

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

JUNE 24, 2020

+ + + + +

The Regular Public Meeting convened via Video-
Teleconference, pursuant to notice at 9:30 a.m. EDT,
Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

ROBERT MILLER, Vice Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

DANIEL BASSETT, ESQ.
JACOB RITTING, ESQ.

The transcript constitutes the minutes from the
Public Meeting held on June 24, 2020.

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

9:40 a.m.

1
2
3 CHAIRPERSON HILL: The meeting will please come
4 to order. Good morning ladies and gentlemen. We're convened
5 and broadcasting this decision meeting by video conferencing.

6 This is the June 24, 2020 public meeting session
7 of the Board of Zoning Adjustment of the District of
8 Columbia. My name is Fred Hill, Chairperson. Joining me is
9 Carlton Hart, Vice Chair, and Lorna John, a Board Member.
10 And representing the Zoning Commission is Rob Miller and
11 Anthony Hood during the day.

12 Today's meeting agenda is available to you on the
13 Office of Zoning website. Please be advised that the
14 proceeding is being recorded by a court reporter and is also
15 webcast live via Webex and YouTube Live. The video will be
16 available on the Office of Zoning's website after today's
17 hearing session.

18 Accordingly, everyone who is listening on Webex
19 or by telephone will be muted during the meeting. We do not
20 take any public testimony at our decision meetings, unless
21 the Board asks someone to come forward.

22 If you are experiencing difficulty accessing Webex
23 or with your telephone call in, please call our OZ hotline
24 number. And I'll repeat the number, at (202) 727-5471. Once
25 again, that's (202) 727-5471, to receive Webex log in or call

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1 in instructions.

2 At the conclusion of this meeting session, I will,
3 in consultation with the Office of Zoning, determine whether
4 a full or summary order may be issued. A full order is
5 required when a decision that it contains is adverse to a
6 party, including an affected ANC.

7 A full order may also be needed if the Board's
8 decision differs from the Office of Planning's
9 recommendation. Although the Board favors the use of summary
10 orders whenever possible, an applicant may not request the
11 Board to issue such an order.

12 Preliminary matters are those which relate to
13 whether a case will or should be heard today, or set for a
14 postponement, continuance or withdrawal, or whether proper
15 and adequate notice of the meeting has been given. Mr.
16 Secretary, do we have any preliminary items for the meeting
17 agenda portion?

18 MR. MOY: Good morning, Mr. Chairman, members of
19 the Board. I do have, very quickly, a quick announcement for
20 a decision case that was originally scheduled for today, June
21 24. That is Case Application Number 20230, 3232 13th Street,
22 Northwest, LLC. The decision has been rescheduled to July
23 1.

24 Other than that, there are a couple of preliminary
25 matters. But the Board can address those when I call the

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1 case.

2 CHAIRPERSON HILL: Okay. All right. Mr. Moy, if
3 you can call our first case then?

4 MR. MOY: That would be Application Number 20163
5 of 719 Sixth Street, LLC, as amended for a special exception
6 under Subtitle E, Section 5201 from the rear addition
7 requirements, Subtitle E, Section 205.4 from the lot
8 occupancy requirements, Subtitle E, Section 304.1 to
9 construct a three-story rear addition to an existing attached
10 principal dwelling unit in an RF-1 zone at premises 719 Sixth
11 Street, Northeast, Square 859, Lot 121.

12 And participating on this decision, Mr. Chairman,
13 is yourself, Vice Chair Hart, Ms. John, and Zoning
14 Commissioner Michael Turnbull.

15 CHAIRPERSON HILL: Okay. Okay, are you all ready
16 to deliberate? I'm going to try to do this a little bit
17 differently because of the video call. I'm going to go
18 around the horn. And so I'm going to start with you, Mr.
19 Hart.

20 VICE CHAIRPERSON HART: That's fine. Thank you.
21 So, yeah, this case was interesting to say the least. We had
22 a case that was really two special exceptions, for this rear
23 addition and for lot occupancy requirements.

24 And they're looking to construct a three-story
25 rear addition to an attached principal dwelling. The ANC was

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1 in opposition to this. The OP, the Office of Planning was
2 in support of it. The opposition from the ANC, they raised
3 a number of issues regarding the impacts of light and air to
4 adjacent property owners. They also noted that they believed
5 that the -- they were concerned about some of the information
6 that was being submitted.

7 In particular, they just thought that the, that
8 the Applicant was not very truthful in their kind of whole
9 process. And they felt that they didn't want to reward that,
10 I guess.

11 I understand that there are these accusations
12 about the Applicant, and you know, about the project. But,
13 really, the Zoning Regulations, they deal with the issues of
14 light and air, and impacts on light and air, impacts on
15 privacy, and visual character.

16 I thought that -- after reviewing the record, I
17 thought that the Applicant had provided the sufficient
18 information to show that they would not unduly impact
19 neighboring properties.

20 They -- with regard to light and air, they
21 provided a shadow study. That was submitted in Exhibit 63C.
22 I believe that demonstrates the light and air to the
23 neighboring property to the north would not be unduly
24 impacted. Yes, there's going to be some impact. I'm not
25 denying that. But I just don't think that that is really an

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1 undue impact on that neighbor.

2 It was helpful to have the -- or the matter of
3 right condition as well as the, what was being, what, I
4 guess, what had already been built. I understand that there
5 were some concerns about privacy, and I'll note that the
6 immediate neighbor submitted statements in support of the
7 application. And they, you know, described no interference
8 with the use and enjoyment of their property.

9 The rear addition -- regarding visual character,
10 the rear addition would not be visible from the street. And
11 the extra three feet would really -- it really didn't show
12 to me that it was going to be visually intrusive on the
13 property.

14 While I understand the points raised by the ANC,
15 and they may actually well be correct in their -- what they
16 said about the Applicant. But the plans that we have before
17 us show that the project will, while it will impact the
18 neighboring properties, I don't believe that it would be an
19 undue impact.

20 The only job, really, I felt that we had to do,
21 was to -- sorry, the only job that I think the Applicant had
22 to do was to show whether or not it had provided sufficient
23 information for us to be able to support the requested
24 relief. And I felt that they did that.

25 So while I understand that the ANC has some

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1 objection to what had -- the process that had been go -- that
2 it had gone through, because, you know, the Applicant had
3 actually already built this. I just -- I think that the
4 actual impacts were not sufficient for me to be able to deny
5 the application. So, that's where I am. Thank you.

6 CHAIRPERSON HILL: Okay. Thank you, Mr. Hart.
7 Ms. John?

8 MEMBER JOHN: So Mr. Hart did such an excellent
9 job of summarizing all of the issues. And so I support all
10 of his comments, particularly with respect to the ANC, that
11 even though the ANC had issues with potential impacts on
12 light and air, I thought that the matter of right option, to
13 me, clearly showed that there was no undue or adverse impact
14 on the two adjoining neighbors who also are in support of the
15 application.

16 And so for all of the reasons that Mr. Hart has
17 testified, based on the full record, I can support this
18 application.

19 CHAIRPERSON HILL: Okay. Thank you, Ms. John.
20 I guess I have -- I don't really have anything to add, other
21 than I would agree with everything that all of my colleagues
22 had said, and also that it is obviously disappointing when
23 we're not in agreement with the ANC. But I did think that
24 the additional three feet of shadowing from the matter of
25 right was not undue.

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1 And also, I would agree with the analysis the
2 Office of Planning had provided in their response. And also
3 that the two adjoining neighbors also did not think that the
4 additional shadowing was undue. They were in support of the
5 application.

6 So, I'm going to go ahead and make a motion. And
7 Ms. John, since your microphone is on, if you wouldn't mind
8 if you would second. I make a motion to approve Application
9 Number 20163 as captioned and read by the Secretary, and ask
10 for a second.

11 MEMBER JOHN: Second.

12 CHAIRPERSON HILL: Mr. Moy, the motion has been
13 made and seconded. Could you please take a roll call vote?

14 MR. MOY: Yes, thank you, Mr. Chairman. So, when
15 I call your name, if you would please respond with a yes, no,
16 or abstain.

17 Ms. John?

18 MEMBER JOHN: Yes.

19 MR. MOY: Vice Chair Hart?

20 VICE CHAIRPERSON HART: Yes.

21 MR. MOY: Chairman Hill?

22 CHAIRPERSON HILL: Yes.

23 MR. MOY: And before I give a final vote count,
24 of course I have an absentee ballot from Michael Turnbull.
25 And his vote is to approve the application. He does have a

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1 comment, which I would like to read into the record, if
2 that's okay with you, Mr. Chairman?

3 CHAIRPERSON HILL: Yes, please, Mr. Moy.

4 MR. MOY: Okay. It reads as quote, although the
5 ANC has voted not to approve this case, the Office of
6 Planning recommends approval. And both neighbors, on either
7 side of the Applicant, have written letters of support. And
8 the special exception relief is de minimis.

9 So, that would give a final vote, Mr. Chairman,
10 of four to zero to one. This is on your motion, Chairman
11 Hill, seconded by Ms. John. Also in support Vice Chair Hart,
12 and of course Zoning Commissioner Michael Turnbull, and I
13 have a seat vacant.

14 The motion carries, sir.

15 CHAIRPERSON HILL: Thank you, Mr. Moy. And
16 whenever you're ready, Mr. Moy, you can read our next
17 decision case.

18 MR. MOY: Okay. That would be Case Application
19 Number 20198 of Mehmet Ogden. Captioned and advertised for
20 a special exception under the RF use requirements of Subtitle
21 U, Section 320.2, to convert a one family dwelling into a
22 three-unit apartment house in the RF-1 Zone at 612 Randolph
23 Street, Northwest, Square 3233, Lot 102.

24 CHAIRPERSON HILL: Okay. Thank you. As before,
25 if I might please just go around the table. Mr. Hart, do you

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1 have anything you'd like to begin with a discussion?

2 VICE CHAIRPERSON HART: I would just say that I
3 appreciate the Applicant providing us with further
4 information about the application. I would be able to
5 support it. They're really only seeking relief because
6 conversion -- because they are converting to an apartment
7 house. And that requires this. They are within the matter
8 of right height limit at 35 feet. They are under the number
9 of four units. So, no, there are no IZ requirements.

10 And they have the -- they're over the nine hundred
11 square feet of land per unit requirement as well. And, you
12 know, they're really looking to convert this one-family row
13 dwelling into a three-apartment, a three-unit apartment
14 house. And you know, and I just think that everything else
15 seems to be within the Zoning Regulations. And they really,
16 are really looking to -- they have to come to us because of
17 the conversion issue.

18 And I just thought that I would be able to support
19 the application because I thought they, you know, met the
20 requirements. I understand the ANC has provided some
21 concerns, or I should say, conditions, excuse me, with regard
22 to the application.

23 And we can talk about -- I'm not going to go
24 through those in general. I think that they may actually
25 kind of go beyond our scope. But I can, you know, we can

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1 talk about them in more detail. But, that's it for me.

2 CHAIRPERSON HILL: Okay. Mr. Hart, just to cut
3 to that chase real quick, and then I'll go to Ms. John. I
4 mean, I think that those conditions are outside of our
5 purview, but the Applicant did agree to them. And so that's
6 something that is now between the ANC and the Applicant.

7 VICE CHAIRPERSON HART: Yep.

8 CHAIRPERSON HILL: Ms. John, would you like to add
9 something to the discussion?

10 MEMBER JOHN: Just briefly, that this is a
11 straightforward conversion, and I agree with everything that
12 you and Mr. Hart have said.

13 CHAIRPERSON HILL: Okay.

14 MEMBER JOHN: And I support the application.

15 CHAIRPERSON HILL: All right. Thank you. I mean,
16 I also do agree with the comments that Mr. Hart has added,
17 as to you as well, Ms. John.

18 And that the -- they're here for a conversion.
19 And I believe they meet the special exception criteria under
20 U 320.2. So -- as well as the special exception general
21 criteria of X 901.2.

22 And then the Office of Planning has provided their
23 analysis in support, and that as was mentioned earlier, the
24 ANC had also supported the application. And there are some
25 agreements that the ANC and the property owner -- or the

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1 developer have agreed to.

2 So, with that, I'll go ahead, and Ms. John, since
3 your microphone is on again, if you wouldn't mind helping us
4 with a second. I'm going to make a motion --

5 MEMBER JOHN: Mr. Chairman? Mr. Chairman?

6 CHAIRPERSON HILL: Yes?

7 MEMBER JOHN: Have we heard from Mr. Miller?

8 CHAIRPERSON HILL: Oh, I'm sorry. I don't think
9 -- I didn't know Mr. Miller --

10 COMMISSIONER MILLER: I'm on the case. Thank you,
11 Ms. John. Thank you, Mr. Chairman. I concur with my
12 colleagues.

13 CHAIRPERSON HILL: Thank you. I realized that I
14 know the Chairman -- Commissioner Turnbull was on the last
15 one. I apologize, Commissioner Miller.

16 I will go ahead and make a motion to approve
17 Application Number 20198 as captioned and read by the
18 Secretary, and ask for a second.

19 MEMBER JOHN: Second.

20 CHAIRPERSON HILL: The motion has been made and
21 seconded. Mr. Moy, could you please take a roll call vote?

22 MR. MOY: Thank you, Mr. Chairman. When I call
23 your name, if you would please respond with a yes, no, or
24 abstain.

25 Ms. John?

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1 MEMBER JOHN: Yes.

2 MR. MOY: Vice Chair Hart?

3 (No response)

4 MR. MOY: Mr. Hart?

5 VICE CHAIRPERSON HART: Sorry. I just realized
6 that my mute was on. Yes.

7 MR. MOY: Zoning Commissioner Rob Miller?

8 COMMISSIONER MILLER: Yes.

9 MR. MOY: Chairman Hill?

10 CHAIRPERSON HILL: Yes.

11 MR. MOY: We have a Board seat vacant. But the
12 vote count is four to zero to one on your motion, Mr.
13 Chairman, seconded by Ms. John. Also in support, Vice Chair
14 Hart, Zoning Commissioner Rob Miller, and the Board seat
15 vacant.

16 Motion carries, sir.

17 CHAIRPERSON HILL: Thank you, Mr. Moy.

18 Mr. Moy, feel free to call our next one when
19 you're ready.

20 MR. MOY: Thank you, Mr. Chairman. Of the
21 remaining decision cases, Rob Miller is participating on all
22 of these, Mr. Chairman.

23 CHAIRPERSON HILL: Thank you, Mr. Moy.

24 MR. MOY: So next is 20209 of Uzoma Ogbuokiri, O-
25 G-B-U-O-K-I-R-I, as amended for special exceptions under

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1 Subtitle D, Section 5201, from occupancy requirements,
2 Subtitle D, Section 304.1, side yard requirements, Subtitle
3 D, Section 206.7, Subtitle U, Section 253.10, from the
4 accessory apartment requirements of Subtitle U, Section
5 253.7(c), to construct a three-story rear addition to an
6 existing semidetached principal dwelling unit, R-2 Zone.
7 This is at 7521 9th Street, Northwest, Square 2961, Lot 18.

8 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy. As
9 before, may I go around the horn and start with you, Mr.
10 Hart?

11 VICE CHAIRPERSON HART: Sure. So, this was a
12 case, or is a case where the Applicant is seeking relief from
13 lot occupancy requirements, from side yard requirements, and
14 from accessory apartment requirements in the Zoning
15 Regulations.

16 I didn't -- I had a few questions for the
17 Applicant during the hearing. I did not have -- I thought
18 that they answered them, you know, very well, and I didn't
19 really have any further questions or comments on it.

20 Regarding the relief requested, I felt that they
21 met the Zoning Regulations and the criteria within the Zoning
22 Regulations. They have several letters of support for the
23 application. The ANC is in support as well as the Office of
24 Planning is in support. They have their report in Exhibit
25 55.

1 And it is, I thought that they were trying to do
2 this project, it seems, so that they can have a unit -- a
3 dwelling unit for their elderly parent. And I thought that
4 was, you know, that was fine. Again, I didn't really have
5 too much else to say on it. I thought that they met the
6 Zoning Regulation requirements or criteria.

7 And I would be in support of the application. I
8 did have some kind of questions about the rear of the
9 building, or the backyard of the building, but they provided
10 that information. So I didn't have any other questions or
11 concerns about the project. So -- that's it.

12 CHAIRPERSON HILL: Okay. Thank you. Ms. John?

13 MEMBER JOHN: So I agree with what Mr. Hart has
14 said. There were some neighbors in opposition, but on
15 balance, I thought the Applicant made a good showing that
16 there would be no adverse impact on the neighbors.

17 And the -- except for the relief that the
18 Applicant requested, the application meets all of the other
19 conditions, the development conditions. And so, I can
20 support this application.

21 CHAIRPERSON HILL: Thank you, Ms. John.
22 Commissioner Miller?

23 COMMISSIONER MILLER: Thank you, Mr. Chairman.
24 I concur with my colleagues. As Ms. John noted, there was
25 some neighborhood opposition about the addition being out of

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1 character with other -- the block.

2 But it is within the matter of right height. And
3 it's a corner lot, which -- if you're going to have one home
4 that's higher than other homes, even though it's within
5 matter of right, the corner is the -- almost the perfect
6 place to put such a more prominent structure. So anyway, I
7 think there's not an undue adverse impact. And OP is
8 supportive, and I am as well.

9 CHAIRPERSON HILL: Okay. Thank you, Commissioner.
10 And as you added, thank you for noting the corner lot that
11 you're speaking to, that you brought up during the hearing.

12 And that also it is disappointing that, you know,
13 there was obviously opposition. And I do think, however,
14 that I would agree with my colleagues that the Applicant has
15 met the burden with which to approve this application.

16 So I'm going to go ahead and make a motion to
17 approve Application Number 20209, as captioned and read by
18 the Secretary, and ask for a second?

19 MEMBER JOHN: Second.

20 CHAIRPERSON HILL: Thank you, Ms. John. Mr. Moy,
21 the motion has been made and seconded. Can you please take
22 a roll call vote?

23 MR. MOY: Okay. Ms. John?

24 MEMBER JOHN: Yes.

25 MR. MOY: Vice Chair Hart?

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1 VICE CHAIRPERSON HART: Yes.

2 MR. MOY: Zoning Commissioner Rob Miller?

3 COMMISSIONER MILLER: Yes.

4 MR. MOY: Chairman Hill?

5 CHAIRPERSON HILL: Yes.

6 MR. MOY: Now the motion was by Chairman Hill and
7 seconded by Ms. John. And we'll record the vote as four to
8 zero to one. This is on the motion, as I said, of Chairman
9 Hill, seconded by Ms. John and also supported by Vice Chair
10 Hart and Zoning Commissioner Miller. We have a Board seat
11 vacant. The motion still carries as four to zero to one, Mr.
12 Chair.

13 CHAIRPERSON HILL: Thank you, Mr. Moy. Whenever
14 you have an opportunity, Mr. Moy, you may call our next case.

15 MR. MOY: Okay. I do. So before you is 20240 of
16 Schmidt Development, LLC, as amended, for special exceptions
17 under the residential conversion -- residential conversion
18 regulation, Subtitle U, Section 320.2, with waivers from the
19 rear addition requirements of Subtitle U, Section 320.2(e),
20 rooftop architectural requirements of Subtitle U, Section
21 320.2(h), and under Subtitle U, Section 301.1(g), from the
22 requirements of Subtitle U, Section 301.1(c)(2), and under
23 Subtitle E, Section 5201 from the accessory building lot
24 occupancy provisions, Subtitle U, Section 5003.1, and
25 pursuant to Subtitle X, Chapter 10 for area variance from the

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1 accessory building access requirements of Subtitle U, Section
2 301.1(c)(4).

3 This would construct a third story and a rear
4 addition to convert a single family, one unit, into two
5 dwelling units, and to expand an accessory building for a
6 third residential unit. RF-1 Zone, 1130 K Street, Southeast,
7 Square 1046, Lot 145.

8 CHAIRPERSON HILL: Thank you, Mr. Moy. Mr. Hart,
9 may I begin with you again?

10 VICE CHAIRPERSON HART: Sure.

11 CHAIRPERSON HILL: I like this new arrangement,
12 Mr. Hart. I got to tell you.

13 VICE CHAIRPERSON HART: Really?

14 CHAIRPERSON HILL: Yeah.

15 VICE CHAIRPERSON HART: So, what do you like about
16 it, Mr. -- Chair Hill?

17 (Laughter.)

18 VICE CHAIRPERSON HART: So, what do you think?
19 Thank you. Yeah. This was an interesting one. They were
20 looking, as you've heard from the Secretary, Secretary Moy,
21 there is a lot of -- there's a lot to this caption.

22 They were seeking relief from a number of aspects
23 of the Zoning Regulations. The Office of Planning report was
24 in support of the application for both the special exception
25 relief, which was a number of -- I'm not going to read all

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1 that, but a number of relief for that for apartment house
2 conversion, building expansion, and building lot occupancy,
3 accessory building expansion and accessory building lot
4 occupancy, and then also looking for variance relief for the
5 permanent access for an accessory building, as well as some
6 waivers for the rear addition and rooftop upper floor
7 additions. So there was quite a bit of relief that was being
8 sought for the application.

9 I think I, after hearing the case and reviewing
10 the record, I think I can be in support of the application.
11 I think that -- and I'd like to hear your take on it as well.

12 I think that the only part of this that was -- I
13 don't want to say problematic -- the only part of this that
14 was, that I needed to hear a little bit more information
15 around, was the variance relief.

16 And -- but I had heard quite a bit of information.
17 This, you know, what they were -- they started talking about
18 the alley and the alley width, and the inability to be able
19 to increase the alley width size at their location. And this
20 is just because of, I don't know, it was somewhat problematic
21 because of what was happening to some other property that was
22 directly behind them.

23 And it was kind of interesting also that there was
24 another alley that was actually a -- that was right next to
25 it that was actually the -- and a size that was large enough

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1 to be able to not require the relief.

2 So the -- I guess the exceptional condition that
3 we're talking about is really about their property in that
4 they were the only ones that were having to deal with that
5 particular issue. But anyhow, I just thought that they were
6 able to show how they were meeting the variance relief. I
7 was -- I think I would be able to support the application.

8 Sorry, I feel like I'm going all over the place
9 with this. It seemed like there was a lot of relief to kind
10 of go through. I'll stop here, and then see if anyone else
11 has comments on this as well.

12 CHAIRPERSON HILL: Okay. Ms. John, would you like
13 to go?

14 MEMBER JOHN: So, I agree that although there are
15 several areas of relief requested, I think the most
16 significant one was the request for variance because of the
17 alley access. And the accessory structure is -- facing the
18 alley is straightforward, except that the alley is too narrow
19 and does not meet the regulation.

20 And I believe Mr. Hart talked about how the
21 accessory structure was situated in such a way that it would
22 be difficult to change the configuration, you know, of the
23 accessory structure, and to widen, you know, to provide a
24 bigger set back. And the Applicant provided information on
25 a grassy lot that was next to the accessory structure, which

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1 was very -- was something that the Applicant had no control
2 over.

3 So I think that all of those conditions suggest
4 that there's an exceptional condition. And I would be
5 comfortable with the variance and -- on that basis. And
6 there was also testimony that FEMS had no objection, F-E-M-S
7 or FEMS had no objection. And OP also provided an in-depth
8 analysis of each and every area of relief requested.

9 There was a waiver of two conditions in U 320.2,
10 which would be the ten-foot pass for their spare wall of the
11 adjoining building. And special exception relief, which is
12 a standard special exception relief of a conversion.

13 So I would just wait for OP's analysis. And there
14 was testimony from a neighbor. And I believe she showed
15 video of the location of the project to her window. Even
16 though it's good to have videos, it was difficult for me to
17 understand where she was in relation to the project. And so
18 for me, that video was not very useful except to say that the
19 neighbor objected to the bulk of the building.

20 So I would like to hear what others think about
21 it. But I can support the waiver request, which is, I think,
22 the most significant aspect of this application.

23 CHAIRPERSON HILL: Okay. Thank you, Ms. John.
24 Commissioner Miller?

25 COMMISSIONER MILLER: Thank you, Mr. Chairman.

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1 I again concur with all of the comments of my colleagues, and
2 just note that in addition to the Office of Planning
3 recommendation of approval of all of these special exceptions
4 and the waiver, and the variance for broadening the alley
5 width, we also have the recommendation to support from the
6 Advisory Neighborhood Commission 6B, which, along with OP,
7 noted the -- that all of this facilitates the creation of
8 three family-sized units on the property without substantial
9 impact, adverse impact to the surrounding neighborhood. So
10 I am in support of this case.

11 CHAIRPERSON HILL: Okay. Great. Thank you. I
12 have really nothing to add. I mean, I think that they have
13 met the criteria for us to grant the application. I thought
14 that again, the variance standard has been met. And I will
15 rest on what my colleagues have also commented upon, as well
16 as the analysis from the Office of Planning, as Commissioner
17 Miller had mentioned, also the analysis from the ANC in
18 support, as well as then DDOT didn't have any objection.

19 I am disappointed that, you know, there was some
20 community opposition. However, I do think that they've met
21 the criteria for us to grant the requested relief, albeit
22 there being quite a few things that they needed to request
23 in order to make use of this property.

24 So, I'm going to go ahead and make a motion to --
25 oh, Mr. Miller?

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1 COMMISSIONER MILLER: Yeah. I just want reiterate
2 what I think Board Member John stated, which was that the
3 Fire and Emergency Medical Services Department has submitted
4 a letter saying that there would be adequate sufficient alley
5 access for emergency service of the property.

6 That was a condition that OP -- a favorable
7 recommendation was contingent upon. And so -- and the ANC
8 also noted that that was important, the support of FEMS.

9 CHAIRPERSON HILL: Thank you, Commissioner Miller.
10 So I'll go ahead and make a motion to approve Application
11 Number 20240, as captioned and read by the Secretary, and ask
12 for a second.

13 MEMBER JOHN: Second.

14 CHAIRPERSON HILL: Mr. Moy, the motion has been
15 made and seconded. Can you please take a roll call vote?

16 MR. MOY: Yes. Thank you. When I call your name,
17 if you would please respond with a yes, no, or abstain. Ms.
18 John?

19 MEMBER JOHN: Yes.

20 MR. MOY: Vice Chair Hart?

21 VICE CHAIRPERSON HART: Yes.

22 MR. MOY: Zoning Commissioner Rob Miller?

23 COMMISSIONER MILLER: Yes.

24 MR. MOY: Chairman Hill?

25 CHAIRPERSON HILL: Yes.

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1 MR. MOY: So, I believe the vote count is four to
2 zero to one. This is on the motion of Chairman Hill,
3 seconded by Ms. John, also in support Vice Chair Hart and
4 Zoning Commissioner Rob Miller. We have a Board seat vacant.

5 The motion carries, sir.

6 CHAIRPERSON HILL: Thank you, Mr. Moy. And
7 whenever you're ready, Mr. Moy, feel free to call the next
8 case.

9 MR. MOY: That would be before the Board
10 Application Number 20231 of 5022 Cathedral, LLC, caption
11 advertised for a variance from the side yard requirements of
12 Subtitle D, Section 206. This would replace the existing
13 building with a two-story detached principal dwelling, R-1B
14 Zone at 5022 Cathedral Avenue, Northwest, Square 1439E, Lot
15 6.

16 CHAIRPERSON HILL: All right. Thank you, Mr. Moy.
17 Mr. Hart, we can try this a different way another time.

18 VICE CHAIRPERSON HART: That's fine. Don't worry
19 about it.

20 CHAIRPERSON HILL: I got to tell you, like it is,
21 it is different from what we've been doing for a while. And
22 it does allow me at least an opportunity to get a little bit
23 better organized --

24 VICE CHAIRPERSON HART: Yeah.

25 CHAIRPERSON HILL: -- while we're pulling up

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1 Exhibits and such. But this one was a little bit more
2 tricky. But, please, if you would, go ahead and begin the
3 discussion.

4 VICE CHAIRPERSON HART: Yeah. This is definitely
5 a more tricky in that they are seeking variance -- variance
6 relief and from the side yard requirements. It's an odd one.
7 And it's probably made odder because the Applicant either
8 owns or controls both this property and Lot, what is it, 6
9 or 7? Excuse me. It's Lot 7.

10 And the part that is a little bit difficult for
11 me for this case really has to do with the exceptional
12 condition aspect of this. And we probed this somewhat during
13 the public hearing, asking the Applicant whether or not, or
14 the architect, I guess, whether or not the building could be
15 placed in a different location, it could be moved back, that
16 would not require a variance.

17 I will also note that OP has, in their report,
18 they are in support of this application as well as the ANC.
19 The ANC had some conditions on their approval. But they were
20 -- they were in support of it.

21 So, one of the questions that I had was, well, why
22 not just of the flagged lot, the Lot 7 that's behind there,
23 just give up some of the property so that you can actually
24 have -- instead of having that odd parcel that, you know, is
25 a diagonal in front of the house, why not just have that

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1 straight so that you can just go to the, go to Cathedral
2 Avenue?

3 The Applicant, or the architect, Mr. Ballard, he
4 basically said that the flagged lot needed that alley, that
5 road, that street access -- frontage, that amount for street
6 frontage. So you really weren't able to decrease the amount
7 of that street frontage for Lot 7 to not have -- so that you
8 would not have the issue on Lot 6.

9 And so the other question was whether or not the
10 building could be pushed back. So this was a little bit
11 tricky in that if the building is pushed back, really any
12 push back, any, it then starts to encroach upon the building
13 that is, I guess, going to be placed behind it.

14 So there was going to be another, there is going
15 to be another house placed back there. So the question then
16 becomes, do we believe that that is -- that that encroachment
17 is problematic in itself? So we start looking at things like
18 well, what about the rear, for Lot 6, the rear yard
19 requirement, the rear yard setback requirement, and what does
20 that tell us?

21 Well, there's about 30, it's a little less than
22 35 feet of area behind the -- that, the building that's
23 being, that's before us. It could be moved back. So, in
24 reality, the building could be moved back or it could be
25 designed so that it was moved back up to about 10 feet,

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1 almost 10 feet from where it is right now.

2 And that actually may allow it to -- because of
3 the setback requirements for the rear of Lot 6, and I know
4 that all of this is kind of, you know, a lot of confusion for
5 some of this to follow all of that issue. But it then
6 becomes, is it, does it make sense to move the building back
7 so that there isn't a variance request that is necessary?

8 And I'm -- I struggled with this, I have to admit.
9 You know, the exceptional condition aspect of the variance
10 request, or the three prongs, the exceptional condition is
11 that it -- the building is somewhat hemmed in. It's not a --
12 it's somewhat of an irregular sized lot that you have to
13 conform to this zoning by pushing the building back some, to
14 allow the side yard setback.

15 It's a side yard setback from kind of an angled
16 part of the property, which in itself is a little bit odd.
17 So the exceptional condition, I think there can be an
18 argument that can be made for it.

19 I would like to hear from our resident lawyer, if
20 we -- from Board Member John, if we could, what her thoughts
21 are on this as well. As well as Commissioner Miller, who I
22 understand is also an attorney.

23 So, if you could provide your thoughts on that,
24 that would be helpful for me. Right now I'm leaning towards
25 being okay with it. I think that it is -- it's not a

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1 straightforward kind of case that we've had now -- this is,
2 I guess, the fourth or fifth case that we've heard today.

3 So that's where I am. A little bit of confusion.
4 But I think that I'd be able to support it.

5 CHAIRPERSON HILL: Okay.

6 MEMBER JOHN: So, I struggled with this
7 application as well. And I'm looking at the PowerPoint
8 presentation at Exhibit 48, which clearly shows the angle of
9 the driveway for Lot 7. And it shows where the side yard
10 measurements cannot be met.

11 And so when I first looked at this case, I said
12 wait, that's an exceptional condition. It's an irregularly
13 shaped lot and we're looking at an area variance. And then
14 during the hearing, we heard testimony that the house could
15 be pushed back and still have enough room to meet the rear
16 yard setback. And so, you know, I don't know, then, if we
17 can say that there is an exceptional condition because the
18 house can be set back 10 feet, and would not need the
19 variance.

20 Now, that doesn't mean that the design described
21 in Exhibit 48 might not be the better design in terms of
22 meeting the character of the neighborhood. And the neighbor
23 to the, as I am facing, I think it was to the right, the
24 neighbor who testified eventually said that he would be in
25 support of having the building in its present location.

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1 So I would also like to hear from other Board
2 Members, because I'm sort of on the fence with this. I don't
3 think it's very strong case for a variance. But I can
4 understand, you know, why we have this proposal. So I'm on
5 the fence. I can be persuaded.

6 CHAIRPERSON HILL: Commissioner Miller?

7 COMMISSIONER MILLER: Thank you, Mr. Chairman.
8 I would generally concur with all of the comments of my
9 colleagues thus far, and just note the favorable
10 recommendation from the Office of Planning and Advisory
11 Neighborhood Commission 3D. And I think it's worth quoting
12 from the OP report on the first condition regarding the
13 exceptional situation for the variance from the side yard.

14 It's on page two of their report. The lot is 45
15 feet long in front along Cathedral Avenue, which is narrower
16 than the Zone's 50-foot minimum lot width. As revised, the
17 proposed house would generally provide the required side
18 yard. The width of the property is narrowed on its western
19 side by the driveway apron for Lot 7, which is a pipestem
20 lot.

21 At the front of the subject lot, the width is
22 further narrowed where the driveway for Lot 7 widens at the
23 street. Therefore, the Applicant is requesting relief to
24 provide no side yard at this front corner of their lot where
25 it intersects with Lot 7's driveway apron.

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1 So, I interpret that myself to be a confluence of
2 factors that leads to this exceptional situation. And this
3 driveway apron essentially is providing that side yard kind
4 of buffer.

5 And then I would just quote -- I think it's worth
6 quoting, from ANC 3D's March 4 letter of unanimous support.
7 Complying with the code at this section of the side lot line
8 would require the proposed home, and this is something that
9 other Commissioners, I mean, other Board Members have noted,
10 that complying would require the proposed home to be built
11 considerably further into the lot than the Applicant's
12 current plans call for. It would disrupt this building line
13 along the street, which is already generous, and result in
14 less space, less light and privacy between the two proposed
15 new homes.

16 Instead, the ANC supports the application's
17 request for an area variance allowing only a 1.29-foot
18 setback of the home, closer to the point to that diagonal
19 sideline.

20 The Commission noted the following in reaching its
21 determination, one, optimizing space between the two planned
22 new homes on the subdivided lot is consistent with the Code's
23 intent. Two, relief applies only to the diagonal. The plan
24 respects an eight-foot setback from the straight section of
25 the line and maintains current distances between the new home

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1 and its existing neighbors.

2 Three, the Applicant has shared plans with
3 neighbors on all sides and has obtained written support for
4 relief from the BZA. And fourth, the neighbor to the east
5 has expressed to the ANC that setting the new homes further
6 back would result in less light and privacy between the
7 homes. So I thank you for your indulgence in letting me read
8 through both of those reports.

9 CHAIRPERSON HILL: No, Commissioner Miller, thank
10 you. That was very helpful. I mean, I'm going to side with
11 kind of Commissioner Miller's discussion in that, you know,
12 I agree with everything you've said.

13 That's why I kind of was saying it was kind of a
14 tricky one. But I think that what I'm going to kind of like
15 hang my hat on in the end, it's really kind of the flared
16 driveway at the end that's creating, you know, and the
17 confluence of factors that Commissioner Miller has mentioned,
18 that I can get behind this variance for this particular lot.

19 I'm not taking into the fact that it's a -- it
20 could be a better design, the two lots combined. That's not
21 why I'm looking at this. I'm looking at it really just for
22 that one particular lot. And why it would be -- why I could
23 get behind this application.

24 And again, it's probably the driveway is really
25 the thing that kind of set it off in the other direction for

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1 me. So I'm going to go ahead and make a motion and see what
2 happens. I'm going to make a motion to approve Application
3 Number 20231 as captioned and read by the Secretary, and ask
4 for a second?

5 VICE CHAIRPERSON HART: Second.

6 CHAIRPERSON HILL: A motion has been made and
7 seconded. All those in favor, Mr. Moy -- well, the motion
8 has been made and seconded. Mr. Moy, if you can please take
9 a roll call vote.

10 MR. MOY: Yes. Thank you, Mr. Chairman. When I
11 call your name, if you would please respond with a yes, no,
12 or abstain. Ms. John?

13 MEMBER JOHN: Can you hear me?

14 MR. MOY: Okay. I do now. Vice Chair Hart?

15 VICE CHAIRPERSON HART: Yes.

16 MR. MOY: Zoning Commissioner Rob Miller?

17 COMMISSIONER MILLER: Yes.

18 MR. MOY: Chairman Hill?

19 CHAIRMAN HILL: Yes.

20 MR. MOY: So, I believe that would give a
21 resulting vote of four to zero to one. This is on the motion
22 of Chairman Hill, seconded by Vice Chair Hart, also in
23 support Ms. John and Zoning Commissioner Rob Miller. We have
24 a Board seat vacant.

25 CHAIRMAN HILL: Mr. Moy, I didn't hear Ms. John's

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1 vote.

2 MEMBER JOHN: It was no.

3 CHAIRMAN HILL: Oh, it was no.

4 MR. MOY: No, okay. It was no.

5 MEMBER JOHN: Can you hear me? My mic is on.

6 CHAIRMAN HILL: Yes. We can hear you.

7 MR. MOY: Yes, I thought I caught it a different
8 way. But, okay. It's clear now.

9 So the vote count is three to one to one. This
10 is on the motion of Chairman Hill to approve, second is Vice
11 Chair Hart. Also in support Rob -- Zoning Commissioner Rob
12 Miller. Ms. John is opposed and we have a Board seat vacant.

13 So the vote count is three to one to one, Mr.
14 Chair.

15 CHAIRMAN HILL: Okay. Great. Thank you, Mr. Moy.
16 And Mr. Moy, you can call our next one when you get an
17 opportunity.

18 And I would like to thank my fellow Board Members
19 for that discussion on the last case on this. It was a nice
20 discussion.

21 MR. MOY: Okay. The case application before the
22 Board for a decision is Application Number 20178 of Murat
23 Kayali, K-A-Y-A-L-I. This application is captioned and
24 advertised for a special exception under the penthouse
25 requirements of Subtitle C, Section 1504.1, from the setback

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1 requirements of Subtitle C, Section 1502.1(a), Subtitle C,
2 Section 1502.1(b), and Subtitle C, Section 1502.1(c)(1)(A),
3 and pursuant to Subtitle X, Chapter 10, for a variance from
4 the maximum lot occupancy requirements of Subtitle F, Section
5 604.1 to construct a rear deck addition and an accessory
6 structure in the RA-8 Zone at 1738 Church Street, Northwest,
7 Square 156, Lot 313.

8 As a preliminary for the Board, as you know, in
9 the record, there was a filing from the Applicant yesterday,
10 June 23, as a preliminary matter, and its filings under
11 Exhibits 69, 70, 71, 72, and 73. And I believe it's the
12 Applicant's proposed amendment with revised plans in
13 reference to the lot occupancy requirements.

14 CHAIRPERSON HILL: Okay. All right. So, we're
15 going to have a little mini discussion here with the Board,
16 I guess.

17 And so, I guess I'm fine with this, right, okay?
18 Like, we can go ahead and I'd be fine with reopening the
19 record. And then I guess they want us to reopen the record.
20 They want to amend their application. They want to submit
21 revised plans.

22 And I don't know if the attorneys here -- and I
23 don't know if Dan or if Alex, you want to speak to any of
24 this in terms of the -- and then there's the motion to waive
25 the 40 day requirements.

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1 So, basically, and then I do want to speak to one
2 thing that the attorney has kind of put forward. I mean,
3 this was last week, and what has happened before in the past
4 when we were live, in person, and who knows when we're ever
5 going to be live again in person.

6 But sometimes there's discussion between the
7 architect and the attorneys and the client. And they all
8 kind of figure out a different way to do things. Right? And
9 so since we're not live, that opportunity is no longer there.
10 And so, then there was this virtual situation last week,
11 where it's not as easy to do when it's live and in person and
12 you're all sitting together at a table.

13 So for that reason, I would be open to reopening
14 the record so that we could take a look at this new proposal.
15 It is for less relief being requested, right, they're asking
16 for less relief. So that's something that I don't think
17 would have to go back to the ANC, because it's basically the
18 same project that they've looked at, except for this minor,
19 you know, this less relief, that's taking it from a variance
20 to a special exception.

21 So, I will find out from Mr. Moy in terms of the
22 timeline, if the Board decides to do this, and reopen the
23 record. So I'm in favor of what is being proposed by the
24 Applicant.

25 I will make one more statement. And this is for,

1 you know, the Board, and again, also the Applicant and the
2 attorney. I mean, I've never -- we've never thought or had
3 thought of like what's it called? Alternative proposals.
4 Right.

5 Like, we've never entertained alternative
6 proposals. We've always looked at whatever's before us. And
7 determined whether or not we thought that submission met the
8 burden of proof for us to grant the relief requested.

9 So, I'm not, I was not proposing alternative
10 proposals. I'm not in favor of alternative proposals. What
11 I had, what I was trying to accomplish in the discussion, was
12 if the Applicant had wanted to take a step back and talk with
13 their attorneys, and see if there was another way to go about
14 this, or if they wanted to move forward with the application
15 the way it was.

16 At the end of the day last week, it was to move
17 forward with the application the way it was, and now it seems
18 there's been reconsideration. So, I'm in favor of reopening
19 the record. I'm going to go around the horn again and start
20 with you, Mr. Hart.

21 VICE CHAIRPERSON HART: Yes. So, this is what I
22 -- I think we've had quite a bit of discussion about this at
23 our hearing last week.

24 And it seems as though the -- you know, I would
25 agree with you. Going from special exception to -- variance

1 to special exception is a positive direction. I think that
2 -- I don't think that this is an alternative proposal. I
3 think they are making this as a proposal.

4 But I agree with you in terms of not having to
5 opine on something that is, you know, a hypothetical. And
6 we look at whatever is before us. They are looking to change
7 what is before us, to amend what we are reviewing. And I'm
8 in support of doing that. So that's it.

9 CHAIRPERSON HILL: Ms. John?

10 MEMBER JOHN: I also support reopening the record.
11 And as I read the request, it seems that the Applicant was
12 proposing to reduce the amount of relief requested.

13 And so I would be open to considering the new
14 drawings. And I also agree that because the Applicant is
15 reducing the relief, in other words, the Applicant is going
16 from a request for a variance to a special exception, that
17 there would be no need for additional notice. So I would be
18 in favor of reopening this.

19 CHAIRPERSON HILL: Thank you, Ms. John.
20 Commissioner Miller?

21 COMMISSIONER MILLER: Thank you, Mr. Chairman.
22 I also support the waiver to reopen the record to include
23 this quote, alternative or substitute proposal for special
24 exception lot occupancy relief, unquote.

25 As indicated by my comments last week at the

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1 hearing, I was in support of the variance request that was
2 72.6 percent lot occupancy, because of a number of -- for a
3 number of reasons, including that it had already been reduced
4 form 76.7 percent in the original proposal, which did not
5 have the support of OP because of that. But it did have the
6 support of the ANC and the adjacent neighbors.

7 It still has the -- in the proposal last week that
8 we heard, that had the hearing on, had the support of both
9 OP and the ANC and the adjacent neighbors. So I guess I'll
10 just leave it at that, without going into the prongs or
11 whatever of the original of last week's request and the
12 relief being requested here, which is a lesser, a much lesser
13 relief for the special exception versus the variance. So --
14 and I support the whole thing, I support reopening the
15 record.

16 CHAIRPERSON HILL: No, that's great. And Mr.
17 Miller, I don't -- like I said the last time, and you're kind
18 of reopening the can of worms a little bit here, that like,
19 I don't know what would have happened. And so, you know, I
20 think we're clear in your discussion last week as to where
21 kind of where you were.

22 COMMISSIONER MILLER: I didn't mean to open any
23 can of worms. If -- I'll retract anything if that had that
24 effect.

25 CHAIRPERSON HILL: That's quite all right. That's

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1 quite all right. And so -- okay. So, then that being the
2 case, I'll go ahead and see, Mr. Moy, I don't know where we
3 are in terms -- I'm looking here in the Exhibits.

4 I mean, I guess we're going to go ahead and grant
5 the motion. I can sense this if everybody can just nod,
6 because you all just said it's okay. We'll go ahead and
7 grant the motion to reopen the record.

8 And then I also don't have any issues with the
9 motion to waive the 40-day requirement, because again, this
10 has already gone through the process with the ANC. And
11 they're asking for the relief is less than what had been gone
12 through -- than what had gone through the ANC.

13 And so, Mr. Moy, I don't know how quickly we could
14 get back here with the Board getting an opportunity to look
15 at the revised drawings and then have a deliberation of that,
16 those drawings.

17 I think you might have an idea in terms of the
18 time line?

19 MR. BASSETT: So, this is Dan Bassett, OAG.

20 CHAIRPERSON HILL: Oh, hi, Dan.

21 MR. BASSETT: Just in terms of the post-hearing
22 submissions, unless you were to waive this provision, there
23 needs to be seven days for any parties to respond to post-
24 hearing submissions.

25 So the post-hearing submission for this, I

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1 believe, would be the motion to amend the relief. So the
2 soonest that the Board could decide on this, I believe, would
3 be next Thursday, unless you were to waive that provision.

4 CHAIRPERSON HILL: I didn't think it was -- I
5 mean, I hate to say it, you guys can tell me what you think.
6 I don't want to waive the provision. I mean, if something's
7 been changed, I want there to be an opportunity for people
8 to kind of, like, have their time to say something.

9 And so, even though if the provision were not to
10 get waived, I thought it had to be two weeks anyway, Dan?
11 Is that not -- and you just said Thursday. So that means it
12 would still be two weeks. Because we wouldn't be back here
13 by Wednesday.

14 MR. BASSETT: Yeah. You are correct.

15 CHAIRPERSON HILL: Okay. So do you guys want to
16 -- are you all good with leaving the provision the way it is?
17 Or do you want to waive the seven-day provision?

18 Somebody can raise their hand if they want to
19 waive the seven-day provision. Okay, Mr. Miller? Mr.
20 Miller, you want to comment on waiving the seven-day
21 provision? Come on. I'm curious.

22 COMMISSIONER MILLER: I don't want to open up the
23 can of worms, but I would be in support of waiving. I think
24 it's clear that the ANC and the adjacent neighbors would
25 support lesser relief.

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1 They supported 76.7 and they supported 72.6. And
2 now they're down to 70 percent. I don't think that it's
3 necessary. I just, I don't want to put this homeowner
4 through any -- but, I understand --

5 CHAIRPERSON HILL: I mean, Mr. Miller, that's --
6 (Simultaneous speaking)

7 COMMISSIONER MILLER: I don't want to set -- I
8 don't want to set a precedent of waiving that very important
9 provision. But, in this particular case, I think the
10 homeowner's jumped through a lot of hoops already. And I'm
11 tired of jumping through those hoops with them.

12 CHAIRPERSON HILL: Okay. I'm -- so Mr. Miller,
13 you've got an advocate over there. So I'm fine with waiving
14 the seven-day provision. Does Ms. John or Mr. Hart have any
15 objection to that?

16 MEMBER JOHN: No objection.

17 CHAIRPERSON HILL: Okay. So then Mr. Moy, if we
18 waive the seven-day provision, how fast can we get back here?
19 Or Dan, can you tell me? Because I'm a little confused. I
20 still thought we can't get back here any faster than two
21 weeks.

22 *

23 MR. BASSETT: So the regulations require that for any post-
24 hearing submissions there be a seven-day period for parties
25 to comment. You have the power under Subtitle Y 101.9 to

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1 waive any of these provisions. And so you would be waiving
2 the seven-day period for any party to comment on the post-
3 hearing submissions or submit responses. After that, it's
4 kind of up to you as to when you'd want to schedule the
5 decision.

6 CHAIRPERSON HILL: So then under that -- and I
7 don't even really understand it. So under that discussion,
8 can't we just decide today?

9 MR. BASSETT: I don't see any problem with doing
10 that.

11 CHAIRPERSON HILL: Okay. Then hold on. Give me
12 a second. Sorry, Mr. -- so if the Board is comfortable with
13 it, I would like to look at this at the break. Okay? So
14 then we can come back and make a determination after the
15 break. Okay? So if the Board is comfortable with that, I'm
16 fine with that. I just need a break to take a look.

17 So let's go through this. So what I am proposing
18 is that we waive the seven-day provision that Mr. Miller had
19 back. And I'm now proposing that we go ahead and sign on
20 this today. And by consensus if the Board will all just nod
21 with me, if that's fine with them. Okay, fine.

22 And so -- all right. So that's what we'll do.
23 So Mr. Moy, why don't you just put this off until we're going
24 -- we got to go through a lot of stuff with the meeting.
25 After the meeting, we'll take a break. We'll come back and

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1 reopen the meeting, decide this, and then go on with our
2 hearing. Okay, Mr. Moy?

3 MR. MOY: Yes. Thank you, Mr. Chairman. So for
4 the record and the transcript then we have not concluded this
5 application yet. When you come back, the Board is going to
6 revisit this after the break that's coming up.

7 CHAIRPERSON HILL: Yes.

8 MR. MOY: Okay.

9 CHAIRPERSON HILL: Okay. All right. So you can
10 call our next case when you get a chance, Mr. Moy.

11 MR. MOY: Okay. That would be Case Application
12 Number 20233 of Erin Carroll. Caption advertised for a
13 special exception under Subtitle D, Section 5201 from the lot
14 occupancy requirements of Subtitle D, Section 304.1 to
15 construct a one-story rear addition to an existing detached
16 principal dwelling unit, R-1-B Zone. This is at 4810 48th
17 Street, Northwest, Square 1491, Lot 41.

18 CHAIRPERSON HILL: Okay. Mr. Hart, this is an
19 easier one. Do you want to start it?

20 VICE CHAIRPERSON HART: Yeah, I don't really have
21 a whole lot to say on this. I felt that this was a fairly
22 straightforward case. I'd be in support of the application.
23 Like I said, I don't have a whole lot to say on it. I
24 thought that they met the Zoning Regulations and that's about
25 it.

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1 CHAIRPERSON HILL: Okay, great. Thank you. Ms.
2 John? Your microphone is still -- there you go.

3 MEMBER JOHN: Yeah, this is a very straightforward
4 application for a rear addition and a request for 3.6 percent
5 or -- yeah, 3.6 percent lot occupancy relief. And it's a
6 one-story addition, really quite straightforward as I said
7 before. The ANC is in support.

8 The ANC recommended that the Applicant install a
9 rain spout. And the Applicant agreed to do that. And I have
10 no comment on that because it's really beyond the Board's
11 jurisdiction. And so I will give great weight to OP's
12 analysis, and I can support the application.

13 CHAIRPERSON HILL: Thank you. Commissioner
14 Miller?

15 COMMISSIONER MILLER: Thank you, Mr. Chairman.
16 Just briefly. I agree with my colleagues and note the
17 adjacent neighbors' support as well.

18 CHAIRPERSON HILL: Okay. I'm going to go ahead.
19 I agree with everything everyone has said. I will go ahead
20 and make a motion to approve Application Number 20233 as
21 captioned and read by the Secretary and ask for a second.

22 MEMBER JOHN: Second.

23 CHAIRPERSON HILL: Mr. Moy, the motion has been
24 made and seconded. Can you please take a roll call vote?

25 MR. MOY: Ms. John?

1 MEMBER JOHN: Yes.

2 MR. MOY: Vice Chair Hart?

3 VICE CHAIRPERSON HART: Yes.

4 MR. MOY: Zoning Commissioner Rob Miller?

5 COMMISSIONER MILLER: Yes.

6 MR. MOY: Chairman Hill?

7 CHAIRPERSON HILL: Yes.

8 MR. MOY: Okay. My vote count is four to zero to
9 one, and this is on the motion of Chairman Hill, seconded by
10 Ms. John, also in support, Vice Chair Hart, Zoning
11 Commissioner Rob Miller, and we have a Board seat vacant.
12 The motion carries, sir.

13 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy. All
14 right, Mr. Moy. Whenever you're ready, please feel free.
15 I think we have some preliminary matters on the next case.

16 MR. MOY: Yes, we do. This is Appeal Number --
17 what's before the Board now is Appeal Number 20191 of DC for
18 Reasonable Development. This is a motion -- and this is teed
19 up in the Board's meeting session because the Appellant
20 requested for a live in-person hearing instead of a virtual
21 hearing, which is scheduled for August the 5th, among other
22 preliminary matters. But this is the main one.

23 CHAIRPERSON HILL: Okay. I'm sorry. Okay. You
24 don't need to read the whole caption, Mr. Moy.

25 MR. MOY: No, I don't believe I need to unless you

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1 want me to.

2 CHAIRPERSON HILL: No, I was just curious because
3 we're just talking about the motion sent. All right. Okay,
4 you guys. So I was trying to figure out how to walk through
5 this and structure all this. And so it seems as though --
6 can you all hear me okay? Okay. Thank you.

7 It seems as though, again, the Appellant has a
8 summary for affirmance, also a request for an in-person
9 hearing, and then a motion to strike a reply brief that came
10 from DCRA. And DCRA has a motion to dismiss, as well as the
11 property owner, which is DMPED. And so I'm going to kind of
12 walk through some of my thoughts and then circle back around
13 to you guys if you want to let me know what you think. I
14 think who is on this with us in terms of the Commissioner?
15 Is it Mr. Miller sitting in for this portion of it, Mr. Moy?

16 MR. MOY: Yeah, Mr. Miller, I believe, unless OAG
17 tells me otherwise. But --

18 CHAIRPERSON HILL: That's right. So --

19 MR. MOY: Yeah.

20 CHAIRPERSON HILL: -- Commissioner Miller can sit
21 in on this portion of it? I can't hear you, Commissioner
22 Miller.

23 COMMISSIONER MILLER: I'm sorry. I have reviewed
24 the record and because I was interested in the case. I
25 actually thought Commissioner May was going to participate

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1 in all aspects of it. But if he's not here and you need me
2 for this procedural motion, I'm available and knowledgeable,
3 I think, enough to deliberate and decide.

4 CHAIRPERSON HILL: Okay, wonderful. Well, thank
5 you very much. So I read the appeal, the motion to dismiss,
6 the Appellant's motion for summary affirmance, the
7 Appellant's request for an in-person hearing, and the
8 Appellant's motion to strike. I noticed a few issues.

9 The Appellant has not provided any factual
10 information to support its claims. It's required to do this
11 by the Zoning Regulations and should be required to do so
12 before this case proceeds to a hearing. Otherwise, the Board
13 and other parties are forced to guess what errors are being
14 alleged.

15 So I'm kind of pointing this out because I'm going
16 to ask the Appellant to submit information to us as to again
17 what it is that the error was as per, again, 11 -- I'm going
18 cite the regulation -- 11 Y DCMR 302.12(h). And in that
19 regulation, it also speaks to the witnesses. So we need to
20 hear -- whatever the witnesses are, we need to know what's
21 going on beforehand and we'll set a date for that depending
22 upon, again, what happens with one of the motions about the
23 in-person hearing.

24 The next thing that I kind of noticed is the Board
25 lacks the authority to grant the appeal based on the alleged

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1 violations of the DC Historic Preservation Act, and for all
2 but the Zoning Regulations cited by the Appellant because the
3 Board cannot conclude the Zoning Administrator erred in
4 issuing the permits.

5 The one regulation that seemed to me that I wanted
6 to find more clarity upon was the claim that -- what I would
7 like to get from the property owner again is it provide that
8 the permit plans must match those approved by the Zoning
9 Commission and the PUD. So again, that would another item
10 that I would like to hear or see from the property owner,
11 right? That the plans, the permit plans, must match those
12 approved by the Zoning Commission and the PUD.

13 So more about what I had seen as going through,
14 the Board's appeal rules require that the Appellant submit
15 certain information with its appeal. And again, I'm kind of
16 repeating myself. But namely, all the statements,
17 information, briefs, reports, including reports and
18 statements of experts and other witnesses. Again, statements
19 from experts and other witnesses, plans, photographs, or
20 other exhibits that the Appellant may wish to offer in
21 evidence to the public per 11 Y DCMR 302.12(h).

22 So I don't think we've gotten that information yet
23 is what I'm trying to point out. The appellant has not
24 provided this information in the appeal or in its motion for
25 summary affirmance. The Board rules further provide that

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1 except for rebuttal or impeachment, the Appellant may present
2 no witness nor offer any documents not previously identified
3 in the filings required by Subtitle Y 302. So therefore,
4 before we hear the appeal again, we need to hear who are the
5 witnesses, what's the documents that are going to be before
6 us.

7 The appellant, I believe, has had quite an amount
8 of opportunity to provide this information and documents to
9 us. I'm going to, again, kind of point out for the
10 Appellant, who I would imagine is listening, that the
11 Appellant bears the burden of proof in appeals. I don't
12 necessarily think that we can dismiss a case based on
13 procedural deficiencies without first providing the
14 Appellants notice and an opportunity to hear it. And again,
15 that's in 11 Y DCMR 600.4. Again, 11 Y DCMR 600.4.

16 So -- and I'm going to come back to the motion in
17 a second. But -- so unless the Appellant provides the
18 information required by 11 Y DCMR 302.12(h) by a certain
19 amount of time, I think that we're going to have really
20 nothing to look at. What I, again, would point out -- and
21 I'll go around the horn again as I finish all this. But that
22 I would like to see that there's evidence that the plans
23 match what was approved in the PUD. And that will be
24 something that I could get to from the property owner.

25 In terms of the motions to dismiss, and again,

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1 I'll go back to my first listing, I mean, when I first was
2 summarizing all the different motions. I think that I would
3 hold the motions to dismiss in abeyance because we want to
4 give time to the Appellant to respond to the information that
5 we've requested as well as I want to give time to the
6 property owner to provide evidence that the plans match what
7 was approved in the PUD.

8 And then, I guess, at that point, when we get
9 everything before us, we can determine whether or not we
10 think that the appeal is ripe in order for us to hear it and
11 whether or not we should dismiss. I guess I continue to
12 point out to the Appellant that the Appellant has the burden
13 of proof. And I don't think they've submitted a sufficient
14 actual basis for the Board to rule on one way or another.
15 At this point, we don't have anything really before us.

16 Also kind of mentioning to the Appellant that
17 adding a new issue to the motion -- adding a new issue to the
18 motion that was included in its appeal. The issue is the
19 Appellant's claim that the Zoning Commission must conduct a
20 second PUD review for the master plan in Parcels 2 and 3.
21 The Appellant is prohibited from adding new issues to an
22 appeal per 11 Y DCMR 302.13.

23 An appeal may not be amended to add issues not
24 identified in the statement of the issues on appeals
25 submitted in response to Subtitle Y 302.12(g) unless the

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1 Appellee impeded the Appellant's ability to identify the new
2 issues identified. And I don't think that is the case
3 meaning that I don't -- as in previous appeals that we've
4 had, you can't add new issues to the appeal.

5 In any case, again, the Appellant itself points
6 out that the Zoning Commission did, in fact, approve a PUD
7 for the parcels mentioned in the motion. The new claim I
8 don't think should -- I think the new claim should therefore
9 be dismissed. But I don't think that's, again, before us.

10 So now that brings in terms of the discussion --
11 so now I'll go back. So the Appellant had asked for a
12 summary for affirmance, and I wouldn't be in favor of that.
13 I don't think we have anything in front of us that we can
14 necessarily grant that motion.

15 The motion to strike, I wouldn't be in favor of
16 the motion to strike because I believe what happened with
17 that was that DCRA filed a motion to dismiss. The appellant
18 then filed something in opposition to that motion and then
19 added new information to the appeal. And then DCRA replied
20 back to that new information that was put forward by the
21 Appellant when they're not allowed to put forward new
22 information. And then Appellant wanted the motion to strike
23 from the fact that DCRA was responding to the new
24 information. And so I would not be in favor of the
25 Appellant's motion to strike either.

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1 So I'll go through those two first things before
2 we get to the request for an in-person hearing with the
3 Board. And I'm going to ask for a second and a vote. Okay?
4 So I am going to make a motion to deny the Appellant's motion
5 for a summary affirmance. Is there anyone that would second
6 me?

7 MEMBER JOHN: Second. I don't think we have
8 enough information in the record, as you said.

9 CHAIRPERSON HILL: Okay. So Mr. Moy, that motion
10 -- I'm sorry. The motion that I made to deny that motion has
11 been made and seconded. Could you please take a roll call
12 vote?

13 VICE CHAIRPERSON HART: Mr. Chairman?

14 CHAIRPERSON HILL: Yes.

15 VICE CHAIRPERSON HART: I'm sorry for
16 interrupting. Do you want us to have a brief discussion
17 about that motion before we vote on it?

18 CHAIRPERSON HILL: Yeah, you can -- that's fine.
19 We can have a discussion about the motion.

20 VICE CHAIRPERSON HART: And I don't want to have
21 a huge discussion. I just thought that it would be helpful
22 --

23 CHAIRPERSON HILL: Sure. That's fine.

24 VICE CHAIRPERSON HART: -- just to hear everybody.
25 So I would agree with it. I think the motion to dismiss is

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1 to strike that information. I don't -- I think when you have
2 --

3 CHAIRPERSON HILL: Mr. Hart, I'm sorry. What I'm
4 speaking now is the summary affirmance.

5 VICE CHAIRPERSON HART: Oh, I'm sorry. I'm sorry.
6 So you wanted --

7 (Simultaneous speaking.)

8 CHAIRPERSON HILL: Actually, let's start with Ms.
9 John because she was speaking to it. So I'm making a motion
10 to deny the Appellant's motion for summary affirmance. And
11 Ms. John, did you have any discussion on that?

12 MEMBER JOHN: Well, I thought I added something
13 that I didn't think we had enough information on the record
14 to make that decision. So --

15 CHAIRPERSON HILL: You did.

16 MEMBER JOHN: -- I would deny that motion.

17 CHAIRPERSON HILL: All right. Mr. Hart, do you
18 have any -- I'm not going to make the motion yet again. But
19 I'm going to go through this for discussion.

20 VICE CHAIRPERSON HART: Sure.

21 CHAIRPERSON HILL: Mr. Hart, do you have any
22 discussion about the motion that I'm putting forward?

23 VICE CHAIRPERSON HART: I would also agree that
24 we do not have sufficient information. So I would be in
25 support of that. I guess I'm in -- I don't know how that --

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1 I think I'm getting confused as to am I in support of -- I
2 don't -- I think that we don't have enough information right
3 now. So --

4 CHAIRPERSON HILL: I'll make the motion again and
5 ask for a second. But now we're just having discussion.

6 VICE CHAIRPERSON HART: That's fine.

7 CHAIRPERSON HILL: Mr. Miller, do you have
8 anything to add?

9 COMMISSIONER MILLER: Nothing to add. This
10 appellant has delayed this project three years and not all
11 in good faith.

12 CHAIRPERSON HILL: Okay. So I will go ahead and
13 again make a motion to deny the motion for summary
14 affirmance. And Ms. John, you had seconded. Could you
15 please second again?

16 MEMBER JOHN: Second.

17 CHAIRPERSON HILL: Mr. Moy, could you take a roll
18 call vote? Your microphone is not on, Mr. Moy.

19 MR. MOY: I apologize. Again, when I call your
20 name, if you would please respond with a yes, no, or abstain.
21 This is to the Chairman's motion to deny and seconded by Ms.
22 John. So I'm going to call your name. Vice Chair Hart?

23 VICE CHAIRPERSON HART: Yes.

24 MR. MOY: Yes to the motion?

25 VICE CHAIRPERSON HART: Deny.

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1 CHAIRPERSON HILL: Yes to deny the motion.

2 VICE CHAIRPERSON HART: I'm not sure how I needed
3 to. That's why I was having a hard time trying to figure out
4 what's the -- but I think it's yes to deny the motion.

5 MR. MOY: Yeah, yeah. I want to be sure myself.

6 So that's Vice Chair Hart. Ms. John?

7 MEMBER JOHN: Yes to deny.

8 MR. MOY: Zoning Commissioner Rob Miller?

9 COMMISSIONER MILLER: Yes to deny.

10 MR. MOY: Chairman Hill?

11 CHAIRPERSON HILL: Yes to deny.

12 MR. MOY: Okay. So that would be a vote of four
13 to zero to one. This is on the motion of Chairman Hill,
14 seconded by Ms. John to deny. And we have a Board seat
15 vacant. And yeah, Ms. John and Vice Chair Hart are in
16 support of the motion. The motion carries, sir.

17 CHAIRPERSON HILL: Okay. All right. I'm just
18 trying to be -- since we're not all together, it's difficult
19 to do this like with nodding heads. Okay? And so I'm just
20 trying to walk through this. So again, then I'm going to
21 make -- well, I'm offering up for discussion.

22 I'm going to make a motion to deny the Appellant's
23 motion to strike. And the reason why, again, is that DCRA
24 made a motion to dismiss. The Appellant then made a motion
25 in opposition to the motion to dismiss and added new

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1 information which the Appellant is not allowed to do.

2 And then DCRA made a reply brief to the new
3 information, and then the Appellant wanted to strike the
4 reply brief to the new information. So I'm going to make a
5 motion to deny the Appellant's motion to strike because DCRA
6 was just responding to what the new information was that the
7 Appellant is not allowed to bring into the case anyway. So
8 Ms. John, do you have anything to add to the discussion?

9 MEMBER JOHN: No, I think that's a good recap of
10 what happened and what's in the record.

11 CHAIRPERSON HILL: Mr. Hart?

12 VICE CHAIRPERSON HART: I would concur.

13 CHAIRPERSON HILL: Mr. Miller?

14 COMMISSIONER MILLER: I concur.

15 CHAIRPERSON HILL: All right. Then I'm going to
16 make a motion to deny the Appellant's motion to strike and
17 ask for a second.

18 MEMBER JOHN: Second.

19 CHAIRPERSON HILL: Mr. Moy, the motion has been
20 made and seconded. Could you please take a roll call vote?

21 MR. MOY: Yes. When I call your name, if you
22 would please respond with a yes, no, or abstain, the motion
23 to deny this, yes. Zoning Commissioner Rob Miller?

24 COMMISSIONER MILLER: Yes to deny.

25 MR. MOY: Vice Chair Hart?

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1 VICE CHAIRPERSON HART: Yes to deny.

2 MR. MOY: Ms. John?

3 MEMBER JOHN: Yes to deny.

4 MR. MOY: Chairman Hill?

5 CHAIRPERSON HILL: Yes to deny.

6 MR. MOY: So that would give a resulting vote of
7 four to zero to one, Mr. Chairman.

8 CHAIRPERSON HILL: Okay, great. All right. So
9 now what this brings us to is the last motion which is,
10 again, the in-person hearing motion, which is in Exhibit 32.
11 Let's see. So at the public meeting of May 27th, 2020, the
12 Board of Zoning Adjustment addressed the Appellant's request
13 that the Board not hold the public hearing -- these are my
14 notes here. I'm trying to look at my notes. So we're
15 talking about whether or not -- the Appellant has a motion
16 before us to not have the virtual hearing. And to not have
17 the virtual hearing, this motion is permitted in Subtitle Y
18 103.13(a).

19 MR. BASSETT: Yeah.

20 CHAIRPERSON HILL: Okay. And so the Zoning
21 Commission and the --

22 MR. BASSETT: Yeah, and actually Rob Miller
23 already kind of did that on the record.

24 (Simultaneous speaking.)

25 CHAIRPERSON HILL: Somebody is talking right now.

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1 Hello, hello. Somebody is speaking. Somebody is speaking.
2 I don't know who's speaking. Is it Dan that's speaking or
3 somebody? Somebody mute their microphone, please.

4 VICE CHAIRPERSON HART: It was him. He's --
5 (Simultaneous speaking.)

6 CHAIRPERSON HILL: Okay, great. So -- and the
7 Zoning Commission recently adopted an emergency text
8 amendment updating procedures that would govern public
9 hearings on contested cases held through videoconference,
10 teleconference, or other electronic means. And I think that
11 the emergency -- sorry, the emergency text amendment set
12 forth safeguards that allowed the Board to hold virtual
13 hearings with procedures reasonably equivalent to those of
14 in-person hearings while offering additional alternatives and
15 flexibility to account for potential technical issues. The
16 rules for the virtual hearings can be found as part of Zoning
17 Commission Case 20-11 and are published in the D.C. Register.
18 Again, that's Zoning Commission Case 20-11.

19 So the -- I think that what has been put forward
20 by the Zoning Commission, we have a Commissioner here with
21 us, in terms of the virtual conferences -- I mean, the
22 virtual hearings. There's the ability to take part in these
23 hearings virtual as what's going on right now. Then you can
24 also call in, right?

25 You can also call in using your phone which is,

1 I think, another surefire way. Like, everybody has a phone,
2 right? And so an ability -- or everyone has access to a
3 phone so that you have an ability to participate in the
4 hearing.

5 And so I don't -- and I don't know. I mean, I
6 would love to be able to say when we're going to be back in
7 person together. I don't know when that will be, and I don't
8 think that the city's work should slow down because -- we're
9 not slowed down. We're already making accommodations so that
10 it's possible to function virtually.

11 And so I actually am not in support of the request
12 to postpone for an in-person hearing because honestly I just
13 have no idea when it's going to be. It could be -- I hate
14 to say it. Gosh, it could be a year from now. Who knows,
15 right?

16 And so I think that the Zoning Commission text
17 amendment set forth the criteria for us to be able to have
18 these meetings virtually. And I think that what is the thing
19 that kind of keeps me from even trying to push this out a
20 little bit more is that you can participate by the phone.
21 You can submit all your filings. There's nothing to preclude
22 you from being able to submit all the information that the
23 Board would need in order to have the hearing.

24 So I think for me right now, I would be, again,
25 wanting to get the information that we need to get from the

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1 Appellant in an appropriate amount of time for us to be able
2 to have this hearing on the day that it was scheduled to
3 happen, which is August 5th. And then also if the Appellant
4 wanted to submit anything else in terms of information how
5 we could accommodate any people that needed to participate
6 via phone or how they -- we could somehow make a way that
7 they could participate virtually but figure out
8 accommodations. I'd be open to accommodations.

9 But I don't think we need to push -- I don't know
10 when the in-person hearings are going to happen. So I'm
11 going to kind of go around the horn again and have a
12 discussion on this. I guess, Ms. John, may we start with
13 you?

14 MEMBER JOHN: So I'm in agreement with your
15 comments. I don't know when we will have in-person hearings
16 again. That's outside of the Board's control. And so that's
17 too tenuous for us to grant that motion.

18 But more importantly, the Applicant has not
19 identified any witnesses that could testify or what
20 accommodations would need to be made or even give any reason
21 for requesting an in-person hearing or what -- I think I said
22 what accommodations would need to be made. So I don't think
23 that at this point we can grant this motion for an in-person
24 hearing because everything is just so uncertain. We don't
25 know when we'll get back together again. And I certainly

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1 agree with you that everyone can participate over a
2 telephone.

3 So -- and we've been doing that since we've been
4 conducting these in-person hearings. So far, there haven't
5 been any problems -- major problems with these virtual
6 hearings that would lead us to be concerned about the process
7 established by the Zoning Commission. So I am not in favor
8 of granting that motion, especially since we don't have any
9 request in the record for accommodations. So that would be
10 my suggestion.

11 CHAIRPERSON HILL: Okay, great. Thank you. Mr.
12 Hart?

13 VICE CHAIRPERSON HART: Yeah, I would concur. The
14 only thing I'd probably add to this discussion, I think you
15 brought up -- both of my colleagues have brought up points
16 that are right on the money. We have always said that we try
17 to be as efficient as possible with appeals and applications
18 as they are submitted to us in our review of those cases and
19 applications. And I think that having virtual hearings has
20 really enabled us to have the efficiency or meet that
21 efficiency kind of standard.

22 And I don't think that waiting for -- I mean, it
23 seems as though there is the only reason to do this is so
24 that people can kind of be in person. But we are doing these
25 hearings now and these are real time. We are all

1 participating as in person as we can or at least as face to
2 face as we can.

3 So I think that the issue for me is really around
4 efficiency, and we are doing these hearings virtually in
5 light of where we are with our -- within the pandemic. And
6 I just think that these have proven to be more than
7 sufficient in providing chances for -- opportunities for
8 everyone to be able to participate. So that's where I am.
9 So I would support the motion to deny.

10 CHAIRPERSON HILL: Mr. Miller?

11 COMMISSIONER MILLER: Thank you, Mr. Chairman.
12 I agree with all the comments my colleagues that the
13 procedures that have been put in place for virtual hearings
14 include all the options for participating and which are
15 reasonably equivalent to those of in-person hearing while
16 offering additional alternatives and flexibility to account
17 for potential technical access issues.

18 I think -- no, correct if I'm wrong. I believe
19 this Board has already held a virtual hearing or at least one
20 or more on an appeal, so it was a contested case with
21 opportunity for all the aspects of participation, including
22 testimony and cross examination. I don't think I was on that
23 case, but I think I attended it and saw all that happening
24 as if it were in the hearing at 441 4th Street.

25 So yes, I would support the motion to -- if there

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1 is a motion -- to deny the request for an in-person hearing
2 unless there's some documentation provided between now and
3 whatever time you're giving that they can show that they're
4 being denied some due process rights. But I don't think
5 that's the case.

6 CHAIRPERSON HILL: Okay. All right. So then what
7 I'm going to do is make a motion again to deny the
8 Appellant's motion for an in-person hearing and ask for a
9 second.

10 MEMBER JOHN: Second.

11 CHAIRPERSON HILL: Mr. Moy, that motion has been
12 made, so could you please take a roll call vote? You're on
13 mute, Mr. Moy. You're on mute, Mr. Moy.

14 MR. MOY: Okay. So when I call your name, if you
15 would please respond with a yes, no, or abstain. This is on
16 the motion of Chairman Hill to deny the motion for a live in-
17 person hearing. The Chairman's motion was seconded by Ms.
18 John. So Zoning Commissioner Miller?

19 COMMISSIONER MILLER: Yes to deny.

20 MR. MOY: Vice Chair Hart?

21 VICE CHAIRPERSON HART: Yes to deny.

22 MR. MOY: Ms. John?

23 MEMBER JOHN: Yes to deny.

24 MR. MOY: Chairman Hill?

25 CHAIRPERSON HILL: Yes to deny.

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1 MR. MOY: Staff will record the vote as four to
2 zero to one. And again, this is on the motion of Chairman
3 Hill to deny the motion. Seconded by Ms. John. Also in
4 support, Vice Chair Hart and Zoning Commissioner Rob Miller,
5 Board seat vacant. Motion carries, sir.

6 CHAIRPERSON HILL: Okay. All right. So the last
7 thing, I guess, is there's two motions to dismiss, one from
8 DCRA and one from DMPED. And Mr. Ritting, you can comment
9 on something in a second. I don't know what you're about to
10 comment on, but you can put your video on. Or maybe you do
11 have something. I don't know. You disappeared now.

12 So I'm going to say that -- is there feedback?
13 Who's giving the feedback? Is it Mr. Ritting? Now are you
14 still getting feedback? No. Okay. So it's you, Mr.
15 Ritting. So I'll mute myself when you have something to say.
16 You can raise your hand.

17 And so I'm going to say that we're just -- and you
18 guys can just nod, if the Board would nod -- and I'll see if
19 you're nodding yes or no -- to hold in abeyance the motions
20 from DCRA and DMPED to dismiss until after we get more
21 information from the Appellant. Is that good with the Board?
22 If you could all just nod yes or no?

23 VICE CHAIRPERSON HART: Just one point, Mr.
24 Chairman.

25 CHAIRPERSON HILL: Sure, Mr. Hart.

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1 VICE CHAIRPERSON HART: Just that DMPED is the
2 Deputy Mayor for Economic and -- Planning and Economic --
3 sorry, Deputy Mayor for Planning and Economic Development
4 just in case people were wondering.

5 CHAIRPERSON HILL: Thank you. Thank you. They're
6 the property owner. I appreciate that. Thank you.

7 MEMBER JOHN: So can we have some discussion on
8 that? Is the motion open --

9 CHAIRPERSON HILL: Sure.

10 MEMBER JOHN: -- for discussion? So --

11 CHAIRPERSON HILL: No, there's no -- I mean, yeah,
12 you want to --

13 MEMBER JOHN: So I'm in agreement that we hold the
14 motions to dismiss in abeyance until we have a virtual
15 hearing. But there's one issue that I think we might be able
16 to take care of which is the claim regarding the Historic
17 Preservation Act. Just because the Board has no jurisdiction
18 to hear an appeal based the Historic Preservation Act, but
19 I'm fine with keeping that claim in. But it's just so clear
20 that I'm comfortable with dismissing that part of the appeal.

21 CHAIRPERSON HILL: Okay. I can ask Mr. Ritting.
22 And Mr. Ritting, I will mute my line if I'm providing
23 feedback for you in a second. But just let me make my
24 statement. Ms. John, yeah, I don't know whether -- at this
25 point, it would be more just to let the Appellant know that

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1 we don't need to focus on that because we don't think that
2 that is something that is before us. But I don't know how
3 we -- and I can ask OAG if we can dismiss a piece of the
4 appeal now or not. And to that, I would look to OAG. Mr.
5 Ritting?

6 MEMBER JOHN: While we wait for Mr. Ritting, I can
7 go either way on that. But it's sort of clear that we don't
8 have jurisdiction.

9 CHAIRPERSON HILL: Okay.

10 MEMBER JOHN: So we can just leave it as it is and
11 then we'll make that determination at the hearing.

12 CHAIRPERSON HILL: Okay. Well, I don't see where
13 Mr. Ritting is. He's now dropped off perhaps. So then let's
14 just go ahead and leave it the way it is, Ms. John. And
15 during the appeal -- during the hearing, we can make clear
16 to the Appellant that we don't need to talk about that
17 because it's not within our purview.

18 MEMBER JOHN: Right.

19 CHAIRPERSON HILL: Okay. So that being the case,
20 we're still going to hold those in abeyance. So then what
21 I would ask of Mr. Moy is helping me kind of work back some
22 dates or set some dates. And what I would like to see is the
23 Appellant comply with 11 Y DCMR 302.12(h) which is, again,
24 putting reports, statements, experts, and other witnesses,
25 plans, photographs, or exhibits that the Appellant may wish

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1 to offer in evidence so that we can take a look at it before
2 the public hearing and to what it is that the claim -- what
3 is the error that the Zoning Administrator has made. I mean,
4 that's not still clear to me.

5 The other is that then the other item that I had
6 asked for which I can get from the property owner -- Mr. Moy,
7 if you could also follow up with this -- is the evidence that
8 the plans match what was approved in the PUD. And so we get
9 those, and I'm just kind of working backwards from August
10 5th, I think, if you did -- if we got everything by July 8
11 and then the other parties would have seven days to respond
12 by July 15. Would that give the Board then enough time to
13 have the hearing on the date that was originally scheduled,
14 I think, for August 5th?

15 MR. MOY: Yeah, I believe so, Mr. Chairman,
16 provided that the submission that you're asking from the
17 property owner could be also the same deadline of July 8.
18 So in other words, the Appellant to file by July 8th as well
19 as the property owner, same day. And then any responses, I
20 think you were going to, by July 15, correct? And then hold
21 the decision on the -- we'll hold the hearing on August 5th.

22 CHAIRPERSON HILL: Yes. And so then August 5th,
23 we can also speak to the motion to dismiss --

24 MR. MOY: Yes.

25 CHAIRPERSON HILL: -- as well as have the hearing.

1 And so we can decide what's going to happen that day. Is
2 that all right with the Board? I don't see anybody raising
3 their hand.

4 MEMBER JOHN: Yes, yes.

5 CHAIRPERSON HILL: Mr. Ritting, you went in and
6 out. Was there anything you needed to add at this point?

7 MR. RITTING: No.

8 CHAIRPERSON HILL: Okay. All right. So Mr. Moy,
9 then we've taken care of -- and Mr. Ritting, I think we've
10 taken care of everything. Mr. Miller?

11 MEMBER JOHN: No, Mr. Miller.

12 COMMISSIONER MILLER: I just wanted to add, if we
13 -- I'm supportive of everything that's been said. But I just
14 wanted to note that the burden is on the Appellant to
15 demonstrate the only possible potential legitimate claim in
16 this appeal, which is that the plans approved by the ZA for
17 the permit -- for the foundation permit, it would be on --
18 the burden would be on the Appellant to prove that those are
19 inconsistent with the plans approved by the Zoning Commission
20 and the PUD. So I guess I'll leave it at that. I have a lot
21 on my mind about this case, but I don't want to open up a can
22 of worms.

23 CHAIRPERSON HILL: Okay. Well, no, I appreciate,
24 Commissioner, your helping to focus the discussion. Again,
25 nothing new is allowed to be added at this point in terms of

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1 the appeal. And so we've asked for the information that
2 we've asked for, and we have the dates. Mr. Moy, again, July
3 8 for the parties to submit the information, July 15 for any
4 responses, and then we're back on August 5th to discuss this.
5 Mr. Hart?

6 VICE CHAIRPERSON HART: Yeah, just one
7 clarification. Commissioner Miller, were you just saying
8 that you think it's not DMPED or the property owner that has
9 to provide the plans but that the Appellant should be
10 providing where they think that the errors are between the
11 plans. Is that what you were -- the point that you were
12 making?

13 COMMISSIONER MILLER: Yeah, I think the initial
14 burden is on the Appellant and the property owner and the
15 party can reply. But there hasn't even been any -- well,
16 they have to make that case.

17 VICE CHAIRPERSON HART: No, I understand. I just
18 want to make sure I understood --

19 COMMISSIONER MILLER: Yes, the property owner
20 should reply, and you should have that information --

21 VICE CHAIRPERSON HART: Okay.

22 COMMISSIONER MILLER: -- before you even go --
23 I'll leave it at that.

24 CHAIRPERSON HILL: Yeah. So anyway, so Mr. Moy,
25 I think we're all clear as to what we need. And also, we

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1 would like to get a submission from the property owner that
2 the plans match those with the PUD. Okay?

3 COMMISSIONER MILLER: I wouldn't use the word
4 match. I would say inconsistent with. I mean, the Appellant
5 has the burden of proof to show that they're inconsistent
6 with the plans approved by the PUD. Match is a pretty high
7 standard. Plans do evolve in a project.

8 Match, I think the Appellant has the burden of
9 proof. What was approved by the ZA, that those plans were
10 inconsistent with the plans -- the PUD plans approved by the
11 Zoning Commission? I'm not sure it needs to be an exact
12 match.

13 CHAIRPERSON HILL: And I didn't mean to imply
14 that. I guess, Mr. Miller, what I meant is that I haven't
15 seen the plans yet, right? And so that's what I wanted to
16 get from the property owner. And as you mentioned and I
17 appreciate that now you've gone this far with us, I guess
18 you're going to go with us the rest of the way now, right?
19 That --

20 (Simultaneous speaking.)

21 CHAIRPERSON HILL: I'm saying it's okay. So I do
22 understand what you're saying that, again, it's the
23 Appellant's burden to show that it's inconsistent, right?
24 I just wanted to get the plans from the property owner. And
25 I appreciate it. I'm not trying to use the word, match, in

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1 a way that it's kind of locking in a discussion. So I just
2 want to see the plans.

3 So okay, in that regard. All right. So I think
4 we're done, and I don't think I've missed anything with all
5 of the different motions, checking all of my notes. Mr.
6 Ritting, we're good, correct? Okay. All right. Okay. So
7 this is what I propose now. So there was that one case that
8 we were going to take a look at, at the break. Okay? And
9 so let's go ahead and take a break. We'll come back.

10 So the meeting is still going on, Mr. Moy. We'll
11 come back for a meeting -- one more meeting decision, and
12 then we will start our hearing after that. All right. So
13 let's say it's 11:20 -- it's 11:30 right now. How about,
14 like, 11:45? We'll shoot for it. Okay? All right,
15 everyone. Thank you.

16 (Whereupon, the above-entitled matter went off the
17 record at 11:27 a.m. and resumed at 11:47 a.m.)

18 CHAIRPERSON HILL: So Mr. Moy, if you would call
19 us back in to the meeting here, and then also call up our
20 last decision case.

21 MR. MOY: Yeah, thank you, Mr. Chairman. So the
22 Board is back in session after a very brief recess, and we
23 are at or about 11:45 in order to resume its deliberation on
24 Application Number 20178 of Murat Kayali. And I'll leave it
25 at that, Mr. Chairman.

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1 CHAIRPERSON HILL: Okay. All right. Okay. I got
2 Dan on here if we need anything. So if everyone had a chance
3 to look at it, I did have a chance to look at it. And I
4 actually -- the thing that I was struggling with was really
5 the variance. And I don't know where we would've ended up
6 with to be quite honest.

7 So I didn't really have an issue with any of the
8 other relief that was being requested. I thought that the
9 Applicant had met its burden of proof in terms of meeting the
10 standards for the other requests that were being made in
11 terms of the relief. I think that the new plans I am
12 comfortable with that are in the record now. Basically, all
13 of the new exhibits are 69, 70, 71, 72, and 73.

14 And as I said, we were in favor of waiving the 40-
15 day requirements as well as the seven-day requirement so that
16 we can actually have this deliberation now. And I think that
17 Mr. Miller -- Commissioner Miller made a good point as to why
18 he thought this was something to try to discuss today. And
19 so I didn't really have anything in terms of the current
20 relief being requested. So I would be voting to approve.
21 Mr. Miller, may I go ahead and start with you since you were
22 kind of the point person on this one right now?

23 COMMISSIONER MILLER: Okay. Thank you, Mr.
24 Chairman. I concur with your comments, and I'm prepared to
25 move forward.

1 CHAIRPERSON HILL: Ms. John?

2 MEMBER JOHN: I am fine with the revised --

3 CHAIRPERSON HILL: You're kind of -- Ms. John,
4 that's right. You're kind of cutting -- you're cutting in
5 and out on us.

6 MEMBER JOHN: I believe that the application --

7 CHAIRPERSON HILL: That's okay. We'll figure it
8 out.

9 VICE CHAIRPERSON HART: Yeah, I couldn't hear --

10 MEMBER JOHN: Can you hear me?

11 CHAIRPERSON HILL: We can hear you. Maybe don't
12 turn on your camera for a minute and go ahead and continue.

13 MEMBER JOHN: Okay. How is that?

14 CHAIRPERSON HILL: Yes, it's better.

15 MEMBER JOHN: Let me try it again. Okay. So I
16 was saying that based on the revised plans, I can support the
17 application.

18 CHAIRPERSON HILL: Okay. Mr. Hart?

19 VICE CHAIRPERSON HART: I would concur. I
20 understand that they have submitted the revised plans, and
21 I would be in agreement with my colleagues. I think that
22 what they're proposing is a special exception relief from a
23 variety of things. I'm not going to go through all of them.
24 But I think that they have definitely shown how they meet the
25 standard in the Zoning Regulations.

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1 And I will not talk about all of the exhibits that
2 they submitted more recently, but I just feel that the ones
3 that they have submitted to us really show that they are
4 definitely within the 70 percent and lot occupancy and the
5 rest of the relief and how they're meeting that relief -- or
6 how they're meeting the criteria for the relief. So I'd be
7 in support of the application as well that is in Exhibit --
8 what did you say -- 69 through 73 which shows the updated
9 plans. So that's it.

10 CHAIRPERSON HILL: Okay. All right. So I think
11 -- and Dan, just listen to this. I think I'm going to have
12 the caption right. So I'm going to make a motion to approve
13 Application Number 20178 of Murat Kayali pursuant to 11 DCMR
14 Subtitle X, Chapter 9, for a special exception under the
15 penthouse requirements in Subtitle C 1504.1 from the setback
16 requirements of Subtitle C 1502.1(a), C 1502.1(b), and C
17 1502.1(c)(1)(A), to construct a rear deck addition and an
18 accessory structure in the RA-8 Zone at premises 1738 Church
19 Street, Northwest, Square 156, Lot 313, and ask for a second.

20 MR. BASSETT: Sorry.

21 MEMBER JOHN: Second.

22 MR. BASSETT: Before the full vote of the Board,
23 I want to clarify on the record what the waiver for the
24 seven-day provision is for. There's actually two provisions
25 that need to be waived. You can waive them.

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1 But just to clarify, the first is to allow seven
2 days for the parties to file written responses to any post-
3 hearing briefs. So you're going to waive that one, and you
4 need to find that good cause exists and that there's no
5 prejudice to any party. And then the second provision is
6 that the director shall notify parties by email of the
7 acceptance of supplemental material.

8 So you need to waive both of those provisions.
9 Those both have seven-day waiting periods. Just to make sure
10 that we're clear for the record. The Board needs to find
11 that good cause exists and it doesn't prejudice any party to
12 waive both those.

13 CHAIRPERSON HILL: Okay. So I think that, as Mr.
14 Miller clearly stated when we were talking about this, that
15 it's not going to prejudice anyone. The ANC knows about this
16 and is in support of this. They are asking for less relief,
17 and there wasn't any opposition.

18 And I believe all the parties -- this does not
19 change any of the opinions of all the parties. And also, it
20 does not prejudice anyone. So unless someone wants to raise
21 their hand in opposition, I would agree with both of those
22 waivers and continue with my motion and ask for a second.

23 VICE CHAIRPERSON HART: Second.

24 CHAIRPERSON HILL: Once again, Mr. Moy, the motion
25 has been made and seconded. And for the record, no one

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1 raised their hand that had wanted to talk about the waiving
2 of the seven-day requirements for either one. And Mr. Moy,
3 can you take a roll call vote?

4 MR. MOY: Yes, thank you, Mr. Chairman. So when
5 I call your name, if you would each respond with a yes, no,
6 or abstain to the motion to approve on the amended
7 application. Ms. John?

8 (No audible response.)

9 MR. MOY: Ms. John?

10 (No audible response.)

11 MR. MOY: Can you hear me?

12 MEMBER JOHN: Yes. Can you hear me? Can you hear
13 me now?

14 MR. MOY: Just now, yes. Thank you.

15 MEMBER JOHN: I'm going to log off and log back
16 in.

17 MR. MOY: All right. Zoning Commissioner Rob
18 Miller?

19 COMMISSIONER MILLER: Yes.

20 MR. MOY: Vice Chair Hart?

21 VICE CHAIRPERSON HART: Yes.

22 MR. MOY: Chairman Hill?

23 CHAIRPERSON HILL: Yes.

24 MR. MOY: Staff will record the vote as four to
25 zero to one. This is on your motion, Mr. Chairman, to

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1 approve the amended application -- or the application for the
2 amended relief, rather. Seconded by Vice Chair Hart. Also
3 in support, Zoning Commissioner Rob Miller and Ms. John. The
4 motion carries.

5 CHAIRPERSON HILL: All right, Mr. Miller. Is that
6 it for you today?

7 COMMISSIONER MILLER: That's it. I might watch
8 you if I get bored doing something else. But thank you.

9 CHAIRPERSON HILL: You'd be very bored, Mr.
10 Miller. That's a very -- you let us know if you get that
11 bored.

12 COMMISSIONER MILLER: Okay. Thank you.

13 CHAIRPERSON HILL: Thank you. Bye-bye. And I
14 guess now we're waiting for -- I see Ms. John and then
15 Chairman Hood. And there's Chairman Hood, I think. Okay.

16 CHAIRPERSON HOOD: All right. Good afternoon.
17 How's everybody?

18 CHAIRPERSON HILL: Good, thank you. How are you,
19 sir?

20 CHAIRPERSON HOOD: I'm fine. Thank you.

21 CHAIRPERSON HILL: Good. Ms. John, are you with
22 us?

23 MEMBER JOHN: I'm here.

24 CHAIRPERSON HILL: Okay. It seems to be working
25 well. I mean, I suppose if it tends to buffer and you have

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1 issues, you could maybe turn off your video. And then maybe
2 just the microphone might work enough. And then I'll just
3 kind of go through and make sure everyone has an opportunity
4 to speak.

5 MEMBER JOHN: Okay. Thank you.

6 (Whereupon, the above-entitled matter went off the
7 record at 11:57 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: 06-24-20

Place: teleconference

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



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