

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY

JULY 22, 2020

+ + + + +

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

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD, Chairperson
PETER SHAPIRO, Commissioner
MICHAEL TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN COCHRAN
MATT JESICK
KAREN THOMAS

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

DANIEL BASSETT, ESQ.
ALEXANDRA CAIN, ESQ.

The transcript constitutes the minutes from
the Regular Public Meeting held on July 22, 2020.

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

2 (9:35 a.m.)

3 BZA CHAIR HILL: Okay, good morning. The meeting
4 will please come to order. We're convening and
5 broadcasting this decision by meeting by video conference.

6

7 This is the July 22nd public meeting session of
8 the Board of Zoning Adjustment of the District of
9 Columbia.

10 My name is Fred Hill, Chairperson. Joining me
11 today is Carlton Hart, Vice Chair, Lorna John, Board
12 Member, and representing the Zoning Commission is Peter
13 Shapiro, as well as Anthony Hood and Michael Turnbull, at
14 different points during the day.

15 Today's meeting agenda is available to you on the
16 Office of Zoning website.

17 Please be advised that this proceeding is being
18 recorded by a court reporter, and is also webcast live via
19 WebEx and YouTube Live.

20 The video will be available on the Office of
21 Zoning's website after today's hearing session; meeting
22 session, as well.

23 Accordingly, everyone who is listening on WebEx
24 or by telephone will be muted during the meeting. We do
25 not take any public testimony at our decision meetings,

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1 unless the Board asks someone to come forward.

2 At the conclusion of the meeting session, I
3 shall, in consultation with the Office of Zoning,
4 determine whether a full or summary order may be issued.

5 A full order is required when the decision is
6 adverse to a party, including an affected ANC. A full
7 order may also be needed if the Board's decision differs
8 from the Office of Planning recommendation.

9 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, such as
14 requests for a postponement, continuance, or withdrawal,
15 or whether proper and adequate notice of the meeting has
16 been given.

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

19 MR. MOY: Good morning, Mr. Chairman, and Members
20 of the Board.

21 I do not have any at this time, but if there are
22 any that appear, I will call that to your attention when I
23 call the case, Mr. Chairman.

24 BZA CHAIR HILL: Okay, great. Thank you, Mr.
25 Moy. Also, if you have any technical issues, please call

1 the Office of Zoning hotline, and I'll say the number and
2 repeat it. The number is 202-727-5471. Once again, it's
3 202-727-5471. If you do have access to the video, it's
4 also in the top left corner there under the OZ hotline.

5 All right, so that being the initial issues, Mr.
6 Moy, if you would, please call our first meeting case.

7 MR. MOY: All right, thank you, Mr. Chairman.

8 Okay, here we go.

9 This is a motion for rehearing from an opposition
10 party motion to Case Application Number 20135, of 3428 O
11 Street LLC, as amended for area variance from the corner
12 store requirements, Subtitle U, Section 254.6(g), to
13 operate a corner store on the first floor and basement of
14 an existing mixed-use building in the R-20 Zone. And this
15 is at 3428 O Street Northwest, Square 1228, Lot 76.

16 And participating on this decision is Chairman
17 Hill, Vice Chair Hart, and Zoning Commissioner Peter
18 Shapiro.

19 BZA CHAIR HILL: Okay, great. Thank you.

20 So as you all probably recall, last week we
21 started to talk about this during our meeting session, and
22 there were four points that the opposition party had
23 brought up, in terms of the motion to reopen the hearing.

24 I had gone through all of my deliberation and
25 discussion on all those points, so I don't have anything

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1 new to add, however, there was a question that I believe
2 Commissioner Shapiro wanted clarification on, and we asked
3 OAG to provide some clarification on that issue.

4 OAG, could you please speak to the issue?

5 MS. CAIN: Yeah, so at last week's meeting, the
6 question was raised -- sort of a two part question -- as
7 to how the Board should address allegations of misconduct
8 or malfeasance with regard to the ANC report, and then
9 also the standard of evidence that needs to be applied,
10 based on the party opponent's assertion that the BZA must
11 exclude relevant evidence if its probative value is
12 substantially outweighed by the danger of unfair
13 prejudice.

14 So, to the first point regarding the ANC report,
15 the Board is required, under the ANC Act, to give great
16 weight to the issues and concerns that the ANC's written
17 report; provided, that that report meet certain
18 requirements under the ANC Act so that it was, you know,
19 approved at a duly noticed public meeting that was open to
20 the public, and then also that it meets the requirements
21 of the zoning regulations in Y, 46.2.

22 Assuming that it meets those sort of procedural
23 requirements, the Board has to give it great weight, and
24 what great weight requires is that the Board articulate
25 with particularity and precision the reasons why the

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1 advice given by the ANC does, or is not, persuasive to the
2 Board's decision.

3 So, if there is an allegation of misconduct --
4 you know, in this case, there was an assertion that one of
5 the ANC commissioners should have recused themselves --
6 that would be something that the Board could consider as,
7 you know, one of the circumstances impacting the ANC's
8 vote that would then in turn impact how much weight that -
9 - whether the report meets those procedural requirements,
10 and if it does get great weight, and then it's just a
11 matter of, you know, the Board sort of considering the
12 circumstances that went into that report.

13 Now, as to the issue of excluding evidence, what
14 the party opponent is citing to appears to be coming from
15 the Federal Rules of Evidence, Rule 403, which provides
16 that a court may, but is not required to, exclude relevant
17 evidence if its probative value is substantially
18 outweighed by danger of unfair prejudice.

19 These rules of evidence are typically applied to
20 trial cases. They do not typically, and the courts have
21 actually held, that they really don't have a logical
22 application to bench trials, which is essentially what the
23 Board proceedings are. You're an administrative body, you
24 operate under a sort of looser standard of evidence.

25 Neither the D.C. APA nor the Zoning Regulations

1 have any, you know, strict requirement like this. The
2 Board is pretty open to accepting whatever information it
3 believes is relevant, and then sort of making the
4 determination as the deciding body as to what is probative
5 and what can be allowed in.

6 But there is no requirement in the regulations or
7 in the Administrative Procedures Act to strike this
8 evidence, or to not allow it in.

9 The Board is considered, you know, competent
10 enough to make that decision on its own as to what is
11 relevant to the decision, and you're not worried about a
12 jury being impacted by, you know, potentially inflammatory
13 evidence, which is what that rule is designed to protect
14 against.

15 So that is sort of a quick summary of those
16 issues. If you have any additional questions,
17 I'm happy to answer them, but I think that addresses what
18 the Board raised in last week's meeting.

19 BZA CHAIR HILL: Commissioner Shapiro?

20 COMMISSIONER SHAPIRO: Yeah, Mr. Chair, I think
21 that absolutely addresses the issues that were raised at
22 our last meeting, and I have no further concerns about
23 this matter and I'm ready for us to take action.

24 BZA CHAIR HILL: Okay. Ms. John or Mr. Hart, do
25 you have anything you'd like to add?

1 COMMISSIONER SHAPIRO: Not Ms. John, Mr. Chair.

2 MEMBER JOHN: I'm not on this case, Mr. Chairman.

3 BZA CHAIR HILL: Oh, I'm sorry. Okay. So then,
4 Mr. Hart, you don't have anything to add?

5 Okay, so it's Mr. Hart, Commissioner Shapiro, and
6 myself on this case. Okay.

7 All right, then I'm going to make a motion to
8 deny the motion to reopen the hearing for Application
9 20135, and ask for a second.

10 COMMISSIONER SHAPIRO: I second, Mr. Chairman.

11 BZA CHAIR HILL: Okay, Mr. Moy, could you please
12 take a roll call vote?

13 MR. MOY: Yes, thank you, Mr. Chairman. When I
14 call your name, then you would please respond with a yes,
15 no, or abstain to the motion that was made by Chairman
16 Hill to deny the motion for a rehearing, seconded by
17 Zoning Commissioner Peter Shapiro.

18 MR. MOY: Okay, so Zoning Commissioner Peter
19 Shapiro, your vote?

20 COMMISSIONER SHAPIRO: Yes.

21 MR. MOY: Vice Chair Hart?

22 VICE CHAIR HART: Yes.

23 MR. MOY: Mr. Chairman?

24 BZA CHAIR HILL: Yes.

25 MR. MOY: Staff would record vote as 3 to 0 to 2,

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1 and again, this is on the motion of Chairman Hill to deny,
2 seconded by Zoning Commissioner Peter Shapiro. Also in
3 support of the motion, Vice Chair Hart.

4 We have a member not participating and a Board
5 seat vacant. The motion carries.

6 BZA CHAIR HILL: Okay. Thank you, Mr. Moy. You
7 may call our next case when you get a chance.

8 COMMISSIONER SHAPIRO: I'll be stepping away, Mr.
9 Chair.

10 BZA CHAIR HILL: All right, Mr. Shapiro --
11 Commissioner. Thank you for joining us.

12 COMMISSIONER SHAPIRO: Thank you.

13 MR. MOY: Okay, the next case for decision-making
14 is Case Application Number 20258 of William G. Springer
15 and Forrest Kettler.

16 And this application is for special exception
17 under Subtitle F, Section 5201, from the maximum lot
18 occupancy requirements, Subtitle F, Section 604.1. This
19 would construct a two-story rear addition to an existing
20 attached principal dwelling on RA-8 Zone at premises 1416
21 15th Street Northwest, Square 195, Lot 104.

22 And the Board will recall this was last heard at
23 the Board's hearing on July the 15th, and the Board set
24 this for decision for today, July 22nd.

25 BZA CHAIR HILL: Okay, thank you, Mr. Moy. And

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1 I'm trying to open up the record.

2 There was an item -- or, a request to reopen the
3 record because there was some technical issues, in terms
4 of submitting information into the record.

5 And I've had a chance to look this over, I don't
6 know if my fellow Board members have, but I don't have any
7 issue allowing the information into the record due to the
8 technical difficulties the citizen had bringing forth the
9 information.

10 So, no one has any issues with that, correct? If
11 you do, raise your hand.

12 MEMBER JOHN: No.

13 BZA CHAIR HILL: All right. Oh, Mr. Hood?

14 ZC CHAIR HOOD: I have a clarifying question.
15 This goes to Mr. Moy. And I believe -- did the staff know
16 about this while the hearing was proceeding? I believe
17 the answer is yes, but I just want to --

18 MR. MOY: Yes, sir. Thank you, Mr. Hood.

19 For the record, we, the staff, were aware at the
20 day of the hearing that these two individuals had called
21 in to testify, and we were ready to bring them into the
22 hearing, but for some reason we lost their signal, because
23 it was by telephone call.

24 So, they didn't have time to.

25 ZC CHAIR HOOD: And I think that was mentioned

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1 while the hearing was going on, to us, as well, correct?

2 MR. MOY: Yes, that's correct, sir.

3 ZC CHAIR HOOD: All right. Thank you, Mr. Chair.

4 BZA CHAIR HILL: Sure, of course. And welcome,
5 by the way, Chairman Hood.

6 ZC CHAIR HOOD: Thank you.

7 BZA CHAIR HILL: So, as I mentioned -- so we'll
8 go ahead and allow that -- we'll go ahead and open the
9 record to allow those two items into the record, Mr. Moy.

10 And also, as Chairman Hood had just indicated,
11 and we'll see how this goes moving forward, but, you know,
12 we knew these people were there, and that there was just
13 issues. I mean, that they were unable to get access in
14 some capacity. But I do see their information has been
15 put into the record. So -- and I have had a chance to
16 look at it over the weekend.

17 Are we all ready to deliberate?

18 MEMBER JOHN: Yeah.

19 BZA CHAIR HILL: No? Mr. Hart?

20 VICE CHAIR HART: I wasn't sure if we needed to
21 give the Applicant, I guess, a time to review and, I don't
22 know, I don't want to say respond to, but give, I guess, a
23 response for this case because these are next-door
24 neighbors, and typically, the Applicant would have the
25 opportunity to be able to ask questions of the next-door

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1 neighbor when they are there, but we haven't been able to
2 do that, and the next-door neighbor -- actually, they're
3 both next-door neighbors, I think, to the south of the
4 Applicant's property.

5 And I just think that we should allow -- to the
6 Applicant an opportunity to respond, if they want to.

7 And particularly because the two neighbors are
8 saying that there's going to be impacts to light and air,
9 and it would be helpful to have some response for that.

10 So, I'm not sure if we can take the vote today,
11 not having that response from -- or at least giving the
12 Applicant an opportunity to respond.

13 That's the only --

14 (Simultaneous speaking.)

15 BZA CHAIR HILL: Okay, that's fine. I mean, I
16 don't know. I mean, Mr. Moy, again, this is new
17 territory. I don't know how one would -- I mean, we can
18 wait until next week, I guess. Is that what it was? The
19 guy had seven days?

20 MR. MOY: Yeah, Mr. Chairman. Mr. Bassett can
21 weigh in, but the language in the new regs allows, quote,
22 reasonable time.

23 So, and the Board can set whatever time frame you
24 want, in this case, for responses. But, there is -- the
25 only language if is that the Board could not make a

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1 decision any earlier than 48 hours after the hearing, so,
2 yeah.

3 MR. BASSETT: So, this is Dan Bassett with OAG.
4 I would clarify that your decision today was to let this
5 testimony in, and then under the new virtual hearing
6 rules, there is a reasonable time for parties to respond.

7 So you've made the decision today, and then you
8 would decide what you view as a reasonable time for the
9 parties to respond to this new information that you've
10 allowed into the record.

11 BZA CHAIR HILL: Okay. So then, I mean, Mr. Moy
12 -- I mean, this is the first time that we have had
13 technical issues wherein someone needed to then provide
14 testimony to us after the fact. And then also, as Mr.
15 Bassett just mentioned, we just now allowed it into the
16 record. So, I guess I'm just trying to understand how
17 this will all happen then moving forward, meaning this
18 does now seem to be the process.

19 The only way that this would change is if when we
20 know someone had technical issues, we allow the
21 information into the record, and then at that time, we
22 would notify the parties, and then they would have time to
23 respond before we deliberated. I mean, I'm just trying to
24 understand. Otherwise, this is what's going to happen
25 every time, right?

1 That means the next meeting, you allow things
2 into the record, and then they have seven days, and then
3 you're going to, you know, deliberate.

4 I guess I'm asking Mr. Moy or Mr. Bassett, so
5 this is now the new process? I see Chairman Hood's about
6 to say something.

7 ZC CHAIR HOOD: Yeah. Mr. Chairman, let me just
8 say, the thing we're doing right now is temporary. That's
9 what I've been saying from the beginning. These are
10 temporary regulations.

11 It comes across like it's permanent. It's all
12 temporary. There'll be a discussion that's going to take
13 place with the Commission on the 30th, and we're going to
14 do some fine-tuning.

15 I'm hearing and I'm watching, and I'm sure my
16 other colleagues are as well. These are the things we're
17 going to take into consideration as we continue to move
18 on. We're not trying to cause the Board, the staff, or
19 the citizens more work. What we're trying to do is
20 refine and make it better.

21 So I'm hearing that, but I want you to know that
22 what he's talking about right now is all temporary. These
23 are under an emergency regulations that was put in place
24 during the pandemic, but these are all temporary.

25 BZA CHAIR HILL: Okay. Well, Chairman Hood, I

1 also don't necessarily disagree with what Mr. Hart is
2 bringing up, I suppose, in that someone should have an
3 opportunity to respond, right?

4 This might not be as complicated a situation as
5 you might have in the future, but I guess what I'm just
6 pointing out, and I don't know what you guys might end up
7 doing, but I'm just saying I don't necessarily disagree
8 with the people having an opportunity to respond, because
9 I know you don't think that either, but I'm just kind of -
10 -

11 ZC CHAIR HOOD: Absolutely, though. And this
12 right here is a textbook case of how this works, I think.

13 I would agree with everything the Vice Chair has
14 said about this way of going forward, but this is a
15 textbook case.

16 These cases don't happen all the time, so we have
17 to try to figure out how we work this in with our regular,
18 and how we move forward.

19 All cases are not going to be like this. But for
20 the ones that are like this, this is, I think, the course
21 of action to take, and I agree with both you and the Vice
22 Chair.

23 BZA CHAIR HILL: Okay. So --

24 MR. BASSETT: This is Dan Bassett, OAG.

25 I would echo everything everybody said, and I

1 would say that your rules are for the virtual hearings,
2 which may change, and specifically address this situation,
3 and a lot of future situations probably wouldn't fall into
4 this, where someone raised the objection -- or, raised the
5 technical issue during the hearing, OZ was aware of it,
6 tried to have them access it, they submitted their request
7 within 24 hours, and then you made a decision as to
8 whether you were going to allow that information into the
9 record or not.

10 So, this is a fairly narrow scope of cases that
11 would fall into this scenario.

12 MR. MOY: Yeah, Mr. Chairman, if I could add to
13 that? I just want to confirm what Mr. Bassett just said,
14 because I'm being reminded by the staff just now that our
15 staff did reach out to the Applicant to notify the
16 Applicant that there were these two filings.

17 So, if the Applicant did not file a response on
18 the record, then he didn't do that, but then again,
19 because these are new guidelines for us, out of an
20 abundance of caution, you could put this off until next
21 week, if you like.

22 And that's your choice.

23 BZA CHAIR HILL: No, I mean, well that's what Mr.
24 Hart has now brought up, and so now, I would be remiss to
25 just go ahead and not figure this out, right?

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1 And so, I guess, Mr. Moy, what you could have
2 done -- or, what we can do is, if there were something in
3 the record that the Applicant, you know, didn't want to
4 add anything to the record -- I don't know, right? And
5 now we're talking this through a little bit.

6 You're saying you reached out to the Applicant,
7 you told the Applicant that there were things that had
8 been added into the record, and there is nothing in the
9 record that says that the Applicant had no intention of
10 responding.

11 MR. MOY: Yeah, that's correct, but that was all
12 oral conversation, Mr. Chairman. In retrospect, I
13 should've had something more formal submitted into the
14 record.

15 BZA CHAIR HILL: So now, I guess this is
16 something I guess for Chairman Hood, or whatever.

17 Like, I mean, had we gotten just anything from
18 the Applicant that said, we don't have any response, or
19 this is our response, then we could have deliberated
20 today.

21 ZC CHAIR HOOD: I would really leave that to Mr.
22 Bassett, but I believe so.

23 But since we didn't, we need to do it as -- and
24 as Mr. Bassett and I think others have alluded to, we need
25 to provide due diligence as to what we already have

1 | described.

2 Whether they will respond or not now, we'd still
3 need to provide due diligence, but I would agree if we got
4 something, we probably could have proceeded, but we didn't
5 get it.

6 MR. BASSETT: And I believe that the chair of the
7 Board could've made this decision himself, if you had made
8 a decision on the record to admit this information last
9 week, and then provided the parties ample time to respond,
10 the decision could have been made this week, but having
11 made the decision -- you know, given that this is the
12 first time this has come up, having made the decision at
13 this meeting today, I would say that a reasonable time to
14 respond would not be elapsed as of the end of this
15 meeting.

16 But, you know, that is a judgment call for the
17 Board.

18 BZA CHAIR HILL: Okay.

19 All right, Mr. Moy, why don't you reach out to
20 the Applicant, have the Applicant put something into the
21 record saying either they're not responding, or have a
22 response, so we at least have something in the record in
23 terms of their action?

24 And we can put this on for decision next week,
25 which is the 29th.

1 VICE CHAIR HART: And I am not sure, but because
2 the ANC is a party, how do we handle that? And I don't
3 know if, Mr. Bassett, you could -- I don't know.

4 MR. BASSETT: I think I defer to OZ, whether
5 they've had any contact with the ANC.

6 VICE CHAIR HART: And again, I don't think that
7 this is necessarily an issue in this case, but I'm
8 thinking about other cases in the future, as you're having
9 to deal with this.

10 Because the ANC is a party, as well as the
11 Applicant, there are no other parties in opposition or in
12 support. They're the two that we should be looking for,
13 and I guess it would be helpful just to circle back with
14 both of them.

15 I think that's more of a question than a
16 statement, so -- anyhow, Mr. Moy, if you have any thoughts
17 on that, that'd be helpful.

18 MR. MOY: Well, I think that's a good point, Mr.
19 Vice Chair. The ANC is a party, and I don't want to
20 presume how they would react to these two additional
21 filings, but yeah, just take caution, the staff can follow
22 through, and hold conversations with ANC.

23 VICE CHAIR HART: And I think it would be helpful
24 just to have an email from them that, you know -- yeah,
25 well, just something from them -- letter, email, to

1 respond.

2 BZA CHAIR HILL: So, I guess now -- I'm just
3 trying to figure this out as well, right?

4 Oftentimes, if the ANC has been notified and we
5 don't get something from the ANC, that to us, in the past,
6 has indicated that the ANC doesn't have anything they want
7 to add, right?

8 And this is where, again, we're talking with
9 Chairman Hood, who's here, as well as now Mr. Bassett -- I
10 think that notifying the ANC and letting them know that
11 there's new information in the record is enough for me
12 because we've done that before.

13 And I don't think there needs to be anything in
14 the record that says that the ANC has been notified,
15 because in the past, all we've had Mr. Moy, at the Office
16 of Zoning, say on the record is that the ANC has been
17 notified, and we have received nothing from the ANC.

18 We're just putting too much work on the ANC,
19 again.

20 VICE CHAIR HART: I understand, and you're right,
21 and I was just trying to make sure that we were at least
22 sending something out to them.

23 You're right about the response back. It's on
24 them to figure out if they want to actually do that or
25 not, but it is on us, or the Zoning staff, to be able to

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1 send something out to the ANC and the Applicant, you know,
2 saying that these things are in the record now, and give
3 them an opportunity to respond if they want to.

4 And if they don't, then they don't, but I
5 understand what you're saying, and I don't have a big
6 issue with it. I was just, again, thinking about this in
7 terms of more than just this particular case, but how does
8 this work, since we haven't really had to deal with this
9 issue with any detail -- or with any, you know, a specific
10 case.

11 ZC CHAIR HOOD: I know on the commissioner's side
12 when we've had issues come up like this, basically what we
13 have done is we send it back to them. I think you're
14 exactly right, Vice Chair.

15 We actually send it back to them and say, if you
16 choose to comment further. We have to give them that
17 option. If they choose or choose not -- I'm not sure
18 which way Mr. Moy handles that, but I believe I can speak
19 for Ms. Schellin, and I know that's what she does, and I'm
20 sure Mr. Moy does something similar, so I'll just leave it
21 at that, Mr. Chairman.

22 BZA CHAIR HILL: Okay. So Mr. Moy, you can reach
23 out to the ANC, as well.

24 MR. MOY: Yes sir, we'll do that.

25 And not to belabor the point, but what we've

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1 gotten used to in our protocol is that we upload an OZ
2 staff memo to the record, giving the status of -- in this
3 case, it'd be this incident experience.

4 So, we could put that in the record after we've
5 made contact and gotten their response.

6 BZA CHAIR HILL: Okay. Ms. John, do you have
7 anything to add to the discussion?

8 MEMBER JOHN: No, nothing to add. I think it's a
9 good idea to give the ANC an opportunity to respond.

10 BZA CHAIR HILL: Okay, great. And Chairman Hood,
11 Mr. Hart brought up the problem, but I'm the one who had
12 the solution.

13 ZC CHAIR HOOD: For some reason I couldn't find
14 my unmute button when you said that, but I found it.

15 (Laughter.)

16 BZA CHAIR HILL: Just wanted to make sure the
17 credit was properly distributed.

18 VICE CHAIR HART: Please, please, yes. I defer
19 to the chairman, of course, because, you know.

20 BZA CHAIR HILL: Okay, all right. So we'll do it
21 on decision next week, right? Okay, Mr. Moy?

22 MR. MOY: Yes sir, it's on.

23 BZA CHAIR HILL: Okay. Okay, let's go ahead and
24 do the next one, Mr. Moy.

25 MR. MOY: Yes, thank you.

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1 That would be Case Application Number 20206 of
2 Tim Purdy, as amended for special exceptions under
3 Subtitle E, Section 5201, lot occupancy requirements,
4 Subtitle E, Section 304.1, and from the rear yard
5 requirements, Subtitle E, Section 306.1, to construct a
6 rear deck addition. This is to an existing attached
7 principal dwelling unit, RF-1 Zone at 627 Orleans Place
8 Northeast, Square 855, Lot 367.

9 And as before, this was heard at the Board's
10 hearing on July the 15th, and the decision was set for
11 today, July 22nd.

12 BZA CHAIR HILL: Okay, great. Are we all ready
13 to deliberate? I see everyone nodding yes.

14 Okay. I can start in that we did go through,
15 kind of, a first round of deliberations last week.

16 There is no new information that has been brought
17 into the record, and so, I'm standing with the
18 deliberations that I made last week, and I'm going to vote
19 yes.

20 Is there anything anyone would like to add?

21 And you can raise your hand if there is. Mr.
22 Hart?

23 VICE CHAIR HART: Yeah, I would be in support of
24 the application.

25 I mean, the Applicant has -- they have worked to

1 try to reduce the, you know, scale and size of the deck
2 that they were looking to add to the back of their house.

3 The deck itself is, you know, facing southeast
4 and have minimal impact on light and air to the
5 neighboring properties.

6 There is some question about the privacy issue,
7 and I just didn't think there were going to be a lot of --
8 it just seemed like there were a lot of back decks and
9 things on other properties there, and I didn't think that
10 that would be an impact on the privacy issue.

11 And then the view from the right of way, it's not
12 visible from the street, and it's, as I said before,
13 consistent with the other rear decks, in addition to along
14 the alley. And I just felt that I'd be able to support
15 the case.

16 The ANC I know deadlocked on the case. And that
17 was a change from when they opposed it as a variant --
18 when it was a variance.

19 And, you know, the Applicant has reduced the size
20 and scale of -- I guess, the size of the deck from 30 feet
21 long to 15 feet long, virtually, I guess, reducing it by
22 half.

23 And, you know, it seems as though that ANC was
24 looking more concerned about, you know, I guess the
25 privacy issue, but they noted that they didn't have really

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1 images that showed the kind of relationship between the
2 deck and the neighbors to the Applicant.

3 But again, as the information that I saw in the
4 record, I didn't feel that there were privacy issues any
5 more so than any other deck along that alley.

6 So, while I understand the ANC's kind of
7 comments, I just felt that -- I disagreed with them, or at
8 least disagree with that aspect of it. So, I'd be in
9 support of the application.

10 BZA CHAIR HILL: Ms. John or Chairman Hood, do
11 either of you have anything to add? And if you do, just -
12 - Ms. John unmuted her microphone, please go ahead.

13 MEMBER JOHN: Mr. Hart covered my comments pretty
14 well. And I thought that we should draw attention to the
15 fact that because the ANC deadlocked and voted 3 to 3, we
16 cannot give their considerations great weight, but we
17 still need to consider, and we have considered, their
18 concerns about privacy, and I would point to OP's report
19 that noted that there would be no significant change in
20 any privacy concerns than what's already there.

21 So, I can support the application.

22 BZA CHAIR HILL: Chairman Hood?

23 ZC CHAIR HOOD: I don't have anything to add.
24 I'm in support of this application.

25 BZA CHAIR HILL: Okay. All right, I'm going to

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1 make a motion to approve Application Number 20206, as
2 captioned and read by the Secretary, and ask for a second,
3 Ms. John?

4 MEMBER JOHN: Second.

5 BZA CHAIR HILL: The motion has been made and
6 seconded. Mr. Moy, could you please take a roll call
7 vote?

8 Mr. Moy, your microphone is muted, if you're
9 trying to say something.

10 MR. MOY: Yeah, thank you, Mr. Chairman.

11 So, yeah, so when I call your name, if you would
12 please respond with a yes, no, or abstain to the motion
13 made by Chairman Hill to approve the application for the
14 relief requested, seconded by Ms. John.

15 Zoning Commissioner, Chair, Anthony Hood?

16 ZC CHAIR HOOD: Yes.

17 MR. MOY: Vice Chair Hart?

18 VICE CHAIR HART: Yes.

19 MR. MOY: Ms. John?

20 MEMBER JOHN: Yes.

21 MR. MOY: Chairman Hill?

22 BZA CHAIR HILL: Yes.

23 MR. MOY: The staff would record the vote as 4 to
24 0 to 1, and this is on the motion of Chairman Hill to
25 approve the application, seconded by Ms. John, also in

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1 support, the Zoning Commission Chair Anthony Hood and Vice
2 Chair Hart, a Board seat vacant, the motion carries 4 to 0
3 to 1.

4 ZC CHAIR HOOD: Mr. Chairman, you all take care
5 and have a great day.

6 BZA CHAIR HILL: Thank you, Chairman.

7 MEMBER JOHN: Thank you, Chairman.

8 BZA CHAIR HILL: Good morning, Mr. Turnbull.

9 COMMISSIONER TURNBULL: Good morning, Chairman
10 Hill. It took me a while to unmute.

11 BZA CHAIR HILL: How are you? How are you doing?

12 COMMISSIONER TURNBULL: I'm doing well. Can't
13 complain. How about you?

14 BZA CHAIR HILL: Good. Good, thank you. I'm
15 curious, have you had an opportunity to go back to the
16 Capitol? I mean, have you had a chance to go?

17 COMMISSIONER TURNBULL: I was back once several
18 weeks ago.

19 I had to pick up -- well, in order to do this
20 whole thing, I needed to get the camera from my office put
21 on my computer here, because what I had here wouldn't do
22 anything.

23 So, other than that, I have not been back, I have
24 not been asked to go back. I keep in touch regularly, I
25 send in reports, but, other than that, I'm hunkering down

1 like everyone else.

2 BZA CHAIR HILL: Good, good. All right, I'm
3 sorry, I was just curious. I know it's such a lovely
4 place to be able to go.

5 COMMISSIONER TURNBULL: Well actually, I had
6 dropped my son off. My son works down --- and he said
7 that there's very few people there. You know? It's like
8 minimal staff.

9 I mean, the Architect, we have a lot of
10 mechanical blue collar workers in there to keep the
11 buildings up and running, so we have a lot of people there
12 doing that. But again, it's minimal staff and just
13 supporting Congress and their staff, who's ever in, and
14 they don't have a lot of people in either, so.

15 BZA CHAIR HILL: All right. I will abstain from
16 talking about anything about the Capitol, actually, so.

17 (Laughter.)

18 BZA CHAIR HILL: All right, Mr. Moy, if you could
19 please call our next case?

20 MR. MOY: Thank you, Mr. Chairman. So, this is
21 the last case for decision by the Board, which goes to
22 case --

23 BZA CHAIR HILL: No, isn't there one more?

24 MR. MOY: Oh, one more. I'm sorry. You're
25 right.

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1 BZA CHAIR HILL: Okay, right. We have a time
2 extension, and then there's 20054, correct?

3 MR. MOY: I stand corrected. So, this is
4 Application Number 18701-D, of 1247 ESE, LLC. And this is
5 a request for a two year time extension of BZA Order
6 Number 18701-A, approving a variance from the use
7 provisions to operate a restaurant in the first floor
8 space within an existing apartment house, under Section
9 330.5 in the R-4, which is now RF-1 Zone, at premises 1247
10 E Street Southeast, Square 1019, Lot 43.

11 BZA CHAIR HILL: Could you read the number again
12 for me, Mr. Moy? I'm sorry.

13 MR. MOY: 18701-D.

14 BZA CHAIR HILL: Okay, great. Is the Board ready
15 to deliberate? I see everyone nodding yes. Okay.

16 After reading the record, I didn't have an issue
17 with the time extension. I'd agree with the analysis the
18 Office of Planning has provided, as well as the ANC. And
19 also, you know, the Applicant and their points about the
20 pandemic and how that's leading to some missed
21 opportunities.

22 And I don't have an issue with the number of
23 times that an extension has been asked for, but I will ask
24 my fellow board members what they think, and Mr. Hart, I
25 see that you're unmuted.

1 VICE CHAIR HART: Yes.

2 Only that I would be in support of the time
3 extension as well, but I am getting a little bit -- I
4 think time extensions can be done, you know, for a variety
5 of reasons, and while I understand that this is an issue
6 here, it is getting, I think, a little bit long to keep on
7 doing this.

8 And, you know, I have a slight reservation about
9 the number of times to do it, but it's not enough to vote
10 against it. It's more just noting that these are not
11 indefinite, so it should have some, you know, definitive
12 period where it begins and ends, and that's it.

13 So, that's all I'd like to say.

14 We can't hear you.

15 BZA CHAIR HILL: Thank you. Mr. Turnbull, you
16 had your microphone off.

17 COMMISSIONER TURNBULL: Yeah, I just would agree
18 with the Vice Chair, and with you also.

19 I think I'm in favor of granting the extension,
20 and I agree that we're in unusual circumstances right now
21 with the pandemic and everything else, so I think that's a
22 very valid reason to allow it.

23 But again, these extensions can't keep going. At
24 some point, they've got to come to grips with if they're
25 going to open or not.

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1 And so -- but again, because of the pandemic, I
2 think I'm willing to go along with the fact that as a
3 restaurant, if they're having a difficult time, they can't
4 open, and so I'd be willing to grant it for this time, but
5 I think as we go forward in the future, I think they'd
6 have to have some extremely good reason next time to get
7 an extension.

8 BZA CHAIR HILL: Okay. Ms. John, do you have
9 anything to add?

10 MEMBER JOHN: Nothing to add.

11 BZA CHAIR HILL: All right. Okay, thank you, Ms.
12 John.

13 I'll make a motion then to approve Application
14 Number 18701-D, as captioned and read by the Secretary,
15 and ask for a second, Ms. John?

16 MEMBER JOHN: Second.

17 BZA CHAIR HILL: Motion was made and seconded.
18 Mr. Moy, could you please take a roll call vote?

19 MR. MOY: Yes, thank you, Mr. Chairman.

20 When I call your name, if you would please
21 respond with a yes, no, or abstain to the motion made by
22 Chairman Hill to approve the request for a two-year time
23 extension. This motion is seconded by Ms. John.

24 Zoning Commissioner Michael Turnbull? Your vote?

25 BZA CHAIR HILL: Your microphone's muted, Mr. --

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1 COMMISSIONER TURNBULL: I'm sorry, I was muted.

2 Yes.

3 MR. MOY: Vice Chair Hart?

4 VICE CHAIR HART: Yes.

5 MR. MOY: Ms. John?

6 MEMBER JOHN: Yes.

7 MR. MOY: Mr. Chairman?

8 BZA CHAIR HILL: Yes.

9 MR. MOY: The staff would record the vote as 4 to
10 0 to 1. This is on the motion of Chairman Hill to grant a
11 request for a two year time extension, seconded by Ms.
12 John. Also in support, Zoning Commissioner Michael
13 Turnbull, then Vice Chair Hart, and of course Chairman
14 Hill. And we have a Board seat vacant, but the motion
15 carries 4 to 0 to 1.

16 BZA CHAIR HILL: Okay, thank you, Mr. Moy.

17 Mr. Moy, you're welcome to call our last meeting
18 case.

19 MR. MOY: Okay, thank you. This would be Case
20 Application Number 20054, of Rupsha 2011, LLC.

21 And this application was amended for a special
22 exception under the use provision of Subtitle U, Section
23 421.1 to construct an eight-unit apartment house in the
24 RA-1 Zone at premises 616 50th Street Northeast, Square
25 5180, Lot 814.

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1 And the Board had originally scheduled this for
2 decision on July the 1st, but granted the ANC's motion to
3 continue the Board's decision, and so the Board set the
4 decision for today, July 22nd.

5 Other than that -- and, yeah, that's it, Mr.
6 Chairman.

7 BZA CHAIR HILL: Okay. I'm going to just kind of
8 mention a couple of things, and then I'll go around the
9 table, if that's all right?

10 Again, the ANC had indicated that they would have
11 been in support if the Applicant was able to come to some
12 terms or agreements with the community, and they were
13 unable to do that, so the ANC still is remaining opposed.

14 Mr. Hart, may I start with you?

15 VICE CHAIR HART: Sorry, I'm trying to unmute.
16 Always an issue.

17 Yeah, I appreciate the Applicant has submitted
18 the updated drawings that we did request. They are much
19 cleaner now, and do show the three parking spaces.

20 I would be in support of the application, because
21 I think that they have described how they're meeting the
22 criteria for the relief requested.

23 I would also support the Office of Planning
24 report, which recommends approval of this application.

25 I understand that there are some people that are

1 in opposition to the application, and they came to the
2 hearing, and they noted that the project, plus other
3 nearby projects, would change the character of the
4 neighborhood.

5 And it seemed as though there were some different
6 types of residential, I guess, development in the
7 neighborhood, and I think that while I understand this is
8 somewhat different, I guess there is something across the
9 street, as I said, that was much larger than what this is
10 being proposed as.

11 And I'll also note that before us right now is
12 really not the other developments in the neighborhood,
13 it's really just this particular project, and I do feel
14 that they are meeting the criteria under the regulations.

15 As you noted, Mr. Chairman, the ANC does oppose
16 this application still. And, you know, that's
17 unfortunate, and it's unfortunate they weren't really able
18 to come to an agreement with the Applicant.

19 It sounded like the ANC was trying to get there,
20 and, you know, I'm not sure if it was just too late in the
21 process to try to get there, or what, but I do understand
22 the ANC's point; I'm just not in agreement with it. So, I
23 think that they've met the criteria.

24 They have included the long-term bike parking
25 inside the building. We were looking for three.

1 Originally, they had two. Now, they have the three in the
2 building.

3 And I would be in support of the application, and
4 that's it.

5 BZA CHAIR HILL: Ms. John?

6 MEMBER JOHN: I don't have anything to add to Mr.
7 Hart's summary, which I thought was very thorough.

8 I believe the Applicant meets the criteria, and I
9 would give great weight to the recommendations of the
10 Office of Planning, as well, and note that the
11 requirements for the three bicycle parking spaces is one
12 of the issues that were held -- that we needed to
13 consider.

14 So, I'm in support of the application.

15 BZA CHAIR HILL: Mr. Turnbull?

16 COMMISSIONER TURNBULL: Thank you, Mr. Chair. I
17 would agree with both of my colleagues. I think this case
18 has been before us for a long time. I think it's very
19 difficult in the sense that the community is not in full
20 support of this.

21 But when you look at the requirements they've
22 actually met, what they're requesting for a relief is
23 really de minimis. And they're under the requirements,
24 so, you know, I mean, you can go to 40 feet, be three
25 stories, and they're 36 feet and three stories.

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1 So, they're under the limits they're at, they've
2 met most of the requirements. The Applicant has gone back
3 several times to try to meet with the community and work
4 things out.

5 It's gone back and changed a lot of things for
6 the Board, it's gone back and given us better drawings,
7 it's gone back with the landscape plan -- I mean, changes
8 to show everything. And as we talked about, the bike
9 parking, I think they've gone out of their way to show
10 that and address that.

11 I think the Applicant has tried to work hard, and
12 I think maybe the community wants more, but the fact is
13 that the Applicant is required to meet, and they've been
14 trying to work out all the differences, but he can only do
15 so much. And I think he's tried to do as much as he can
16 within the limits of what he's trying to do on the site.

17 So, I'm in support of the application. I'm sorry
18 that the ANC and the community can't get on board and
19 agree to it, but I think the relief under the regulations
20 is really de minimis, and so, I'd be in support of the
21 application.

22 BZA CHAIR HILL: All right, great. Thank you,
23 Commissioner.

24 I do not have anything to add, and I will agree
25 with all the comments that my colleagues have just made.

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1 I'm going to make a motion to approve Application
2 Number 20054, as captioned and read by the Secretary, and
3 ask for a second. Ms. John?

4 MEMBER JOHN: Second.

5 BZA CHAIR HILL: The motion was made and
6 seconded. Mr. Moy, could you please take a roll call
7 vote?

8 MR. MOY: Thank you, Mr. Chairman. When I read
9 your name -- or call your name, rather, if you would
10 please respond with a yes, no, or abstain to the motion to
11 approve made by Chairman Hill, seconded by Ms. John?

12 Zoning Commissioner Michael Turnbull?

13 COMMISSIONER TURNBULL: Yes.

14 MR. MOY: Vice Chair Hart?

15 VICE CHAIR HART: Yes.

16 MR. MOY: Ms. John?

17 MEMBER JOHN: Yes.

18 MR. MOY: Chairman Hill?

19 BZA CHAIR HILL: Yes.

20 MR. MOY: The staff would record the vote as 4 to
21 0 to 1, and this is on the motion by Chairman Hill to
22 approve the application for the relief requested, seconded
23 by Ms. John. Also in support is Zoning Commissioner
24 Michael Turnbull and Vice Chair Hart. So, that's 4 to 0
25 to 1, and we have a Board seat vacant. The motion

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1 carries.

2 BZA CHAIR HILL: Thank you. Just since we -- I
3 think we have a little bit of a light day today.

4 I mean, if it's okay, before we start the
5 hearing, we'll go ahead and take a quick break.

6 MEMBER JOHN: Yes.

7 BZA CHAIR HILL: And just so everyone knows, if
8 you do need to take a break or if there's something you
9 want, I do not have my phone with me today, so go ahead
10 and just raise your hand and let me know.

11 All right. I'll see you all in a few minutes.

12 Maybe 10, 15 minutes. Thank you.

13 MEMBER JOHN: Okay, thank you.

14 (Whereupon, the above-entitled matter went off
15 the record at 10:26 a.m.)

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In the matter of: Public Meeting

Before: DC BZA

Date: 07-22-20

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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