

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY

JULY 15, 2020

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The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment 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
CARLTON HART, Vice Chair (NCPC)
LORNA JOHN, Board Member
MARCEL ACOSTA, Executive Director, NCPC

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD, Chairperson
PETER SHAPIRO, Zoning Commissioner
PETER MAY, Zoning Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALEXANDRA CAIN, ESQ.

The transcript constitutes the minutes from the Regular Public Meeting held on July 15, 2020.

CONTENTS

Opposition Party Motion for Rehearing in Application No. 20135 of 3428 O Street LLC	6
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DECISIONS

1 Application No. 20254 of The Government of The Republic of Zambia	19
2 Application No. 20243 of 532 Taylor LLC	24
3 Application No. 20245 of Christopher Astilla	26
4 Application No. 20247 of Reneau Randolph LLC	27
5 Application No. 20248 of Hilary Hansen	30
6 Application No. 20250 of William and Karen Quarles	33
7 Application No. 20069 of Deidra Barksdale	37

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

9:32 a.m.

BZA CHAIR HILL: All right. This meeting will please come to order. Good morning, ladies and gentlemen. We're convening and broadcasting this decision meeting by video conferencing. It's the July 15th, 2020 public meeting session, the Board of Zoning Adjustment of District of Columbia.

My name is Fred Hill, Chairperson. Joining me today is Carlton Hart, Vice Chair, and Lorna John to our meeting. But the first the first case, Board member and representing the Zoning Commission is Peter Shapiro, and then for the day I think we have Commissioner Hood -- Chairman Hood, I'm sorry, later on during the day.

Today's meeting agenda is available to you on the Office of Zoning's website. Please be advised that this proceeding is being recorded by a court reporter, and is also webcast live. Can you all hear me?

MEMBER JOHN: Yes.

BZA CHAIR HILL: Thank you, thank you. Webcast via WebEx and YouTube Live. The video will be available on the Office of Zoning's website after today's hearing session. Accordingly, everyone who is listening on the WebEx or by telephone will be muted during the meeting. We do not take any public testimony at our decision meetings unless the

1 Board asks someone to come forward. If you're experiencing
2 difficulty accessing WebEx, or mute, or telephone call, I'm
3 going to give you the number to call. It's actually also
4 listed. I didn't realize it in the top corner there, but the
5 number is 202-727-5471. Again, I'll repeat it, 202-727-5471.
6 Mr. Moy, if you want to mute your microphone if you wouldn't
7 mind.

8 At the conclusion of the meeting session I shall,
9 in consultation with the Office of Zoning, determine whether
10 a full or a summary order may be issued. A full order is
11 required when the decision it contains is adverse to a party,
12 including an affected ANC. A full order may also be needed
13 if the Board's decision differs from the Office of Planning's
14 recommendation. Although the Board favors the use of summary
15 orders whenever possible, an applicant may request the Board
16 to issue such an order.

17 Preliminary matters are those which relate to
18 whether a case will or should be heard today, such as request
19 for a postponing, continuance or withdraw, or whether proper
20 and adequate notice of meeting has been given.

21 Mr. Secretary, do we have any preliminary issues?

22 MR. MOY: Not at this time, Mr. Chairman.

23 BZA CHAIR HILL: Okay, great. Well then if you
24 would, Mr. Moy, I know as I mentioned before, Ms. John is not
25 on this case but Ms. John is free to watch and listen. And

1 if you would, Mr. Moy, call our first case.

2 MR. MOY: Yes, thank you. Good morning, Mr.
3 Chairman, members of the Board. This is the meeting session
4 of the Board's hearing today, and the first decision making
5 is a motion for reconsideration. This goes to case no. 20135
6 of 3428 O Street, LLC as amended for an area variance from
7 the corner store requirements of Subtitle U, Section 254.6(g)
8 to operate a corner store on the first floor and basement of
9 an existing mixed use business at the R-20 zone at premises
10 3428 O Street, NW, Square 1228, Lot 76. Again, this is a
11 motion of the opposition party for reconsideration of the
12 hearing. And participating on this decision is Chairman
13 Hill, Vice Chair Hart, and Zoning Commissioner, Peter
14 Shapiro.

15 BZA CHAIR HILL: Okay. Thanks, Mr. Moy. Are you
16 guys ready to deliberate? Just nod-- okay. In a second, I'll
17 go ahead and start a little bit, and then I would like to
18 hear from everybody.

19 So, I mean, as I'm sure you all remember this is
20 a long case. We took a tremendous amount of testimony. I
21 mean, I think -- I can't remember. This was over several
22 hearings. And I think that we as a Board had enough
23 information to kind of understand what was being requested,
24 and whether or not we thought that they were meeting the
25 criteria to grant the relief requested.

1 In terms of the motion that's before us, in terms
2 of reopening, the issues that have been brought before us
3 from the party in opposition was that the ANC votes in
4 support were tainted was one. One Call Your Mother has
5 opened a new location in Capitol Hill, which operates as a
6 retail, not a prepared food established. So the proposed
7 Georgetown location could operate out of the prior use
8 variance allowing retail uses. The COVID-19 pandemic has
9 severely impacted both Saxby's and Weisse Miller, and social
10 distancing requirements do not permit the outdoor line or
11 queue that was proposed.

12 After reviewing the motion, I do not believe that
13 the party opponent has provided newly discovered evidence
14 within the meaning of Subtitle Y, Section 700.5, that would
15 justify a hearing of this case and for the following reasons:
16 with regards to the ANC vote, I don't believe that the Board
17 has justifications to hear challenges to an ANC report.

18 I mean, nonetheless, in this case I know that the
19 ANC adopted its two reports by votes of 6 to 2 both times so
20 that even -- I mean, again, getting into whether or not
21 there was a tainted vote or not, I mean, that's something
22 that is way beyond our purview. I don't know how that has
23 anything to do with what we're supposed to be doing here.
24 And nonetheless, even if you did count if there was a vote
25 in there, it still would've passed by 5 to 2.

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1 And what our job is is to look at the reports that
2 are giving by the ANC and give great weight to those reports.
3 The ANC is not deciding. Like, you know, they're giving us
4 their great weight. We then take all of the information we
5 take in in terms of all the different testimony that we've
6 heard, in terms of the report that we get from the Office of
7 Planning, the different agencies around the city, whatever
8 they may be. This one I think probably just had DDOT. So
9 I didn't think that that was a justified reason.

10 As to the operations of Call Your Mother's Capitol
11 Hill location, I think that this is a different situation.
12 Operations at one location are not directly relevant to the
13 Board's analysis of whether an applicant has met its burden
14 for zoning relief at another location. They merely provide
15 general guidance as to how a particular business may operate.
16 I believe that especially when it comes to variance relief,
17 the practical difficulty space by property owners vary
18 greatly from one location to another due to the particular
19 circumstances effecting the property that is the subject of
20 the application. So I wouldn't be holding any value to that
21 claim as well.

22 And then lastly, finally, the COVID-19 pandemic
23 and result in public health emergencies are temporary
24 conditions, whereas zoning and hence the Board's review of
25 a zoning application are based on long-term considerations.

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1 The Mayor's declaration of a State of Emergency is, by its
2 very definition, temporary in duration and scope and
3 therefore does not present a basis on which the Board can
4 evaluate zoning relief. So therefore, I'd be in favor of
5 denying the party motion for a rehearing.

6 May I go around the table and see what my
7 colleagues think? May I start with you, Mr. Hart?

8 VICE CHAIRPERSON HART: Sure. I appreciate the
9 comments that you provided, Mr. Chairman. I, you know, have
10 reviewed the -- read through the party in opposition's motion
11 for a reconsideration. And listening to your explanations,
12 I would agree with you in terms of this not being newly
13 discovered information. The only thing that might be
14 considered newly, possibly newly discovered information,
15 would be the ANC vote because that actually happened prior
16 to our decision. But everything else came after our
17 decision, and so I didn't think that that was valid given the
18 reasons that you've described.

19 But with regards to the ANC vote, I would agree
20 with you in terms of this is a -- we are giving great weight
21 to the ANC report, and that report had a vote tally that was
22 associated with that. And I think what we are really looking
23 at is saying the vote is -- it was just a vote that they gave
24 to us. Now it could have been 4 to 2 or whatever that number
25 was, but it still didn't seem that that would negate that

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1 vote. That vote was taken, and we received that.

2 And as you noted, it is a recommendation to us.
3 And that recommendation is something that we can mull through
4 and mull over and figure out if we agree with that, but we
5 have to give great weight to that report itself. With regard
6 to the other information, it seemed while I understood what
7 they were trying to bring up and trying to add to this, it
8 just didn't seem like that was relevant in that all of the
9 other situations that the party in opposition brought up were
10 things again that happened prior -- happened after our vote
11 had been taken. It wasn't information that was available
12 before our vote had been taken earlier this year.

13 So I just did not think that that was relevant to
14 our discussion, so I would not grant the motion for
15 reconsideration or, I don't know, I mean deny it. I'm not
16 exactly sure what the terminology is. So that's where I am.
17 I'm not in support of that vote or the motion to reconsider.

18 BZA CHAIR HILL: Thank you. Commissioner Shapiro?

19 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I
20 joined with both of you with what you're saying. On the
21 COVID related ones, it just doesn't feel relevant to our
22 determination. On the second argument, I agree with the
23 logic that it's a different operation in a different
24 location.

25 The only one that caught my attention, and I

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1 haven't run into this before so I'm interested in a legal
2 interpretation of this, but what is written in the argument
3 is it says, "The BZA must exclude relevant evidence if its
4 probative value is substantially outweighed by a danger of
5 unfair prejudice. Furthermore, the BZA cannot give greater
6 weight to a vote in which at least one commissioner with a
7 clear and obvious conflict of interest."

8 So is that the opposition's view, or are they
9 quoting from some public record or document that we should
10 be attending to? And maybe this is a question for OAG
11 because it feels -- what the opposition is arguing feels very
12 clear and precise. So that caught my attention.

13 And now let me just say in addition to that, take
14 under advisement what the ANC says. That was not by any
15 stretch the only factor that lead to our decision, right?
16 So even if that were the case, even if there was some legal
17 justification for throwing out the ANC's opinion or view on
18 this, with all the other information that we have, I'm not
19 sure that would really change my view on this.

20 But I am curious, and maybe it's a question for
21 OAG, I'm curious is that government language or is that just
22 something that the person who's making the argument is
23 saying?

24 MS. CAIN: I mean, as to how the Board has to
25 weigh evidence, I believe that might be from the regulations.

1 I'm not sure I can find the specific provision right now in
2 terms of weighing and outweighing evidence that might be
3 unduly prejudicial to a party. Like I said, I'm not sure of
4 the direct citation off the top of my head, but I do believe
5 that might have basis either in the regs or the zoning act.

6 As to the weight that has to be given to the ANC,
7 what the regulations state on that is that you are giving
8 great weight to the issues and concerns that they raise, not
9 the specific (audio interference) itself. So as even some
10 of the other Board members articulated it's, you know, really
11 a matter of looking through the report itself, and what the
12 ANC is saying, and deciding whether the Board agrees with
13 that for whatever reason.

14 I'm not sure if the Board is really in a position
15 to weigh in on whether the ANC followed its own procedures
16 and whether that's sort of something that can be considered.
17 On that, I'm not entirely sure.

18 COMMISSIONER SHAPIRO: So the only piece of
19 complexity here for me is let's say the ANC didn't follow its
20 procedures. Does that then mean -- and if we could interpret
21 it based on the information, does that mean that we should
22 strike the ANC's report from the record? Now even if we did,
23 there was so much other information that we were working
24 with. But still, is that procedurally is that something that
25 we need to consider?

1 MS. CAIN: At this point, I wouldn't feel
2 comfortable giving you an answer on that but that is
3 something that we can looking into in more depth, is to how
4 that would play into the Board's consideration of the report.

5 COMMISSIONER SHAPIRO: Thank you. And Mr. Chair
6 and Mr. Vice Chair, again, I'm not even sure that even if
7 that were the case, that merits us doing anything but denying
8 the motion. But it is an interesting point which is that the
9 information should still be considered.

10 BZA CHAIR HILL: Sorry, I was just looking up
11 something.

12 COMMISSIONER SHAPIRO: I thought you froze, Mr.
13 Chairman.

14 BZA CHAIR HILL: No, I just was -- I mean, I
15 don't know. And this is where Alex -- I mean, you know,
16 Commissioner Shapiro, I don't know what you think. I mean
17 again, like, I don't even -- I mean, the claims that the
18 party in opposition is making. I mean that's, like, you'd
19 have to go into some kind of I don't even know what trial or
20 how you administer that or how you determine. I mean,
21 somebody's just making a claim about something, right? And,
22 you know, and there's no proof.

23 I mean, I don't know where that person is supposed
24 to go now to say that what they are saying is accurate and
25 that it had an influence on this person's vote, right? I

1 mean, in the report they specifically cite a commissioner,
2 right? And so again, when I was doing the analysis, it's
3 like so that's one commissioner, right? So even if that one
4 commissioner's vote you took out, it's still passing 5 to 2,
5 right? So that's kind of the discussion that I was having.

6 Your point, Mr. Shapiro, is whether or not, you
7 know, our commissioner should -- whether or not that one vote
8 clearly should not have been counted, does that mean that we
9 are not supposed to then take the great weight of the ANC
10 into consideration? I would say no. Like, why would that,
11 you know, change the outcome of the issues and concerns? And
12 really, what Alex is pointing at is we're just supposed to
13 look at the issues and concerns, you know?

14 It's not that we vote yes or -- I'm sorry, it's
15 not that they vote yes or they vote no, and then we just go
16 with that. It's that we're supposed to look at the issues
17 and concerns. There's many times when the ANC has given us
18 something and we have no issues or concerns, and they vote
19 yes.

20 And really, we're not even -- we're giving great
21 weight to nothing because we don't have any issues or
22 concerns. That's what we're supposed to give great weight
23 to, right? So I guess what I'm -- and now we're just having
24 a little bit of an intellectual discussion I think. It's
25 that I don't know where one is supposed to go if they're

1 trying to throw out an entire vote that an ANC has given.
2 I mean, these are elected officials by their community that
3 have now come forward and voted on something. They've
4 listened to everything, they voted on it, and they voted 5
5 to 2 in favor of this.

6 And we looked at their issues and concern -- I'm
7 sorry, at 6 to 2, and we looked at their issues and concerns.
8 And now even if you remove again this one person's vote, that
9 still gives you 5 to 2. It just seems, you know, null and
10 void to me, right, that this claim -- again, it's definitely
11 not our purview. Like, we're not a court. We're not any
12 kind of a thing where we're supposed to decide whether
13 somebody has done something against their values, right?

14 So anyway, so I'm still in denial. But I mean I
15 guess if you want to later on -- Alex, you can kind of talk
16 with Commissioner Shapiro and see what, you know, this
17 conversation might lead to, right? But I want to be clear
18 for the record you, Commissioner Shapiro, by saying that this
19 would not have changed your vote, right, one way or the
20 other, right? There was so much other information there
21 that, you know, the ANC report, if the ANC report were
22 somehow withdrawn it wouldn't turn to, like, a no, right?
23 It just would be withdrawn. This would not have changed your
24 analysis, correct?

25 COMMISSIONER SHAPIRO: Yeah, that is absolutely

1 correct. The only piece that I'm holding onto is this one
2 sentence, "The BZA cannot give great weight to a vote which
3 has at least one commissioner with a clear obvious conflict
4 of interest." The problem with that is we don't know if
5 there's a commissioner that had a clear and obvious conflict
6 of interest. All we're hearing is what one person is saying
7 about that.

8 The Board of Ethics could determine whether that's
9 a clear conflict of interest. We wouldn't, right? That's
10 the problem that I have. And to your point, the information
11 from the ANC was by no means the tipping point in my
12 decision. Not even close. It was so much information that
13 lead to this decision. I'm completely comfortable with that.
14 I want to make sure that -- I don't have enough history with
15 this like you all do, so it's not clear to me whether
16 wherever in a situation where there's some information that
17 needs to be stricken from the record because it was deemed
18 prejudicial in some way.

19 Not talking about this or ANC, I'm talking about
20 maybe an expert witness who turns out that they should not
21 have been an expert witness. Or, you know, there's other
22 examples where we strike things from the record. Even if
23 there were, there's not enough evidence here to say that this
24 should be one of them. But let's say --

25 BZA CHAIR HILL: I mean, that's fine. that's

1 fine. All right, then this is what I think.

2 COMMISSIONER SHAPIRO: This is for another body,
3 not for us.

4 (Simultaneous speaking.)

5 BZA CHAIR HILL: I think it's for another body as
6 well, and I don't think that this is going to change our
7 opinion --

8 COMMISSIONER SHAPIRO: Correct.

9 BZA CHAIR HILL: -- about anything that's going
10 on. However, since this has been a very contentious case and
11 since, you know, it appears as though this could maybe go to
12 an appeal or who knows, right, I don't want there to be any
13 doubt as to what's going on here, right? So if, Alex, you
14 want to look into this one issue, right, and then get back
15 to us next week, we can -- I mean, the only thing I can think
16 of is that this ANC report gets pulled, and I don't even know
17 how that happens.

18 And I know that we're not the body that decides
19 that. And so, you know, and even if the ANC report as I said
20 did get pulled, that would not change my opinion as to all
21 of the evidence, and it doesn't sound like that would for
22 neither Commissioner Shapiro or Vice Chair Hart. Is that
23 correct, Vice Chair Hart? Could you please speak into the
24 microphone?

25 VICE CHAIRPERSON HART: Sorry. Yes, that is

1 correct, Chairman Hill.

2 BZA CHAIR HILL: So let's just go ahead and, you
3 know, Alexandra -- I mean, if OAG would take a look at this
4 issue, okay, and then we'll come back next week and do this
5 again. Okay?

6 COMMISSIONER SHAPIRO: Because I stirred this up,
7 so I just want to make sure that we're clear about what OAG
8 is looking into.

9 MS. CAIN: So I guess the question, if evidence
10 comes to light that there was some issue with the ANC vote
11 be that, you know, a conflict of interest on the part of a
12 commissioner, some other sort of malfeasance, you know, would
13 the Board have jurisdiction to decide whether or not to take
14 great weight from the report.

15 COMMISSIONER SHAPIRO: I think that sounds right.
16 So and then to your point, Mr. Chair, we felt that we needed
17 to, you know, there's a whole lot of if's. But if we felt
18 that we needed to suppress the report, that that was -- there
19 was grounds to do that, then what happens? And again, I
20 don't have experience with this. Are we in a position to
21 say, "Well, there was plenty of other evidence. Even if we
22 suppress that report, then our vote still stands"?

23 BZA CHAIR HILL: Okay. So anyway, Commissioner,
24 why don't you reach out to Alex, to OAG, and clarify your --
25 I understand your question, but make sure that she

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1 understands your question. And, Mr. Moy, we'll put this back
2 on for decision on the 22nd.

3 MR. MOY: All right. That's scheduled for July
4 22nd then, Mr. Chairman.

5 BZA CHAIR HILL: Yeah. Okay? Okay. All right.
6 Thank you, Commissioner. Bye-bye.

7 VICE CHAIRPERSON HART: And I'm going to drop off
8 too, Mr. Chairman.

9 BZA CHAIR HILL: Sure.

10 VICE CHAIRPERSON HART: And so Mr. Acosta can take
11 a break.

12 BZA CHAIR HILL: I guess we're also looking then
13 for Peter May, I think.

14 VICE CHAIRPERSON HART: Yeah. I think he's on the
15 call.

16 BZA CHAIR HILL: Okay.

17 COMMISSIONER MAY: I'm here.

18 VICE CHAIRPERSON HART: You can drop me to the
19 attendees list. That'd be good, thanks.

20 BZA CHAIR HILL: Commissioner May, I mean, you
21 sound happy this morning. I love it.

22 COMMISSIONER MAY: Happy isn't the exact word.

23 BZA CHAIR HILL: You must miss the live action.
24 I sense that you are more of a live action person. You
25 really enjoy the face-to-face combat.

1 COMMISSIONER MAY: I'm happy to be performing from
2 my office at home. But yeah, I just -- I got a busy day so
3 I want to --

4 BZA CHAIR HILL: Okay. Well, I'm going to go with
5 face-to-face combat. That's what you enjoy.

6 COMMISSIONER MAY: Okay.

7 BZA CHAIR HILL: Mr. Moy, if you wouldn't mind
8 calling our next case, please.

9 MR. MOY: Yes. Thank you, Mr. Chairman. I
10 believe Ms. Lorna John is on the screen.

11 BZA CHAIR HILL: Okay. Let's go ahead and get her
12 up there as well.

13 MR. MOY: Before I --

14 BZA CHAIR HILL: Okay, great. Perfect.

15 MR. MOY: -- do that. All right. So this for a
16 decision is case application no. 20254 of the Government of
17 the Republic of Zambia. And this application was captured
18 and advertised as to permit the renovation of the chancery
19 building in the R-1-B Zone at premises 2419 Massachusetts
20 Avenue, NW, Square 2506, Lot 22. And this was heard at the
21 Board's hearing last week, last Wednesday. And participating
22 is Chairman Hill, Ms. John, Zoning Commissioner in this case
23 representing the Department of Interior, Peter May. And
24 representing the National Capital Planning Commission, Mr.
25 Marcel Acosta.

1 BZA CHAIR HILL: Okay, great. Are we all ready
2 to deliberate? Mr. Acosta, since we don't see you that
3 often, why don't we begin with you today?

4 MR. ACOSTA: Good morning. Yes, I'm satisfied
5 with the case now. We did receive a note from the ANC
6 regarding their concerns, or lack of concerns about this.
7 I do know that they received some comments from a neighbor
8 that dealt with some of the operational questions about how
9 we would manage trucks and other things that may be going on
10 during the construction process.

11 I don't necessarily know if it would be helpful
12 to hear from the applicant. I don't know if the applicant's
13 here, but if they have any response to that. But those are
14 kind of our day-to-day operational questions that are
15 questions a neighbor had, and not necessarily the ANC. Given
16 all the other issues that we heard at our last meeting, I'm
17 confident this project will do what it needs to do, and I
18 will support a vote to not disapprove the application.

19 BZA CHAIR HILL: Okay, great. And, Mr. Acosta,
20 we don't have the applicants with us in the meeting session.

21 MR. ACOSTA: Okay.

22 BZA CHAIR HILL: Commissioner May?

23 COMMISSIONER MAY: I think Mr. Acosta covered
24 everything very well. I don't have anything to add.

25 BZA CHAIR HILL: Ms. John?

1 MEMBER JOHN: Nothing to add as well. I thought
2 OP did a great analysis of how the application fits the
3 criteria, and I thought the State Department provided support
4 for the application, so I really don't have much to add.

5 BZA CHAIR HILL: Okay. Well, Ms. John, thank you
6 for pointing out the OP report as well as the State
7 Department's support. I'm going to make a motion then to
8 approve application no. 20254 as captioned and read by the
9 secretary. And ask for a second, Ms. John?

10 MEMBER JOHN: Second.

11 BZA CHAIR HILL: Motion is made and seconded.
12 And, Mr. Moy, could you please a roll call vote?

13 MR. MOY: Thank you, Mr. Chairman. So when I call
14 your name, if you would please reply with a yes, no, or
15 abstain. And this is to the motion to not disapprove that
16 was made by Chairman Hill.

17 BZA CHAIR HILL: I'm sorry, what did you say, Mr.
18 Moy? I apologize. I want to redo it again because I forgot
19 about the not to disapprove.

20 MR. MOY: No, that's all right. That's fine.

21 BZA CHAIR HILL: So I'm going to make a motion not
22 to disapprove application no. 20254 as captioned and read by
23 the secretary. And ask for a second, Ms. John?

24 MEMBER JOHN: Second.

25 BZA CHAIR HILL: Thank you. Thank you, Mr. Moy.

1 I forgot about that way to make that motion.

2 MR. MOY: No, no worries. It shows that you're
3 human. But anyways, if I may call that -- when I call your
4 name, if you would please respond with a yes, no, or abstain.
5 This is on the motion made by the Chairman, seconded by Ms.
6 John. Say, Mr. Marcel Acosta?

7 MR. ACOSTA: Yes.

8 MR. MOY: Zoning Commissioner Peter May?

9 COMMISSIONER MAY: Yes.

10 MR. MOY: Ms. John?

11 MEMBER JOHN: Yes.

12 MR. MOY: Chairman Hill?

13 BZA CHAIR HILL: Yes.

14 MR. MOY: Staff would record the vote as 4 to 0
15 to 1 which, as I said, is on the motion of Chairman Hill,
16 seconded by Ms. John. Also support Mr. Peter May and Mr.
17 Marcel Acosta. And we have a Board seat vacant. Motion
18 carries, sir.

19 BZA CHAIR HILL: Okay, great. Thank you. Well,
20 Mr. Acosta, thank you. Nice to say you.

21 MR. ACOSTA: Oh, thank you. Have a happy summer
22 to everyone.

23 BZA CHAIR HILL: Thank you, thank you. You as
24 well. You're not going to come back before August?

25 MR. ACOSTA: I don't think so, unless you have

1 another case in mind. Everybody have a great summer. I'll
2 probably see Peter at some point, but everybody else not so
3 sure, so take care.

4 BZA CHAIR HILL: Yeah, thank you. All right.

5 MR. ACOSTA: Bye.

6 BZA CHAIR HILL: Commissioner you're done also,
7 correct?

8 COMMISSIONER MAY: No. I mean are we going to do
9 the decision cases?

10 BZA CHAIR HILL: Oh, you're on some of those?

11 COMMISSIONER MAY: We have five decisions.

12 BZA CHAIR HILL: Okay. Because I wasn't there
13 with you guys on Wednesday for --

14 COMMISSIONER MAY: I know.

15 BZA CHAIR HILL: -- that day.

16 COMMISSIONER MAY: We missed you. It was
17 terrible.

18 BZA CHAIR HILL: Thank you. That's so kind of you
19 to say, Commissioner. That really is. I feel the love. I
20 guess the Vice Chair's going to get plugged back in here.

21 VICE CHAIRPERSON HART: It's like I never left.

22 (Laughter.)

23 BZA CHAIR HILL: So I'm going to cut out until we
24 get back to the last one, okay?

25 VICE CHAIRPERSON HART: Not a problem.

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1 BZA CHAIR HILL: Okay, bye-bye.

2 VICE CHAIRPERSON HART: Thank you. Mr. Moy, if
3 you could read us the next case, 20245. I'm sorry, 20243.

4 MR. MOY: Thank you, Mr. Vice Chair. So okay,
5 here we go. All right. So case application participating
6 is no. 20243 of 53, or rather 532 Taylor, LLC. Captioned and
7 advertised for a special exception under the RF-use
8 requirements of Subtitle U, Section 320.2, to permit the
9 conversion of a flat into a three-unit apartment house in the
10 RF-1 Zone at premises 532 Taylor Street, NW, Square 3231, Lot
11 86. And the Board heard this case at its public hearing last
12 week.

13 VICE CHAIRPERSON HART: Thank you very much, Mr.
14 Moy. So I'll just say a few words and we can go from there.
15 So after we, not receiving any further documents following
16 the hearing last week, I would still be in support of this
17 application as I mentioned during our deliberation. I
18 understand that both of my fellow Board members also
19 deliberated, and I'll ask you now if you have anything else
20 to add. You can either shake your head or nod.

21 MEMBER JOHN: I have nothing to add.

22 COMMISSIONER MAY: Nothing to add.

23 MEMBER JOHN: Nothing to add.

24 VICE CHAIRPERSON HART: So I would make a motion
25 to approve application 20243 as read and captioned by the

1 secretary, given the deliberation that we had last week. Do
2 I have a second, Ms. Moy?

3 COMMISSIONER MAY: Second.

4 VICE CHAIRPERSON HART: I'm sorry, Ms. Moy. Wow.
5 Ms. John. Mr. May, there we go. Thank you. The second?

6 COMMISSIONER MAY: Yes.

7 VICE CHAIRPERSON HART: So having heard a second,
8 Mr. Moy, if you could go for a roll call vote, please.

9 MR. MOY: Yes, thank you. So when I call your
10 name, if you would reply with a yes, no, or abstain. This
11 is on the motion made by Vice Chair Hart, seconded by Zoning
12 Commissioner Peter May. Ms. John?

13 MEMBER JOHN: Yes.

14 MR. MOY: Zoning Commissioner Peter May?

15 COMMISSIONER MAY: Yes.

16 MR. MOY: Vice Chair Hart?

17 VICE CHAIRPERSON HART: Yes.

18 MR. MOY: Staff will record the vote as 3 to 0 to
19 2. This is on the motion of Vice Chair Hart, seconded by
20 Zoning Commissioner Peter May. And also in support of the
21 motion, Ms. John. We have a Board seat vacant, no other
22 members participating. Motion carries, 3 to 0 to 2.

23 VICE CHAIRPERSON HART: Thank you. And we can
24 roll right along. If you could -- we could move to the next
25 case, 20245, when you're ready, Mr. Moy.

1 MR. MOY: Thank you. So this is case application
2 20245 of Christopher Astilla, captioned and advertised for
3 special exceptions under Subtitle E, Section 5201. Lot
4 occupancy requirements of Subtitle E, Section 304.1, and from
5 the rear addition requirements of Subtitle E, Section 205.4,
6 to construct a two-story rear addition to an existing
7 attached principal dwelling unit, RF-1 Zone at premises 216
8 14th Place, NE, Square 1055, Lot 31. And this application
9 was heard at the Board's public hearing last week, which was
10 July the 8th.

11 VICE CHAIRPERSON HART: Thank you, Mr. Moy. So
12 again, after not receiving any further documents following
13 the hearing last week, I would still be in support of this
14 application as I mentioned during our deliberation. And I'll
15 ask my fellow Board members if they have anything that they'd
16 like to add.

17 MEMBER JOHN: No.

18 COMMISSIONER MAY: No.

19 VICE CHAIRPERSON HART: Excellent. So I would
20 then make a motion to approve application 20245, as read and
21 captioned by the secretary. Do I have a second?

22 MEMBER JOHN: Second.

23 VICE CHAIRPERSON HART: Thank you. Mr. Moy, if
24 you could read the -- if you could go for a roll call vote,
25 please?

1 MR. MOY: Yes, thank you. So when I call your
2 name, if you would please respond with a yes, no, or abstain.
3 This is on the motion made by Vice Chair Hart, seconded by
4 Ms. John. Zoning Commissioner Peter May?

5 COMMISSIONER MAY: Yes.

6 MR. MOY: Ms. John?

7 MEMBER JOHN: Yes.

8 MR. MOY: Vice Chair Hart?

9 VICE CHAIRPERSON HART: Yes.

10 VICE CHAIRPERSON HART: Staff will record the vote
11 as 3 to 0 to 2, and this is on the motion of Vice Chair Hart,
12 seconded by Ms. John. Also in support, Zoning Commissioner
13 Peter May. We have a Board seat vacant, no other members
14 participating. Motion carries, 3 to 0 to 2.

15 VICE CHAIRPERSON HART: Thank you. So moving
16 right along. I think we are at 20247 now.

17 MR. MOY: Yes, thank you. This is case
18 application 20247, Reneau Randolph, LLC. Captioned and
19 advertised for special exception under the RF use
20 requirements Subtitle U, Section 320.2, to permit the
21 conversion of an existing attached principal dwelling unit
22 into a three-unit apartment house, RF-1 Zone, at premises
23 1317 Randolph Street, NW, Square 2824, Lot 6. This was heard
24 at the Board's public hearing last week, July the 8th.
25 Participating is Vice Chair Hart, Ms. John, and Zoning

1 Commissioner Peter May.

2 VICE CHAIRPERSON HART: Thank you. So I can
3 begin. Again after not receiving any further documents
4 following the hearing last week, I would still be in support
5 of this application as I mentioned during our deliberation.
6 I will point out that the ANC report did include a number of
7 conditions. I thought those conditions were actually outside
8 of the Board's purview. And so I, you know, I didn't think
9 that they were things that we needed to add to the order
10 itself. So I'd like to hear from my fellow Board members
11 their thoughts on this case as well.

12 MEMBER JOHN: I thought we had discussed that the
13 last time and I believe there was an issue of parking that
14 the applicant had met. I don't know if I'm confusing that
15 with another case but --

16 VICE CHAIRPERSON HART: They've met all the
17 things, yes.

18 MEMBER JOHN: Yes. They've met all of the
19 conditions. And so I do not support including those
20 conditions in the order.

21 VICE CHAIRPERSON HART: Okay. I just wanted to
22 be clear on that. Commissioner May?

23 COMMISSIONER MAY: I have nothing to add. I'm
24 ready to vote in support.

25 VICE CHAIRPERSON HART: Thank you. So I'll make

1 a motion to approve application 20247 as read and captioned
2 by the secretary. Mr. Moy, could we have a roll call vote
3 please? Sorry, do I have a second?

4 MEMBER JOHN: Second.

5 VICE CHAIRPERSON HART: Thank you. Mr. Moy, could
6 we have a roll call vote please?

7 MR. MOY: Yes. When I call your name, if you
8 would please respond with a yes, no, or abstain on the motion
9 made by Vice Chair Hart to approve the application for the
10 relief requested. Seconded motion, Ms. John. Zoning
11 Commissioner Peter May?

12 COMMISSIONER MAY: Yes.

13 MR. MOY: Ms. John?

14 MEMBER JOHN: Yes.

15 MR. MOY: Vice Chair Hart?

16 VICE CHAIRPERSON HART: Yes.

17 MR. MOY: Staff would record the vote as 3:0:2 on
18 the motion of Vice Chair Hart, seconded by Ms. John. Also
19 in support of the motion, Zoning Commissioner Peter May. We
20 have a Board seat vacant, and no other members participating.
21 Motion carries, 3:0:2.

22 VICE CHAIRPERSON HART: Thank you. Moving right
23 along, if you could call the next case, 20248, at your
24 convenience, Mr. Moy.

25 MR. MOY: All right. This would be case

1 application for decision no. 20248 of Hilary Hansen. Caption
2 advertised for special exceptions under Subtitle E, Section
3 5201, from the lot occupancy requirements of Subtitle E,
4 Section 304.1; on the rear yard requirements of Subtitle E,
5 Section 306.1; from the nonconforming structure requirements
6 of Subtitle C, Section 202.2. This would construct a two-
7 story rear addition to an existing semi-detached principal
8 dwelling unit, RF-1 Zone at 1006 10th Street, NE, Square 931,
9 Lot 25. And this was last heard at the Board's hearing on
10 July the 8th.

11 VICE CHAIRPERSON HART: Thank you. So after again
12 not receiving any further documents following the hearing
13 last week, I would still be in support of this application
14 as I noted during our deliberation last week. And I'll ask
15 my fellow Board members if they have any other items that
16 they would like to add to the discussion.

17 MEMBER JOHN: No, nothing to add.

18 COMMISSIONER MAY: No.

19 VICE CHAIRPERSON HART: So I'll make a motion to
20 approve application 20248, as read and captioned by the
21 secretary. And do I have a second?

22 MEMBER JOHN: Second.

23 COMMISSIONER MAY: Second.

24 VICE CHAIRPERSON HART: Okay. We got two seconds.
25 It looks like Ms. John beat Commissioner May.

1 COMMISSIONER MAY: Yes, that's fine.

2 VICE CHAIRPERSON HART: And, Mr. Moy, if we could
3 go through a roll call vote again, please.

4 MR. MOY: Thank you. When I call your name, if
5 you would please respond with a yes, no, or abstain to the
6 motion made by Vice Chair Hart to approve the application for
7 the relief requested. Seconded the motion, Ms. John. Also
8 in support of the motion, Zoning Commissioner Peter May? And
9 --

10 VICE CHAIRPERSON HART: You need to go through the
11 vote itself, right?

12 MR. MOY: Yeah. It's 3:0:2.

13 VICE CHAIRPERSON HART: We haven't made the --

14 MEMBER JOHN: Voted.

15 COMMISSIONER MAY: We just had multiple seconds.

16 MR. MOY: Oh, I'm sorry. Well, I'm jumping ahead
17 of myself. Okay. So motion was made and there was a second?

18 VICE CHAIRPERSON HART: Yes, by Ms. John.

19 MR. MOY: And did you call a vote?

20 VICE CHAIRPERSON HART: I called a vote, and I'm
21 just actually waiting for you to call each other's name --
22 call all of our names so that we can officially vote.

23 MR. MOY: All right. Thank you very much.

24 VICE CHAIRPERSON HART: Not a problem.

25 MR. MOY: So staff will record vote as the --

1 VICE CHAIRPERSON HART: We haven't done it yet.
2 You have to call Commissioner May first to have him vote --

3 MR. MOY: Clearly, I haven't had my second cup of
4 coffee really. Sorry.

5 VICE CHAIRPERSON HART: I am actually kind of
6 rolling through this a little quickly, so I understand the --

7 MEMBER JOHN: There's another human in the house
8 here.

9 MR. MOY: Yeah. I say it's throwing my rhythm
10 off. Okay. So motion is made by Vice Chair Hart to approve
11 the application for relief requested, and seconded by Ms.
12 John.

13 VICE CHAIRPERSON HART: Yes.

14 MEMBER JOHN: Yes, yes.

15 COMMISSIONER MAY: Call the roll call, please.

16 MEMBER JOHN: Now the roll call.

17 MR. MOY: Okay. So when I call your name, if you
18 would just respond with a yes, no, or abstain. All right.
19 Zoning Commissioner Peter May?

20 COMMISSIONER MAY: Yes.

21 MR. MOY: Ms. John?

22 MEMBER JOHN: Yes.

23 MR. MOY: Vice Chair Hart?

24 VICE CHAIRPERSON HART: Yes.

25 MR. MOY: Okay, great. So now staff will record

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1 as 3:0:2, right. Motion was made by Vice Chair Hart,
2 seconded by Ms. John. And also in support of the motion,
3 Zoning Commissioner Peter May. No other members
4 participating, we have a Board seat vacant. Motion carries,
5 3:0:2.

6 VICE CHAIRPERSON HART: Thank you. So this is the
7 last case with Mr. May, and this is 20250. If you could call
8 that case please, Mr. Moy.

9 MR. MOY: Yes, thank you. Case application 20250,
10 William and Karen Quarles. Caption advertised for special
11 exception under Subtitle E, Section 5201, rear addition
12 requirements Subtitle E, Section 205.4, from the lot
13 occupancy requirements of Subtitle E Section 304.1, and from
14 the nonconforming structure requirements of Subtitle C,
15 Section 202.2 to construct a two-story rear addition to an
16 existing attached flat in the RF-1 Zone at premises 216 9th
17 Street, NE, Square 917, Lot 113. And this was heard at the
18 Board's public hearing last week, July the 8th.

19 VICE CHAIRPERSON HART: Thank you, Mr. Moy. So
20 again, after not receiving any further documents following
21 the hearing last week, I would still be in support of this
22 application as I mentioned during our deliberation. I also
23 understand that you all, both of my Board members have also
24 deliberated last week and I wanted to ask if you had anything
25 further to add.

1 MEMBER JOHN: Nothing.

2 VICE CHAIRPERSON HART: Okay.

3 COMMISSIONER MAY: Mr. Chairman?

4 VICE CHAIRPERSON HART: Yes.

5 COMMISSIONER MAY: Mr. Vice Chairman, however you
6 want to be addressed.

7 VICE CHAIRPERSON HART: Whatever's fine.

8 COMMISSIONER MAY: I would note that there were
9 two new letters of support that I saw on the record. I don't
10 know if they were added last week and I just missed them, but
11 I just wanted to make sure we recognize that those are in
12 there, including the abutting neighbor to the north.

13 VICE CHAIRPERSON HART: Okay. I think we actually
14 asked for those.

15 COMMISSIONER MAY: Yes. There was one that the
16 applicant thought was in the record but was not there. I
17 don't know when they were added, all I know is that I just
18 found them prepared for today.

19 VICE CHAIRPERSON HART: Okay. So I appreciate
20 that. I think that we did ask for those from the applicant
21 during the hearing itself.

22 COMMISSIONER MAY: Yeah.

23 VICE CHAIRPERSON HART: I was looking at anything
24 else that was outside of that information, but I agree with
25 you. Thank you for pointing that out. I still would be in

1 support of the application, but it's good to have a full
2 record. So with that, I make a motion to approve application
3 20250, as read and captioned by the secretary. And do I have
4 a second?

5 COMMISSIONER MAY: Second.

6 VICE CHAIRPERSON HART: Thank you, Commissioner
7 May. He was quick this time.

8 (Laughter.)

9 COMMISSIONER MAY: Yeah.

10 VICE CHAIRPERSON HART: So, Mr. Moy, if we could
11 do a roll call vote. Thank you.

12 MR. MOY: Yes, sir. So when I call your name, if
13 you would please respond with a yes, no, or abstain on the
14 motion made by Vice Chair Hart to approve the application for
15 the relief requested, and seconded by Zoning Commissioner,
16 Peter May. Ms. John?

17 MEMBER JOHN: Yes.

18 MR. MOY: Mr. May?

19 COMMISSIONER MAY: Yes.

20 MR. MOY: Vice Chair Hart?

21 VICE CHAIRPERSON HART: Yes.

22 MR. MOY: Staff would record the vote as 3:0:2.
23 And this is on the motion of Vice Chair Hart to approve,
24 seconded by Zoning Commissioner Peter May. Also in support,
25 Ms. John. We have a Board seat vacant, no other members

1 participating. Motion carries, 3:0:2.

2 VICE CHAIRPERSON HART: Excellent. Thank you very
3 much. And thank you, Commissioner May, for your staying with
4 us after the FM BZA case. I know it was a little long, you
5 know, to do that this week.

6 COMMISSIONER MAY: No worries. I look forward to
7 coming back on the 5th for two continued hearings.

8 VICE CHAIRPERSON HART: Oh, yeah. That's true.

9 COMMISSIONER MAY: Yeah.

10 VICE CHAIRPERSON HART: So thank you very much.
11 And I guess we're going to have our other folks come back,
12 Mr. Young. Take care.

13 MEMBER JOHN: Bye.

14 VICE CHAIRPERSON HART: And I'll hand it back to
15 Chairman Hill.

16 BZA CHAIR HILL: Yeah. That work better.

17 VICE CHAIRPERSON HART: Yeah.

18 BZA CHAIR HILL: This worked a little better,
19 right?

20 VICE CHAIRPERSON HART: Yeah. I was trying to
21 find a way to kind of cut down some of the time that it took
22 us to get through these. Unfortunately, I was going a little
23 bit too fast I think for Mr. Moy. He needs that second cup
24 of coffee.

25 BZA CHAIR HILL: Yeah, I guess that works out.

1 All right. We can try that again today and see what we
2 think.

3 VICE CHAIRPERSON HART: Sure.

4 BZA CHAIR HILL: All right, Mr. Moy. Chairman
5 Hood, welcome. And you can go ahead, Mr. Moy, and call our
6 next case. Chairman Hood, your microphone was not on but we
7 saw you acknowledge your acknowledgment.

8 ZC CHAIR HOOD: You know what, actually I didn't
9 feel like moving my hand to cut it on, so I just nodded by
10 head. But good morning, everyone.

11 (Laughter.)

12 BZA CHAIR HILL: Good morning.

13 VICE CHAIRPERSON HART: Good morning.

14 MR. MOY: So the next and last case for decision
15 making in the Board's meeting session is application no.
16 20069, of Deidra Barksdale. Captioned and advertised and as
17 amended for special exceptions from the general penthouse
18 requirements of Subtitle C, Section 1500.4, under Subtitle
19 C, Section 1504 from the penthouse setback requirements of
20 Subtitle C, Section 1502.1(c), and pursuant to Subtitle X,
21 Chapter 10 for an area variance from penthouse area
22 requirements of Subtitle C, Section 1503.1 to construct a new
23 rooftop access penthouse on an existing semi-detached flat
24 in the RF-1 Zone.

25 This is at premises 100 S Street, NW, Square 3104,

1 Lot 804. This was last heard by the Board's public hearing
2 on June the 24th. And participating on this decision is
3 Chairman Hill, Vice Chair Hart, Ms. John, and Zoning
4 Commission Chair, Anthony Hood.

5 BZA CHAIR HILL: Okay. Well, I can start a little
6 bit of this and then I'd rather just kind of go around with
7 everybody. And, Mr. Hart, I'm going to start with you just
8 because I've been starting with you of late. You know, we
9 heard a lot of testimony about this, and this was a very
10 disappointing situation I think, you know.

11 I mean, it's not something that any of us would
12 like to be in, meaning that the applicant would not want to
13 be here. You know, I think this is something that eventually
14 I'm going to have to vote against. And I can go through my
15 reasons as to why, but I guess I think I'd just like to go
16 ahead and hear about what y'all have to think about it.
17 Because again it was, you know, it was quite emotional. It
18 was a lot of emotion going on during the hearing, and I can
19 understand why.

20 But again, the reason that we're here is to look
21 through the standards with which to approve or deny
22 something. And in this case again it's an area variance,
23 which is something that's varying and it's a high hurdle to
24 get over, and I'll give my reasons again at the end of this.
25 But, Vice Chair Hart, if you wouldn't mind just kind of

1 starting us off. We can just kind of -- we can go around a
2 couple of times if we need to. Everyone put themselves on
3 mute.

4 VICE CHAIRPERSON HART: Get myself off of mute
5 before I start. So yeah I agree that this case was
6 difficult, and not really because of any necessary complexity
7 for the relief sought itself, but because of the process and
8 timeline that we had to try to figure out. And I'll say from
9 the outset that we're here to understand if we believe the
10 applicant has met their burden by providing information and
11 documentation for us to support the application.

12 And while I feel that I do feel for Ms. Barksdale,
13 the applicant, in her situation, I really don't think I can
14 support her application since I don't think that she's
15 provided sufficient information for us to do that. So she
16 has a variance from the penthouse -- she has requested a
17 variance from the penthouse area requirements.

18 She's proposing a, I guess constructed, 130 square
19 foot penthouse when only a 30 square foot space is allowed.
20 This regulation is in place to limit the size, scale, and
21 massing of rooftop penthouses on flats. The image that we
22 have seen in exhibits that have been shown, what I perceive
23 to be a fairly large penthouse on this -- it's a very
24 impressive house. The applicant has also asserted that they
25 relied on the BZA approval to build the structure, including

1 the penthouse.

2 While I believe the drawings included the
3 penthouse prior to this year, 2020, I am really not sure when
4 the penthouse was added to the drawings. And it seemed to
5 be a little bit of confusion around this penthouse being
6 included sometime around 2016, following the initial permit
7 in 2014, and the updated permit or amended permit, I guess,
8 building permit in 2015. And the amended building permit was
9 it seemed to be for a -- the spiral staircase, and it just
10 kind of said leading to a room. But it wasn't clear that
11 there was an actual approval of the penthouse at that point.

12 So the burden in these applications, and all
13 applications, is for the applicant to provide proof. And
14 this would be in my estimation, some stamped drawings or a
15 permit saying the penthouse as designed was approved by DCRA.
16 While I understand that the applicant had an approval of the
17 renovation of the house, and at some point they decided to
18 have a penthouse and a spiral stair leading up to it. I
19 don't see any plans that have said this is what was actually
20 approved.

21 So we also understand that the applicant noted
22 that the DCA had an error that was -- and I know that the
23 errors, we usually deal with in terms of appeals. But this
24 was that the error was that the -- one of the, I guess,
25 inspectors that came to the house said that all of the plans

1 were, you know, well they kind of made a generalization that
2 all of the plans were, you know, the building was being built
3 to the plans. But it really was not clear as to again if
4 that penthouse was approved at that point. So when the DCRA
5 came back a couple of days later and then said, oh, you know,
6 this is definitely an issue that has to be rectified.

7 So the DCRA did actually start talking to the
8 applicant about the penthouse needing relief from the zoning
9 regulations, and that the applicant would need to come to the
10 BZA. And that was actually back in 2016. And it seems as
11 though there was an application that was submitted, but it
12 just wasn't continued at that point. So right now, we just
13 have the applicant saying that they had approved drawings.
14 We don't actually have the drawings that showed where this
15 penthouse and the relief that is necessary for it were
16 actually approved. And so I can't grant the variance because
17 I don't think that there is a reasonable reliance issue
18 because that has not been established in my estimation.

19 As I don't believe that there are any other
20 rationale that's been put before us, I wouldn't be able to
21 support the requested relief, the variance, as the -- in my
22 estimation, the exceptional condition prong, which is the
23 first prong of the variance test, has not been met. With
24 regard to the special exceptions that are being signed, I
25 would not be able to support these either. Under Subtitle C,

1 in 1504.1, relief to the requirements of C -- excuse me,
2 Subtitle C, 1500.6 through 1500.10 and 1502, these may be
3 granted as a special exception by the Board as long as
4 several conditions are met regarding the condition that the
5 proposed design would result in a better design of the roof
6 structure without appealing to be an extension of the
7 building wall.

8 Also, this is according to the regs, the relief
9 requested would result in a roof structure that is virtually
10 less intrusive and also that every effort has been made for
11 the housing mechanical equipment, stairway, and elevator
12 penthouse to be in compliance with the required setbacks.
13 I just don't think that they meet those aspects of the
14 regulations, and so I would not be able to support the
15 special exceptions.

16 Again, I understand that the applicant has been
17 going through this process for a number of years. But I just
18 don't believe that we have sufficient information for me to
19 be able to support it. As you are, Mr. Chairman, you had
20 noted that you were kind of disappointed that this -- we're
21 kind of here in this place, and it seems as though there is
22 a -- I don't know. It seems as though there should have been
23 a different process for people to go through for this. But
24 maybe this process should have happened a couple of years
25 ago, and we would have had a -- I don't know. It may have

1 been different then. But right now, it's just that this time
2 period has made it even harder I think for the applicant.
3 But I just don't believe that they've met the burden of proof
4 for me to be able to approve it, and that's where I am. I
5 know that was kind of long winded, so sorry.

6 BZA CHAIR HILL: Thank you. Ms. John?

7 MEMBER JOHN: So that was really very thorough,
8 and I don't have a lot to add to it. My concern about this
9 case is that I could -- it was difficult for me to understand
10 what the inspector reviewed on January 9th, 2016. And why
11 that inspector would have said that all work was being done
12 according to the plans, I believe was the statement. And his
13 purpose there was to verify if the scope of work has been
14 exceeded. That's really very broad.

15 And the inspector on January 10th said, the owner
16 was able to provide me the required permits as well as onsite
17 approved plans. The construction work being performed
18 matched the plans that were provided to me today. It is
19 still not clear to me what those plans were.

20 So, Mr. Hart, if you say that the plans showed the
21 penthouse, I didn't read the diagrams to conclude that they
22 did show a penthouse. To me they showed framing, but how
23 much of that was then -- you know, if you could expound on
24 that part of it. Because I was trying to see if up until
25 that time there was some detrimental reliance. And so we

1 could allow the penthouse based on detrimental reliance. But
2 then as I looked at -- that's still not clear, and it's the
3 burden of the applicant to prove its case. The applicant
4 needs to come in and show plans, as you've said, that clearly
5 show that they have a staff permit for building a penthouse.

6 And so I looked again at DCRA's timeline, which
7 is not refuted by the applicant. And the timeline says that
8 -- I'm going to read that, because I thought that it was very
9 clarifying. Timeline says, on August 12th, 2016. Now during
10 this time, there are a lot of meetings and phone calls to
11 various DCRA officials to resolve the matter. And it appears
12 to me that not one person could come up with staff drawings
13 that shows this penthouse.

14 And then when I looked at the original plan, it's
15 clear that there's no fourth floor there. There is nothing
16 between the two turrets. And I don't remember where that
17 exhibit is. I apologize to the lawyers. But, you know, there
18 is no fourth floor in between those two charts.

19 So on August 12th, 2016, the timeline notes that,
20 the zoning administrator met with Mr. And Mrs. Barksdale, and
21 to their architect/representative, Ms. Victoria Bellow. They
22 present drawings but no calculations. They also presented
23 a photo showing that more construction occurred since January
24 7th, 2016 on the illustrated level that Ms. Bellow called
25 either a fourth floor or a rooftop penthouse. The zoning

1 administrator informs them that, either category is a
2 violation of the zoning regulations, and informs them to
3 remove this structure or seek BZA relief.

4 The zoning administrator also informs them that,
5 if the structure is classified as a habitable penthouse under
6 either old pre-1816 or new post 1816 penthouse rules, it
7 would not be allowed under the old penthouse rules, or any
8 special exception under the new penthouse rules. We now know
9 that they would need a variance, not a special exception.
10 At that time, they asked the zoning administrator to
11 partially lift the stop work order so that they could
12 continue work on the interior.

13 So for me, from January to August, during that
14 time if there had been plans showing a penthouse, they should
15 have been provided. So I agree that this is a difficult
16 case, and no one ever wants to tell an applicant that
17 construction needs to be removed. So I looked at this case,
18 you know, as closely as I could based on information in the
19 record. And frankly, the lack of information. And again,
20 another problem with the case was the August 12th note that
21 at 3:16 p.m., Mr. Barksdale provided drawings that were
22 requested by the zoning administrator, elevation drawings.

23 So there you have it. This is really very
24 confusing. And it's not the function of the Board to try to
25 make sense of something that is really this clear. And I

1 think that the responsibility was on the Barksdale's to make
2 sure that their plans were stamped, and to retain those
3 stamped plans and not for the Board to try to figure out what
4 could have happened, because that's sort of where we are.

5 And so I have to look at what the record says and
6 the burden of proof. And the burden of proof is the criteria
7 for a variance is really very strict, and so I have
8 difficulty finding that they met the variance test. Now the
9 architect, in his response, tries to make out an argument for
10 an economic hardship because they would have to remove the
11 structure at an additional cost. And to a certain extent,
12 you know, it serves a self-inflicted wound in a way, and
13 we're not allowed to grant a variance based on, you know,
14 self-inflicted wound. I mean, that's sort of my way of
15 looking at it. So this is really very distressing. I hate
16 to have to review these cases.

17 But at the end of the day, I think the process at
18 DCRA could be tighter. But it's the responsibility of the
19 applicant to make sure that they have stamped drawings, and
20 that they document what really happened. And there was just
21 a lack of documentation in this case.

22 VICE CHAIRPERSON HART: Board Member John, did you
23 have a question for me?

24 MEMBER JOHN: Well, you have said that one of the
25 drawings showed the rooftop, showed the penthouse. But in

1 looking at DCRA's notes, one case there were elevation
2 drawings, and in another case there was none. And then, you
3 know -- so in our view, which in terms of your architectural
4 experience, did you see a penthouse with elevations in any
5 of the drawings? I didn't.

6 VICE CHAIRPERSON HART: No. And that was part of
7 the problem that I was having, was I wasn't exactly sure when
8 the penthouse was included in the drawings. But I know that
9 the issue came to light in that second inspection in January.
10 So sometime between the November approval of the permit to
11 January, they had been in the approval in -- the change to
12 the permit in November, but it wasn't -- typically you'd
13 have, you know, whatever the scope of work is, and that
14 wasn't actually included as part of the scope of work in
15 November. It wasn't explicit that they're putting a penthouse
16 on, you know, on this home.

17 MEMBER JOHN: No.

18 VICE CHAIRPERSON HART: And so it becomes this
19 kind of very -- it becomes unclear as to the what was
20 permitted in November, and it is not -- it should be very
21 clear that the rooftop penthouse, that the penthouse was
22 actually given a permit and approved by DCRA, and that's not
23 the case. And we don't have that information.

24 MEMBER JOHN: Right. There are stairs --

25 VICE CHAIRPERSON HART: Yes.

1 MEMBER JOHN: -- a room above -- I forget what the
2 unit says --

3 VICE CHAIRPERSON HART: Yeah.

4 MEMBER JOHN: -- but it was very big.

5 VICE CHAIRPERSON HART: Yeah.

6 MEMBER JOHN: Everything is are you building a
7 penthouse or are you not? Are you building storage for, you
8 know, a small storage space that meets the requirement or
9 not? The rooftop plan shows to me a wide structure. So it's
10 difficult --

11 VICE CHAIRPERSON HART: Okay.

12 MEMBER JOHN: -- and I can't resolve it through
13 speculation. I need to resolve it based on what's in the
14 record. So those would be my thoughts on this case.

15 BZA CHAIR HILL: Okay. Thank you, Ms. John.
16 Chairman Hood?

17 ZC CHAIR HOOD: Yes, Chairman. I looked at this
18 case. It feels like an appeal, even though it's not. It's
19 too many cross winds and too many things that are really not
20 necessary for us to figure out about who's on first and who's
21 on second and who's on third. Whether this person did these
22 drawings, whether these drawings are stamped.

23 For me, as stated, I don't believe the applicant
24 has provided information demonstrating exceptional
25 conditions. Also with Subtitle 1504, special exception,

1 subtitle -- I don't believe that's been met. Variance for
2 sure has not been met. But even before we get there, the
3 problem I'm having with this is before we get to what we're
4 supposed to actually be doing, there's so much investigative
5 work that we have to do to try to figure out who's on first,
6 who's on second, and who's on third.

7 And the reliance issue, I just couldn't see any
8 evidence of it. I don't know whether we have -- I hear we
9 have drawings that have been stamped, but then I hear we
10 don't. And it's not really -- for me, I think that this
11 applicant, this has been going on for years. I think this
12 applicant needs to go back, find out what they could do
13 within the zoning regulations, start from there and go
14 forward.

15 But right now, I'm prepared to deny this case.
16 But I can tell you I would advise this applicant. And I'm
17 not sure how we could do that in this process. They need to
18 go back and come to conform to the zoning regulations and
19 find out what they can and cannot do. I saw that somewhere,
20 but I didn't see it complete. Somewhere it was mentioned the
21 applicant should try to conform to the regulations, and I
22 didn't see that produced, so I'm not sure or not.

23 But I would tell you, the way it stands now, I
24 vote against this case. I would agree with my colleagues.
25 Thank you, Mr. Chair.

1 BZA CHAIR HILL: Okay. Thank you all. Can you
2 hear me? Okay. I guess, you know, as I said before, and
3 I'll just kind of echo some of the things that you all talked
4 about, Ms. John, Vice Chair Hart, and Chairman Hood, is that
5 -- you know, I mean, first of all it's four times the size
6 of anything that would be allowed. So, I mean, I'm kind of
7 already at that point, right? And again, variance is
8 something that is very difficult to achieve in terms of, you
9 know, what you need to do to get the standard. I again am
10 not even behind the special exceptions that they're
11 requesting for.

12 In terms of the timeline of things and the
13 reliance issues, I mean, that stairway was added I guess like
14 on December 22nd, 2015. And that, you know, if there should
15 have been something that DCRA -- you know, they weren't
16 looking at a penthouse, right? They were looking at that
17 stairwell, right? And so if there's a problem there in
18 DCRA's process, perhaps. But however, it's really I think
19 kind of up to the architect to know what their stamped plans
20 say.

21 You know, it's the architect that is building the
22 thing. Well, like, I'm not an architect. I'm hiring an
23 architect. Right? You have to have stamped plans that show
24 what you're allowed to build, and then you building according
25 to those stamped plans. And we didn't see any stamped plans

1 for the penthouse, right? So, you know, I just don't see how
2 that penthouse ever got built, right?

3 And then the, in terms of the reliance issues, and
4 I -- again, we've already said that we feel for the
5 applicant. I mean, it's not -- the applicant's not an
6 architect. The applicant's just trying to do what they're
7 trying to do, and they don't know that they're in trouble or
8 that there's an issue until I guess, like, January 11th,
9 2016. Right?

10 And so the fact that, you know, January 9th they
11 were good, and then January 11th they weren't, that's only
12 two days. Right? There's not a lot of stuff that gets done
13 in two days, right? So January 11th, 2016, which is now five
14 years ago, right, you know that there's a problem.

15 To echo Chairman Hood's point, whatever -- and I
16 don't even know whether you go now -- if I were the
17 applicant, I don't know what I would be advising to do. I'd
18 go to the Office of Planning. You know, I don't even know
19 if the special exception works at this point. You know, I
20 don't even know how you get the 30 square feet. You know,
21 that is again something that the applicant could go to the
22 Office of Planning for and try to see what they are allowed
23 to do within zoning, to Chairman Hood's point, and kind of
24 work from there. I mean, it's definitely an unfortunate
25 situation that I don't think the applicant necessarily is to

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1 blame for because they're hiring people to help them do what
2 they need to do, right?

3 The only thing that I will say for the applicant
4 is that you did know there was a problem on January 11th,
5 2016. You know, I mean there was a problem there. Right?
6 But nonetheless it's just a very bad situation. But I'm
7 going to ahead -- and I just don't think they've met their
8 burden, as none of us do. So I'm going to make a motion to
9 deny application no. 20069 as captioned and read by the
10 secretary. As for a second, Ms. John?

11 MEMBER JOHN: Second.

12 BZA CHAIR HILL: The motion has been made and
13 seconded. Mr. Moy, if you can please take a roll call vote.

14 MR. MOY: When I call your name, if you would
15 please respond with a yes, no, or abstain to the motion made
16 by Chairman Hill to deny the application relief being
17 requested. Seconding the motion is Ms. John. Zoning
18 Commission Chair, Anthony Hood?

19 ZC CHAIR HOOD: I'm in support of the motion.

20 MR. MOY: Vice Chair Hart?

21 VICE CHAIRPERSON HART: I'm supporting the motion
22 as well.

23 MR. MOY: Ms. John?

24 MEMBER JOHN: I'm in support of the motion.

25 MR. MOY: Chairman Hill?

1 BZA CHAIR HILL: Yes.

2 MR. MOY: Staff would record the vote as 4:0:1,
3 and this is on the motion to deny made by Chairman Hill,
4 seconded by Ms. John, also supporting motion is Zoning
5 Commission Chair, Anthony Hood, Vice Chair Hart, and of
6 course Ms. John and Chairman Hill. We have a Board seat
7 vacant. So the count is 4:0:1, motion carries. Mr.
8 Chairman.

9 BZA CHAIR HILL: Okay, great. Thank you. And I
10 know -- we'll probably just take a break real quick. But,
11 Chairman Hood, you're with us for the rest of the day,
12 correct?

13 ZC CHAIR HOOD: Yes, I sure. And I'm a have to
14 tell Commissioner May he never tells me he misses me when I'm
15 not here.

16 (Laughter.)

17 BZA CHAIR HILL: Well, you know, the thing is we
18 don't like lying, right?

19 ZC CHAIR HOOD: I got you.

20 (Whereupon, the above-entitled matter went off the
21 record at 10:48 a.m.)

22

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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: DCBZA

Date: 07-15-20

Place: teleconference

was duly recorded and accurately transcribed under
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