

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY

DECEMBER 23, 2020

+ + + + +

The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice, at 9:30 a.m. EST, 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

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACK RICE, ESQ.

The transcript constitutes the minutes from the Regular Public Meeting held on December 23, 2020.

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

9:34 a.m.

1  
2  
3 BZA CHAIR HILL: The meeting will please come to  
4 order.

5 Good morning, Ladies and Gentlemen. We're  
6 convening and broadcasting this decision meeting by  
7 videoconference. This is the December 23rd, 2020 public  
8 meeting session of the Board of Zoning Adjustment of the  
9 District of Columbia.

10 My name is Fred Hill, Chairperson. Joining me  
11 today is Lorna John, Vice Chair, and Chrishaun Smith, Board  
12 Member. And representing the Zoning Commission is Anthony  
13 Hood for three cases, and then, I believe we will have Peter  
14 Shapiro.

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

17 Please be advised this proceeding is being  
18 recorded by a court reporter.

19 It is also webcast live via Webex and YouTube  
20 Live. The video of the webcast will be available on the  
21 Office of Zoning website after today's meeting session.

22 Accordingly, everyone who is listening on Webex  
23 or on the telephone will be muted during the meeting. We do  
24 not take any public testimony at our decision meetings. If  
25 you're experiencing difficulty accessing Webex or with your

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1 telephone, then please call our OZ hotline number at  
2 202-727-5471. Once again, 202-727-5471.

3 At the conclusion of this meeting session, I will,  
4 in consultation with the Office of Zoning, determine whether  
5 a full or a summary order may be issued. A full order is  
6 required when the decision it contains is adverse to a party,  
7 including the affected ANC. A full order also may be needed  
8 if the Board's decision differs from the Office of Planning's  
9 recommendation. Although the Board favors the use of summary  
10 orders whenever possible, an Applicant may not request such  
11 an order.

12 Mr. Moy, do we have any preliminary matters?

13 SECRETARY MOY: Good morning, Mr. Chairman and  
14 Members of the Board.

15 I do not in the meeting session, but I will for  
16 the hearing session.

17 BZA CHAIR HILL: Okay. All right. Then, you can  
18 go ahead and call our first meeting case, if you'd like.

19 SECRETARY MOY: Thank you, sir.

20 So, for the record, there are four case decisions  
21 before the Board in its meeting session.

22 The first is a Motion for Advanced Party Status.  
23 And for the record, I'm going to read the case caption as  
24 advertised. And it is Case Application No. 20359 of 1301  
25 West Virginia LLC. And the application is captioned for

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1 special exceptions under the residential conversion  
2 requirements of Subtitle U, Section 320.2, including a waiver  
3 from the rear addition requirement of Subtitle U, Section  
4 320.2(e), from the penthouse requirements of Subtitle C,  
5 Section 1500.4, and pursuant to Subtitle X, Chapter 10, for  
6 an area variance from the residential conversion requirements  
7 of Subtitle U, Section 320.2(d), to convert the existing  
8 principal dwelling unit into a five-unit apartment house in  
9 the RF-1 zone at premises 1301 West Virginia Avenue,  
10 Northeast, Square 4064, Lot 75. And again, this is a request  
11 for advanced party status, and that requester has signed up  
12 to be available to take questions from the Board.

13 BZA CHAIR HILL: Okay. I don't really need to  
14 talk to anybody, unless the Board needs to talk to anybody.

15 Mr. Moy, thank you for reading that.

16 This is advanced party status. It's the immediate  
17 adjacent next-door neighbor. I think that they qualify under  
18 Y404.13. So, I would go ahead and make a motion to approve  
19 the advanced party status for Application No. 20359 and ask  
20 for a second, unless there's any kind of deliberation. If  
21 so, deliberation, please raise your hand. I don't see  
22 anybody raising their hand.

23 Ms. John, could I get a second?

24 VICE CHAIRPERSON JOHN: Second.

25 BZA CHAIR HILL: Mr. Moy, I got a second. Could

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1 I get a roll call, please?

2 SECRETARY MOY: Thank you, Mr. Chairman.

3 So, when I call your name, if you would please  
4 respond with a yes, no, or abstain from the motion made by  
5 Chairman Hill to grant the request for advanced party status.  
6 The motion is seconded by Vice Chair John.

7 Zoning Commission Chair Anthony Hood?

8 ZC CHAIR HOOD: Yes.

9 SECRETARY MOY: Mr. Smith?

10 MEMBER SMITH: Yes.

11 SECRETARY MOY: Vice Chair John?

12 VICE CHAIRPERSON JOHN: Yes.

13 SECRETARY MOY: Vice Chair John? I'm sorry.

14 VICE CHAIRPERSON JOHN: Yes.

15 SECRETARY MOY: Thank you.

16 Chairman Hill?

17 BZA CHAIR HILL: Yes.

18 SECRETARY MOY: So, staff will record the vote as  
19 4-to-0-to-1, and this is on the motion made by Chairman Hill  
20 to grant the request for party status, seconded by Vice Chair  
21 John. Also in support of the motion is Zoning Commission  
22 Chair Anthony Hood, Mr. Smith, and, of course, Vice Chair  
23 John and Chairman Hill. We have a seat vacant. The motion  
24 carries 4-to-0-to-1.

25 BZA CHAIR HILL: Thanks, Mr. Moy.

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1           Now, Mr. Moy, you can take a minute to get  
2 yourself organized. You said there's --

3           SECRETARY MOY: Right.

4           BZA CHAIR HILL: What else do you have on our  
5 meeting calendar?

6           SECRETARY MOY: Well, you have Broad LLC, which  
7 is 20330; Vitis Investments, which is 20290, and then,  
8 Madison Heights, which is 20328.

9           BZA CHAIR HILL: Okay. I guess I got confused  
10 when we were doing our -- anyway, okay. Do you want to go  
11 ahead and, then, queue up 20330, I guess?

12          SECRETARY MOY: Yes, yes. All right.

13          Before the Board for decisionmaking is Case  
14 Application No. 20330 of 5608 Broad LLC. The caption  
15 advertised for a use variance from the use provisions,  
16 Subtitle U, Section 201.1. This would permit the conversion  
17 of an existing storage space into a fitness center, R-1-B  
18 Zone, at premises 5608 Broad Branch Road, Northwest, Square  
19 1997, Lot 78.

20          As the Board will recall, you last heard this at  
21 your hearing on December the 9th. And Zoning Commission  
22 Chair Anthony Hood is participating with you.

23          BZA CHAIR HILL: Okay. Are you guys ready to talk  
24 about this? And if so, I'm actually going to start going  
25 around the table with this, if you all don't mind.

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1           Since I'm going to start with the Zoning  
2 Commission, I'll give him a second, the Chair, to kind of  
3 like think about it, if that's all right.

4           ZC CHAIR HOOD: I've been thinking about this  
5 case, Mr. Chairman. And I think because a lot of this is due  
6 to the Zoning Commission's regulations, I actually would not  
7 like to start on cases because I have a different perspective  
8 that I bring into it. Now I can start, but I --

9           BZA CHAIR HILL: Okay. Mr. Smith. who is down in  
10 the wilderness somewhere, he's raised his hand. So, he says  
11 he's willing to begin.

12           Mr. Smith?

13           MEMBER SMITH: Okay. So, on making a decision on  
14 granting these variances, I will turn to three prongs that  
15 we have to consider in our language. So, the first one is  
16 the physical aspect or other extraordinary or exceptional  
17 situations; two, a new hardship, or three, no harm to the  
18 public or to the Zoning Plan.

19           So, regarding the first prong, and based on the  
20 Applicant's submission in Exhibit 42 that shows the floor  
21 plan, I do not believe that where the trash pickup is located  
22 is an exceptional condition. We are located in an urban  
23 environment and there are a number of retail businesses and  
24 residences. We've even approved accessory dwelling units and  
25 alleys that are located adjacent to trash pickup locations

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1 or back-of-house operations, loading zones, loading  
2 properties, and the like. Also, the space has historically  
3 been used for an accessory use to the existing market and it  
4 can continue to be used as such.

5           On the second part of the test, I do not believe  
6 that the zoning ordinance has placed an undue hardship on the  
7 Application, as the zoning ordinance does allow the Applicant  
8 to consider other conforming uses. These considerations  
9 could include use as a principal property, as a by-right use.  
10 And considerations for uses by special exception may include  
11 chancery, child development, elderly development center,  
12 health care facility, and institutional or religious-based  
13 uses. So, I don't believe that the Applicant has exhausted  
14 the opportunities for by-right or special exception use at  
15 the site.

16           And lastly, I do believe that the approval of this  
17 use variance to allow an otherwise non-conforming use on a  
18 property would be a major conflict of the Zoning Plan,  
19 considering that this use is made a prohibited use within the  
20 zone by the Zoning Commission.

21           Therefore, I do believe the request is in conflict  
22 with all three prongs, and I would support the request  
23 (telephonic interference).

24           BZA CHAIR HILL: All right, Mr. Smith. Thank you  
25 so much. I'm glad you have a certain opinion on this. And

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1 so, that makes it easier for me to at least hear the  
2 different sides of this.

3 Ms. John, do you want to try?

4 VICE CHAIRPERSON JOHN: Okay, if I must. This is  
5 really a difficult case for me. Ordinarily, I am what you  
6 would say very conservative with respect to variances. In  
7 this case, it's difficult because this particular structure  
8 was built over 100 years ago for commercial purposes. It has  
9 never been used, as far as we can tell from the record, for  
10 residential purposes.

11 And right now, there's a situation where a portion  
12 of the space is not necessary for storage or for use by the  
13 child care center. I believe the Applicant has shown that  
14 the Applicant has made a reasonable effort to use the space  
15 appropriately and consistent with the regulations, not having  
16 (telephonic interference) services there.

17 I sort of disagree with Mr. Smith in terms of the  
18 location of the trash at the entrance of the stairs. And I  
19 looked at it in the photographs that the Applicant provided.  
20 And in my view, in order to use that space for residential  
21 purposes, it would have to be reconfigured. And I believe  
22 the Applicant sort of showed that through photographs of  
23 where the basement is located.

24 So, in this case, I agree with the Office of  
25 Planning that it's an exceptional condition, and this

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1 building or structure predated the regulations. So, to me,  
2 it's like a square peg in a round hole; it really doesn't  
3 fit. And the Applicant is entitled to use the space in a way  
4 that will provide a reasonable return. And so, to say that  
5 the Applicant should continue to maintain this vacant space  
6 which there is no obvious use for I think is a hardship.

7           And so, as I said before, this is not a very  
8 straightforward case, and it's one that I have struggled with  
9 quite a bit. And maybe this is something the Commission  
10 needs to look at in terms of how we look at the variance  
11 requirements for structures like this that have never been  
12 used for any residential purpose whatsoever.

13           And so, I would vote in favor of the application,  
14 and I agree with the Office of Planning's analysis in terms  
15 of the other two prongs. And I would also note that the ANC  
16 approves of the application, and DDOT has no objection. So,  
17 Mr. Chairman, I'm in support.

18           And I would not see this case as an example to be  
19 used for any other application, not that we do that anyway,  
20 but this situation is unique in my view.

21           BZA CHAIR HILL: Okay. Thank you.

22           I'm split. I don't know what to vote, I've got  
23 to say, a little bit.

24           And I'll start before -- Mr. Hood, if you want to  
25 offer any opinion or guidance? I think that I could go with

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1 either of my colleagues in terms of their points that they  
2 made. I'm just going to go at kind of a higher level, which  
3 is that the Office of Planning has submitted their analysis  
4 as to how they're meeting the test for us to approve the  
5 variance.

6           Then, we also have the ANC, and although they  
7 don't necessarily, the ANC doesn't necessarily speak to the  
8 specifics of the regulation, they have, you know, the  
9 community themselves have voted for this use.

10           In terms of the prongs of the test, I mean, I  
11 don't think that, again, as we've talked about before in  
12 previous cases, that a non-conformity, if we have a non-  
13 conformity, that is the reason to allow another non-  
14 conformity. However, I do believe that this is a unique  
15 situation in terms of that first prong. The exceptional, I  
16 guess, situation that I'm coming up with, the extraordinary  
17 situation or condition is that that piece of property, as Ms.  
18 John has just alluded to, has always been a commercial piece  
19 of property and has been used that way for a very long time.

20           I don't think that the -- well, I don't know  
21 whether I think -- I mean, I know that Mr. Smith had  
22 mentioned that he thought that the third prong was a major  
23 issue, that the third prong was going to be in conflict with  
24 in terms of the Zone Plan. And I suppose that Commissioner  
25 Hood, since he's here, he can tell us a little bit more about

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1 the Zone Plan.

2           In other words, I don't know how to vote yet,  
3 Commissioner. So, if you want to offer up your suggestions  
4 as to which way you're leaning, then that might sway me, if  
5 you wouldn't mind.

6           ZC CHAIR HOOD: So, Mr. Chairman, this is the  
7 reason I wanted to go last because the Zoning Commission has  
8 a specific role. We're not here defending what the Zoning  
9 Commission's actions are. So, I want to make that clear.  
10 And we're not here as the go-to person under the Zoning  
11 Commission regulations. What we're here to do is to make  
12 sure exactly what Member Smith said; it's about protecting  
13 the Zone Plan. That's one of our major goals.

14           But, anyway, I didn't want to go first because I  
15 bring a lot of baggage with me, having dealt with a lot of  
16 this previously. So, I wanted to hear from others. But I  
17 want to align myself with Board Member Smith. While I think  
18 this is a very -- and I mentioned this at the hearing -- I  
19 think this is a very easy ask, I even looked at the permitted  
20 uses. I even said, well, does this equate to a health care  
21 setting? You know, I'm thinking this is a fitness center and  
22 I'm trying to find ways to make this fit. It would be good  
23 to have some type of release valve. I don't know if the  
24 Office of Planning has looked at it.

25           But, also, let me just say, I have a lot of

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1 respect for the Office of Planning, but I think this one is  
2 a stretch. This is a big stretch. But I also think that the  
3 ask could be accommodated. But, due to the zoning  
4 regulations and what we have in place, it is what the Board  
5 of Zoning Adjustment is due to go by. I don't see how this  
6 could be approved, especially when you look at 201.1 and  
7 203.1 and other regulations pertaining to this case. I just  
8 see it's a heavy lift and you really have to have, especially  
9 201.1, you really have to try to make it fit, and that's not  
10 our role. We can't make it fit. And also, the community  
11 cannot change the uses. So, the uses are already in place  
12 by the Zoning Commission.

13           So, I would offer that maybe at some point in time  
14 the whole setup that we have, look at a release valve,  
15 because I don't think it was a big ask, but, also, the way  
16 the regulations are written, it harms the Zoning Plan. So,  
17 again, that's why I didn't want to go first. I wanted to  
18 hear from others. I don't think it's a big ask, but I don't  
19 see, according to the regulations, which usually I do feel  
20 bound to go by, I don't see how we can approve this case.

21           Those are my comments.

22           BZA CHAIR HILL: Okay. All right.

23           Mr. Smith, you're still where you are, correct?

24           MEMBER SMITH: Correct.

25           BZA CHAIR HILL: Okay. Okay. All right. Well,

1 I'm not going to hold this up. As I said, I didn't know what  
2 I thought. So, all right. Then, I'm going to agree with Mr.  
3 Hood and Mr. Smith, and they're going to have to find another  
4 way to make use of that space, I guess, which I also think  
5 is unfortunate. But I'm going to go with my colleagues.

6 So, I'm going to make a motion to deny Application  
7 No. 20330, as captioned and read by the Secretary, and ask  
8 for a second. Mr. Hood?

9 ZC CHAIR HOOD: Second.

10 BZA CHAIR HILL: Mr. Moy, the motion has been made  
11 and seconded. Could you please take roll call?

12 SECRETARY MOY: Thank you, Mr. Chairman.

13 When I call your name, if you would please respond  
14 with yes, no, or abstain to the motion made by Chairman Hill  
15 to deny the application for the relief being requested. This  
16 motion is seconded by Zoning Commission Chair Anthony Hood.

17 Mr. Smith?

18 MEMBER SMITH: Yes.

19 SECRETARY MOY: Vice Chair John?

20 VICE CHAIRPERSON JOHN: No.

21 SECRETARY MOY: Zoning Commission Chair Anthony  
22 Hood?

23 ZC CHAIR HOOD: Yes.

24 SECRETARY MOY: Chairman Hill?

25 BZA CHAIR HILL: Yes.

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1           SECRETARY MOY: Staff would record the vote as  
2 3-to-1-to-1, and this is on the motion made by Chairman Hill  
3 to deny the application, seconded by Zoning Commission Chair  
4 Anthony Hood. Agreeing with the motion, in support to deny  
5 the motion is Mr. Smith, and, of course, Zoning Commission  
6 Chair Anthony Hood and Chairman Hill. Opposed to the motion  
7 to deny is Vice Chair John, and we have a Board seat vacant.  
8 Again, the motion carries 3-to-1-to-1.

9           BZA CHAIR HILL: Very good.

10           And I don't know if the Applicant is still  
11 listening or not, but, also, I just kind of wanted to mention  
12 that I don't think that anybody here is, as we've kind of  
13 talked about, is in opposition to necessarily what they're  
14 trying to do. I mean, it was a small, I feel -- I need to  
15 say like I'm sure we're all disappointed. Like it's a small  
16 business in the city that's trying to have a gym, right?  
17 But, because of the way the regulation is written, the Board  
18 couldn't get there, right? And also, by the way, if we're  
19 a split Board, it doesn't do anybody any good just to kind  
20 of like have it linger around. But, anyway, I think we would  
21 all, if I may speak everybody, we don't have any opposition  
22 to the small business. It's just that we couldn't figure out  
23 how to make the regulation work.

24           ZC CHAIR HOOD: So, Mr. Chairman, can I ask --

25           BZA CHAIR HILL: Of course.

1           ZC CHAIR HOOD: -- as we went through this, I  
2 really thought -- and this is something I would like for Mr.  
3 Moy to make sure he mentions to Ms. Schellin, so I can think  
4 about it, because I'd like to have a discussion about a  
5 release valve. That's something I just came up with as I was  
6 looking at uses and trying to make it fit.

7           I think this is a small ask, as I've said, and I  
8 think this is something, as Vice Chair John had mentioned,  
9 (telephonic interference) relative to this case. And I think  
10 a lot of times these type of cases come up. I think it's a  
11 great idea. The problem is, how do we get there? So, I  
12 would like Commissioner, I mean, Mr. Moy, if you could put  
13 that on your note to talk to Ms. Schellin about it, she will  
14 mention it back to me, and then, I will (telephonic  
15 interference).

16           So, it won't help this case right now, but I think  
17 that's something we could look at. Thank you.

18           VICE CHAIRPERSON JOHN: Mr. Chairman, may I have  
19 one word, please?

20           I said before that this was built as a commercial  
21 building before the regulations. And I agree with Chairman  
22 Hood that perhaps we need to look at the regulations to see  
23 if there is some sort of release valve for a building like  
24 this which has never been used for a residential purpose and  
25 it was never built to accommodate a residential purpose. So,

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1 that would just be my thought.

2 BZA CHAIR HILL: Okay. All right. Thank you.

3 All right. Mr. Moy, do you want to read the next  
4 one?

5 SECRETARY MOY: Yes. Thank you, Mr. Chairman.  
6 And thank you, Mr. Hood.

7 So, the next Case Application for a decision is  
8 No. 20290, Vitis Investments LLC, as amended, for a special  
9 exception under the residential conversion requirements of  
10 Subtitle U, Section 320.2, which would convert an existing  
11 detached principal dwelling unit to a seven-unit apartment  
12 house, RF-1 Zone, at premises 421 T Street, Northwest, Square  
13 3090, Lots 804, 805, and 807. And, Board, recall you last  
14 heard this case at your hearing on December the 9th.

15 BZA CHAIR HILL: Okay. Is the Board ready to  
16 deliberate?

17 Okay. We asked for some additional information  
18 from the Applicant, and we got all of those particular  
19 submissions in order to have a full record. And then, also,  
20 there was even opposition to this application, and they also  
21 had an opportunity to respond.

22 Where I kind of fell on this is I do think that  
23 Applicant had made the argument as to how I could get behind  
24 this special exception for the conversion. There was a lot  
25 of discussion about shadowing and light and air issues. I

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1 was swaying towards, again, the Office of Planning's report  
2 -- and I'm pulling up the report right now -- and their  
3 analysis as to how they believe that the Applicant has met  
4 the criteria.

5           So, I'm going to be at this point, depending upon  
6 what happens with my other colleagues, voting in favor of  
7 this application.

8           If I could start going around the table?

9           Chairman Hood, if you wouldn't mind?

10           ZC CHAIR HOOD: I'll start briefly on this one.  
11 One of the things on 20290, the Applicant's brief I think is  
12 totally incorrect. The issue about -- they have a right to  
13 write what they want in the brief. But I think we had the  
14 testimony from members of the public whose names I will not  
15 call, but it's in the record, who said the Zoning Commission  
16 removed some things; they removed textually. As I mentioned  
17 at that hearing, I was not sure that some of those things  
18 were duplicate.

19           I still feel duty-bound -- that seems to be a word  
20 that I'm using today -- to look at light and air adverse  
21 impacts under the special exception. And I think we do the  
22 residents of this city a disservice when we have experts,  
23 what we call experts, or counsel to come down and tell us  
24 something that the Zoning Commission took out to make a  
25 shorter path forward to approval. I think, unfortunately,

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1 there's a big confusion of people the way they read the  
2 regulations.

3 I know in Mr. Sullivan's brief that I read, the  
4 first paragraph or the first two paragraphs for me are  
5 fundamentally incorrect. And I read that to try to be able  
6 to make a sound judgment to be able to see whether I'm going  
7 to vote pro or con in this case.

8 Also, Mr. Chandra and Ms. Teague, I believe --  
9 hopefully, I pronounced their names correctly -- I think they  
10 made a case. For me, I just have a fundamental problem of  
11 the way that witness, that whole hearing kind of went as  
12 saying, okay, well, the Zoning Commission took they  
13 regulations out. That did not happen. That was incorrect.  
14 And I think, again, we do the residents of this city a  
15 disservice.

16 But I'll let others talk. Right now, this is a  
17 heavy lift for me. I think that there's no way of getting  
18 around the adverse impacts of the light and air. I just  
19 don't see it. I cannot fundamentally overlook any adverse  
20 impacts and I don't see any mitigations in this record.

21 So, I'll leave it at that for now, Mr. Chairman.  
22 Thank you.

23 BZA CHAIR HILL: Okay. Mr. Smith?

24 MEMBER SMITH: In hearing the case and in looking  
25 at the submitted material, I lean on the side of working with

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1 Chairman Hill. I do believe that in the Applicant's  
2 presentation and the OP report, I believe the Applicant has  
3 sufficiently demonstrated how (telephonic interference).  
4 The original design showed a building there, and in  
5 redesigning the building, they lowered the roofline, tried  
6 to keep the design of the building much more in character  
7 with the design of the original building. So, I was fairly  
8 comfortable in the presentation and in the OP report that the  
9 Applicant has sufficiently mitigated the sidewalk and masking  
10 of the building and, also, there would be enough light and  
11 air to not have (telephonic interference) property.

12 I do recognize that the Applicant did redesign the  
13 building to include a larger number of rooms, smaller number  
14 of units within the building, but more rooms within the  
15 remaining units. And I understand the neighborhood's concern  
16 that they may become (telephonic interference). I don't  
17 believe that's the purview today. That is purview of the  
18 enforcement body of the District of Columbia. So, I don't  
19 believe that that's something that you could (telephonic  
20 interference).

21 So, again, I am fairly (telephonic interference)  
22 for discussion.

23 BZA CHAIR HILL: Ms. John?

24 VICE CHAIRPERSON JOHN: I was not on that case,  
25 Mr. Chairman. I did not participate on that case.

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1 BZA CHAIR HILL: Oh. Oh, then, Mr. Moy, I don't  
2 know; do we have -- how does this work?

3 ZC CHAIR HOOD: You have a problem; I'll just let  
4 you know.

5 BZA CHAIR HILL: Mr. Moy, I can't hear you.

6 SECRETARY MOY: Oh, yes, of course, of course.  
7 I'm on mute.

8 Okay. So, no, you still have a quorum to  
9 participate and vote with a quorum of three. Of course, you  
10 need a majority vote of three to go in either direction.

11 BZA CHAIR HILL: Okay. So, we can just talk a  
12 little bit more. I mean, Chairman Hood, we can talk about  
13 this a little bit more, or I guess I can bring in -- Ms.  
14 John, were you recused for some reason?

15 VICE CHAIRPERSON JOHN: No, I was not there, and  
16 that was last --

17 BZA CHAIR HILL: Got it. Got it. That's fine.  
18 That's fine. That's fine.

19 VICE CHAIRPERSON JOHN: I can read in. I didn't  
20 realize I needed to read in.

21 BZA CHAIR HILL: That's all right.

22 VICE CHAIRPERSON JOHN: But if you want to  
23 continue the decision to January --

24 BZA CHAIR HILL: Right. Well, we might end up  
25 having to do that. I mean, Chairman Hood, I'm not going to

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1 try to necessarily change your mind. I'm just kind of having  
2 a little bit more of a discussion.

3 I understand what you're speaking to in terms of  
4 how there was discussion -- I think this might even be coming  
5 up in another case -- where the zoning regulation at the time  
6 hadn't changed, so that we weren't looking at light and air.  
7 And it wasn't that, as I understand it, it wasn't the zoning  
8 regulations, because the Zoning Commission had changed; it's  
9 just that it was duplicative. And so, we are still looking  
10 at the same things, meaning the BZA is still looking at the  
11 same things. I'm just kind of clarifying what I think you  
12 had said. The BZA is still looking at what the BZA is  
13 supposed to look at. The regulations haven't changed. It's  
14 just that it was duplicative. And therefore, we're still  
15 looking.

16 And so, I'm now just making a discussion in terms  
17 of I still do think they have made their case in terms of the  
18 issues with adverse impact. So, I'm just kind of making that  
19 statement.

20 Is there anything, Chairman Hood, that you think  
21 you might want to see that might change your mind in terms  
22 of either any kind of a different kind of exhibit from  
23 someone or do you feel that you might want to spend a little  
24 bit more time looking at it? Or are you pretty comfortable  
25 with where you sit right now with your analysis?

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1           ZC CHAIR HOOD: So, if I hear some more discussion  
2 from my colleagues -- and maybe I'll go back and look at the  
3 record a little differently. Because I was still kind of  
4 stuck on all the information that was being provided about  
5 what the Zoning Commission took out and what we weren't  
6 looking at, and an easier path for you all to move to, and  
7 all that stuff really is not germane.

8           So, again, I hate to be redundant, but I'm going  
9 to be redundant because it takes me back. All the work that  
10 the Zoning Commission does to make things easy, and then, we  
11 have people who come in and mislead folks.

12           So, to answer your question, Mr. Chairman, I just  
13 don't see how you get around the adverse impacts. I just  
14 don't see it. I could leave that up to the Applicant to  
15 figure out how he could lessen some of the impacts and the  
16 light and air issues on the surrounding neighborhood, but  
17 I'll leave that to the Applicant. I'm not here to build  
18 their case for them.

19           But I know, with Ms. John reading the record, I'm  
20 not sure which way she would go. But I think that's probably  
21 your best, unless Board Member Smith or you, Mr. Chairman,  
22 are willing to change your mind. Unless both of you all are  
23 willing to change your mind, that still leaves us in the same  
24 place. I don't usually change my mind. So, we might as well  
25 not even waste any more time on this. That's just my

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1 suggestion.

2 BZA CHAIR HILL: Okay. That's fine. So, then,  
3 your household must be very interesting, Chairman Hood.

4 (Laughter.)

5 Let's see. Ms. John, could you read into the  
6 record?

7 VICE CHAIRPERSON JOHN: Sure, I'd be happy to do  
8 that. I did not realize I needed to read in and I apologize.

9 BZA CHAIR HILL: That's all right. I didn't  
10 realize you needed to read in, either.

11 So, let's see, Mr. Moy, what's our first day back?

12 SECRETARY MOY: January 13th, sir.

13 BZA CHAIR HILL: Okay. Let's do that then, okay?

14 ZC CHAIR HOOD: Mr. Chairman, can you move that  
15 to another -- well, I would like to be in on the discussion.

16 BZA CHAIR HILL: Sure.

17 ZC CHAIR HOOD: You may not want to announce it,  
18 Commissioner Moy, but can you look at the next date that I'll  
19 be here?

20 SECRETARY MOY: Yes, I can do that. I can do  
21 that, Mr. Hood. I'll look at those dates, yes.

22 ZC CHAIR HOOD: And I'll put this on -- some  
23 people "Commissioner shop". If they know Anthony Hood's  
24 going to be there, they'll ask for a continuance. Or if they  
25 know Commissioner May is going to be there, they'll move it

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1 around. That's how they do us. But, anyway, it's all part  
2 of the job.

3 BZA CHAIR HILL: But you can come in for a --  
4 we're just going to do a decision meeting.

5 ZC CHAIR HOOD: I would have to come --

6 BZA CHAIR HILL: If you're not here on the 13th,  
7 I understand. Are you good the next week?

8 ZC CHAIR HOOD: The next week I don't think  
9 anybody is going to be. That's Inauguration Day, isn't it?

10 BZA CHAIR HILL: Right.

11 SECRETARY MOY: That's correct.

12 BZA CHAIR HILL: I guess the only reason why,  
13 Chairman Hood, is that means it kicks them back all the way  
14 until the 27th, which is over a month away.

15 ZC CHAIR HOOD: If we can put this first, I will  
16 be able to come in early on the 13th. If we could do it at  
17 9:30, I would appreciate it.

18 BZA CHAIR HILL: Yes, let's do it first. We'll  
19 just do it first.

20 Ms. John, can you read in by the 13th?

21 VICE CHAIRPERSON JOHN: Sure.

22 BZA CHAIR HILL: Okay. Okay. All right. Okay.  
23 So, that's that.

24 Just for clarification before I move on, Mr. Rice,  
25 there was like some discussion about this, and I think we got

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1 this taken care of, about that the Applicant had agreed to  
2 combine a record lot subdivision to combine tax lot 807 into  
3 record (telephonic interference) 13. Like I think that was  
4 discussed before and (telephonic interference) condition.  
5 Do you remember that, Mr. Rice?

6 MR. RICE: Yes, sir. The Applicant said that they  
7 agreed to the first proposed condition with regard to  
8 combining the lots. However, they felt that the condition  
9 related to the parking was unnecessary.

10 BZA CHAIR HILL: Okay. So, I'm just saying the  
11 Board doesn't need a condition then?

12 MR. RICE: For the first? No, sir.

13 BZA CHAIR HILL: Well, the only other condition  
14 was the long-term bike spaces. And I think --

15 MR. RICE: There was a second condition that OAG  
16 was proposing that was talking about self-certification, and  
17 the Applicant did not feel that that condition was necessary.  
18 But the way that condition was worded was basically that the  
19 Board may notify as to whether that relief was applicable or  
20 required. So, if the Applicant is proceeding at its own risk  
21 as a self-cert, this condition wouldn't get in its way.

22 BZA CHAIR HILL: So, we don't need any conditions,  
23 is what I'm just trying to clarify again.

24 MR. RICE: Correct, not if you don't (telephonic  
25 interference).

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1 BZA CHAIR HILL: Because we did discuss it all.  
2 Okay. Okay. All right.

3 Okay, Mr. Moy, you can -- well, hold on. So now,  
4 the next case was the one where I wanted to maybe have it a  
5 continued hearing. Is that the last one that's in our  
6 meeting case right now?

7 SECRETARY MOY: Yes, sir, that's the next one.  
8 Yes.

9 BZA CHAIR HILL: So, do you need to call it in the  
10 meeting case? And then, we'll talk about it, and if we want  
11 to, pull it into the hearing session?

12 SECRETARY MOY: Yes, I probably should.

13 BZA CHAIR HILL: Okay. Go ahead.

14 SECRETARY MOY: Okay. The last case in the  
15 Board's meeting session is Application No. 20328 of Madison  
16 Heights LLC, as amended, for special exceptions under the new  
17 residential development requirements of Subtitle U, Section  
18 421.1, and under the Voluntary Inclusionary Zoning  
19 requirements, pursuant to Subtitle F, Section 5206.1 This  
20 would add eight additional units to an existing principal  
21 dwelling unit in the RA-1 Zone at premises 1214 Madison  
22 Street, Northwest, Square 2934, Lot 35.

23 BZA CHAIR HILL: All right. So, what I would like  
24 to propose to you guys is, if you remember, this is the case  
25 that we had an appeal on. And so, we listened for five hours

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1 about the appeal, right?

2           And, Mr. Moy, could you mute your microphone for  
3 me? Thanks.

4           Then, we heard the case, and we didn't hear the  
5 case until the end of a 12-hour day last week. And it was  
6 afterwards I started to think about it to kind of talk  
7 through a little bit more about some of the adverse impacts  
8 on the proposed property. Because I was thinking of it, more  
9 or less, as it was there, as opposed to if it weren't there,  
10 you know, if we actually had an application before us.

11           So, I was interested in having a continued hearing  
12 to discuss the adverse impact of the property. And would you  
13 all be comfortable with that? And then, you all can just  
14 raise your hand. Or I'll go around the table.

15           Ms. John?

16           VICE CHAIRPERSON JOHN: Yes, I'm fine with that.

17           BZA CHAIR HILL: Chairman Hood?

18           ZC CHAIR HOOD: Yes, I think that's actually a  
19 good idea.

20           BZA CHAIR HILL: Mr. Smith?

21           MEMBER SMITH: I agree. I think it's a good idea.

22           BZA CHAIR HILL: Okay. So, then, Mr. Moy -- or  
23 Mr. Rice -- do I need to make a motion or anything like that,  
24 or I'm good just with consensus?

25           MR. RICE: It would probably be fine to make a

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1 motion, just so you have it on the record.

2 BZA CHAIR HILL: Okay. All right. Then, I'm  
3 going to make a motion to move Application No. 20328 from the  
4 meeting session to our hearing session, and we're going to  
5 do it right now. We're going to do it as the next case.

6 And I'm going to ask for a second. Ms. John?

7 VICE CHAIRPERSON JOHN: Second.

8 BZA CHAIR HILL: Could you make a roll call vote,  
9 Mr. Moy?

10 SECRETARY MOY: Yes. Thank you, Mr. Chairman.

11 If you would please respond with a yes, no, or  
12 abstain to the motion made by Chairman Hill, seconded by Vice  
13 Chair John. And this is to withdraw this case from the  
14 decisionmaking in the meeting session to a hearing session.

15 So, starting with Commissioner Anthony Hood?

16 ZC CHAIR HOOD: Yes.

17 SECRETARY MOY: Mr. Smith?

18 MEMBER SMITH: Yes.

19 SECRETARY MOY: Vice Chair John?

20 VICE CHAIRPERSON JOHN: Yes.

21 SECRETARY MOY: Chairman Hill?

22 BZA CHAIR HILL: Yes.

23 SECRETARY MOY: We have a Board seat vacant.  
24 Staff would record the vote as 4-to-0-to-1, and this is on  
25 the motion of Chairman Hill. The motion was seconded by Vice

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1 Chair John. Also in support of the motion is Mr. Smith and  
2 Zoning Commission Chair Anthony Hood. The motion carries,  
3 sir.

4 BZA CHAIR HILL: Okay. Thank you.

5 (Whereupon, at 10:16 a.m., the public meeting of  
6 the Board adjourned to resume immediately thereafter in a  
7 Board hearing.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DC BZA

Date: 12-23-20

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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