by issuing that building permit.

22 I mean I understand that the appellant again is
23 arguing different things in different, you know like Superior
24 Court and they're talking about environmental issues that
25 again are not within our purview. But in terms of the

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1 arguments that they made for U202.1(i), I did not think that
2 they made an argument that the Zoning Administrator erred.

3 So I'm going to be voting in denial of the appeal,
4 and I'll ask my fellow Board members to let me know their
5 thoughts.

6 MEMBER JOHN: So I agree with you, Mr. Chairman,
7 that the appellant has not met its burden of showing that the
8 ZA issued the permit in error. I found that the five station
9 is a local government use, and that it is specifically
10 allowed as a matter of right in that location. The issue
11 was, as I understand it, that the appellants argued that
12 because there were these accessory buildings or structures
13 that were being used for housing equipment that was not in
14 use, then that made it something other than a fire station.

15 It was more for storage, and that the use was too
16 expensive to be considered a local government use. But the
17 definitions for the fire -- the definition of a fire station
18 specifically includes a building and associated land use by
19 the fire department to house personnel and equipment, in
20 connection with the provision of fire, rescue, hazardous
21 materials response and other types of emergency services
22 throughout D.C. So the use is not specifically limited to
23 that particular area.

24 So I struggled with the fact that the regulations
25 specifically mentioned a building and not the accessory

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1 structures, but really the definition itself and the rules
2 of construction allow us to construe that definition to
3 include several building. And so based on that rationale,
4 I would dismiss the appeal or not grant the appeal.

5 VICE CHAIR HART: Yeah, I would agree with my
6 colleagues. I think that looking at what the fire station
7 definition is under Subtitle B100, I would agree with Ms.
8 John. She is correct about that. I mean that is -- this
9 would be included in that definition. This, the project that
10 is under appeal, would be included in that definition.

11 With regard to, you know, we were having this
12 discussion about or listening to the appeal, and there was
13 a discussion about whether or not this was a local government
14 or large scale, sorry. Local government use or if it was a
15 large scale government use. In the large scale government
16 use definition, it includes a use involving services owned,
17 managed or provided by a governmental entity and associated
18 with providing regional or wider services.

19 So this was seen, and they actually gave examples.
20 Airports, jails, truck dispatch facilities or police/fire
21 training facilities. What the District is proposing is not
22 any of those. The examples are included in the local
23 government definition. They are -- include in that things
24 like police stations, libraries, driver's licenses or road
25 test facilities or fire stations. It actually includes that

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1 definition in there.

2 With regard to the -- there were a number of
3 arguments that the appellant made that were outside of this,
4 and we're not -- while I understand that there are other
5 things that may be of interest to the community, they are not
6 things that are underneath the zoning regs, and include
7 things like the bid process and there are financial issues
8 that were being discussed and a lot of other things. They
9 just seemed like they were -- actually they were outside of
10 the Board's purview.

11 And as my colleagues have stated, we're really
12 looking at kind of those two elements, whether or not we
13 think that they are relevant and that the Zoning
14 Administrator erred, and I do not believe for the reasons
15 that my colleagues have stated, that the Zoning Administrator
16 erred in them.

17 The other issue, and I think we brought this up
18 a little earlier, there seemed to be some issues that were
19 added to or that the appeal was amended later, amended as we
20 were kind of going through this process and some of the
21 documents that we received following that. You know, just
22 to note that Y, Subtitle Y302.13 states an appeal may not be
23 amended to add issues not identified in the statement of
24 issues on appeal submitted in response to Y Subtitle
25 302.12(g).

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1 So and actually it says "unless the appellee
2 impeded the appellant's ability to identify the new issues
3 identified," and that's not the case. These were just things
4 that the, I think that the appellant was trying to make kind
5 of a broader case. Like it's not just these, it's these
6 other things that are in issue. I understand that we are not
7 -- and that the appellant is not allowed to do that under the
8 zoning regulations.

9 So I, for those reasons, I would be voting -- I
10 will be voting to deny the appeal. While I understand that
11 this is a use that's not, that was not there, it is a use
12 that is right -- that is adjacent to the CSX rail line and
13 I mean it seemed like it's a use that is kind of -- that is
14 an appropriate place in that area.

15 The Metro lines are, you know, not adjacent to it
16 but right next to the CSX line. So it just seems like it was
17 a use that would make some sense in that location. So for
18 those reasons, as I said, I will be voting to deny the
19 application, excuse me, to deny the appeal.

20 ZONING COMMISSIONER MILLER: I would concur with
21 my colleagues, that this is a fire station as defined in the
22 zoning regulations, which is a local government use, which
23 is permitted as a matter of right in an R-2 zone. The
24 additional fire trucks and ambulances which will be stored
25 in the accessory structures are not being dispatched,

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1 although they're being -- they will be used in the District
2 of Columbia, throughout the District of Columbia they'll be
3 --

4 They're not going to be dispatched in response to
5 emergency calls to elsewhere in the District of Columbia.
6 They're just going to switch out to a fire station that needs
7 to have a different truck that isn't working. There are also
8 -- those additional fire trucks and ambulances, in addition
9 to not being available to be immediately dispatched in
10 response to an emergency call, are not being repaired or
11 maintained beyond keeping them in working order with fuel,
12 whatever.

13 But they're not going to be -- it's not a repair
14 facility. As some of my colleagues mentioned, it's not a
15 training facility, which would bump it up to a larger scale
16 government use. So I think DCRA also submitted testimony in
17 response to a question at the hearing that there is at least
18 one fire station in the District, I think on the western side
19 of the city, this is on the eastern side of the city, which
20 has additional type -- which has similar kind of storage in
21 accessory structures. I think they mentioned up on Georgia
22 Avenue or something.

23 So for all of those reasons, I concur that this
24 -- that it is a fire station under the definition of the
25 zoning regulations. It fits into the local government use

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1 category, which is a matter of right in the R-2 zone, which
2 is what this is. So I would vote, agree with voting to deny
3 the appeal by ANC.

4 CHAIR HILL: Okay. I'm going to make a motion to
5 deny the Appeal No. 20141 as captioned and read by the
6 Secretary and ask for a second.

7 MEMBER JOHN: Second.

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

10 (Chorus of ayes.)

11 CHAIR HILL: All those opposed?

12 (No response.)

13 CHAIR HILL: Motion passes. Mr. Moy.

14 MR. MOY: Staff would record the vote as 4 to 0
15 to 1, and this on the motion of Chairman Hill to deny the
16 appeal. Seconding the motion I'm going to yield to Ms. John.
17 Also in support of the motion Vice Chair Hart and Zoning
18 Commissioner Robert Miller, no other members participating.

19 CHAIR HILL: Okay, thank you Mr. Moy.

20 (Whereupon, the above-entitled matter went off the
21 record at 10:20 a.m. and resumed at 3:02 p.m.)

22 CHAIR HILL: All right, Mr. Moy. If you could
23 recall -- well actually hold on. We'll redo it. I see that
24 actually they're here, which what we were going to do was
25 deliberate, because we closed the hearing and we are going

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1 to now have it as a meeting, I believe, which was 20168. So
2 I guess why don't you go ahead and recall 20168 as a meeting
3 if you would.

4 Application No. 20168

5 MR. MOY: Thank you, Mr. Chairman. So in meeting
6 session, which actually -- well this is Case Application No.
7 20168 of 50 F Street LLC, captioned for special exception
8 under the Capitol Security Subarea requirements, Subtitle I,
9 Section 605.6 to construct a penthouse on a rooftop terrace
10 addition to an existing mixed use building in the D-3 zone.
11 That permit says 50 F Street, N.W., Square 628, Lots 896 and
12 898, and as the Board is aware, the hearing part of this
13 application was earlier today.

14 CHAIR HILL: Okay, thank you Mr. Moy. So we heard
15 this earlier today, and we closed the hearing and we put this
16 into a decision meeting, because we wanted to see whether we
17 had heard anything from the Architect of the Capitol. As I
18 understand it, Mr. Moy, we have not heard anything from the
19 Architect of the Capitol, is that correct?

20 MR. MOY: That's correct sir. We've tried to make
21 contact several times today.

22 CHAIR HILL: Okay. So then what I would propose
23 is we go ahead and deliberate, and if we do pass this, hold
24 the record open for a statement from the Architect of the
25 Capitol. If it turns out that there is some issues that they

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1 are concerned with we could, if we wanted to, determined upon
2 what we get from the Architect of the Capital rescind our
3 vote and then have a continued hearing to understand what
4 those issues might be. Does that sound good with the Board?

5 VICE CHAIR HART: I agree.

6 CHAIR HILL: Okay. I will go ahead then and begin
7 deliberation, which is what we actually did talk about
8 before, which was that I do believe that the applicant has
9 met its burden of proof in terms of meeting the standards for
10 which we could grant the relief requested.

11 I would also note then that the ANC Commissioner
12 had come to testify, and that one of their conditions is no
13 amplified music be allowed on the rooftop terrace, and I
14 would be in agreement with that as a condition. I do think
15 that the Office of Planning's analysis in terms of their
16 support, I could get behind it is accurate, as well as then
17 the ANC being in support, as long as again the -- no
18 amplified music was put forward.

19 As I mentioned -- well so does anyone else have
20 anything they'd like to add in terms of the analysis of the
21 standard. Okay. Then I will, as I mentioned, make a motion
22 and also hold the record open, Mr. Moy, for something from
23 the Architect of the Capitol, and if it turns out that that
24 is something that they are in -- have some concerns about,
25 then we would go ahead and probably reopen the record.

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1 But at this point, I'll go ahead and make a motion
2 to approve Application No. 20168 as captioned and read by the
3 Secretary, including the condition that no amplified music
4 be permitted on the penthouse rooftop terrace addition and
5 ask for a second.

6 MR. MOY: Second.

7 CHAIR HILL: The motion made and seconded. All
8 those in favor say aye.

9 (Chorus of ayes.)

10 CHAIR HILL: All those opposed?

11 (No response.)

12 CHAIR HILL: The motion passes Mr. Moy.

13 MR. MOY: Staff would record the vote as 4 to 0
14 to 1. This on the motion of Chairman Hill to approve the
15 application for the relief requested, as well as to
16 conditions as cited in the Chair's motion. Seconding the
17 motion is Ms. John. Also in support Vice Chair Hart and
18 Zoning Commissioner Peter May. No other members present.

19 CHAIR HILL: Okay. I see the applicant is kind
20 of walking forward. Again, since we are in a meeting case
21 situation, we don't take any testimony. However, if you do
22 have a question for the Secretary, might as well go ahead and
23 ask him now and see if there's anything that he has.

24 (Pause.)

25 Closed Meeting Vote

1 CHAIR HILL: All right. Let's see. As Chairman
2 of the Board of Zoning Adjustment of the District of
3 Columbia, and in accordance with 405(c) of the Open Meetings
4 Act, I move that the Board of Zoning Adjustment hold closed
5 meetings by telephone conference at 3:00 p.m. on the
6 following Monday dates: On the Mondays from January 13th,
7 2020 through July 27th, 2020.

8 The purpose of the closed meetings will be to
9 receive legal advice from the Board's counsel and to
10 deliberate but not vote on the contested cases per Section
11 405(b)(4) and (13) of the Act, D.C. Official Code Section 2-
12 575(b)(4) and (13), scheduled for the Board's public meeting
13 and/or hearing the following Wednesday.

14 Per D.C. Official Code Section 1-207.42(a), no
15 resolution, rule, act, regulation or other official action
16 shall take place except at an open public meeting. The
17 closed meeting will be electronically recorded pursuant to
18 D.C. Official Code Section 2-578(a). Is there a second?

19 VICE CHAIR HART: Second.

20 CHAIR HILL: Mr. Secretary, the motion has been
21 made and seconded. If you could please take roll call vote,
22 and if you could also post the dates and times of the
23 meetings in the Office of Zoning.

24 MR. MOY: Yes sir. Thank you, Mr. Chairman. When
25 I call a member's name, if you would please reply with a yes

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1 or no. Ms. John.

2 MEMBER JOHN: Yes.

3 MR. MOY: Zoning Commissioner Peter May?

4 ZONING COMMISSIONER MAY: Yes.

5 MR. MOY: Vice Chair Hart?

6 VICE CHAIR HART: Yes.

7 MR. MOY: Chairman Hill?

8 CHAIR HILL: Yes.

9 MR. MOY: And I believe that's a quorum of the
10 roll call vote sir.

11 CHAIR HILL: Okay. As it appears the motion has
12 passed, I request that the Office of Zoning provide notice
13 of this closed meeting in accordance with the Act, by posting
14 those times as I have mentioned in the Office of Zoning, and
15 all right. So I believe that's all there is. So the motion
16 has been made, seconded and passes, Mr. Moy.

17 And so is there anything else that is before the
18 Board today?

19 MR. MOY: The only thing sir, is that on behalf
20 of the BZA staff and the staff of the Office of Zoning, we
21 wish the Board a very merry and happy and safe holidays.

22 CHAIR HILL: Thank you, and I would also second,
23 the Board vice-versa, which is the staff of the Board of
24 Zoning Adjustment and the Office of Zoning a very happy, safe
25 and wonderful New Year, and we'll see you in the New Year,

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1 and OAG, and OAG. We wish OAG a happy, healthy New Year.
2 Amen. All right. We stand adjourned.

3 (Whereupon, the above-entitled matter went off the
4 record at 3:11 p.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: 12-18-19

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.



Court Reporter

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