

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

MAY 12, 2021

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via videoconference at 9:40 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. Hill, Chairperson
LORNA L. JOHN, Vice-Chair
CHRISHAUN S. SMITH, Board Member
CARL BLAKE, Board Member

ZONING COMMISSION MEMBERS PRESENT:

PETER MAY, Commissioner
ROBERT MILLER, Vice-Chair
MICHAEL TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD W. MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALEXANDRA CAIN, ESQ.

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The transcript constitutes the minutes from the Public Hearing held on May 12, 2021.

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

Case No. 17702A - Application of District-Properties.com -
(rescheduled to July 28, 2021). 7

Case No. 20452 - Appeal of Michael Hays -
(rescheduled to July 28, 2021). 7

Case No. 20453 - Appeal of DECCA (Dupont East Civic Association)
- (rescheduled to July 29, 2021). 7

Case Application No. 20359 - 1301 West Virginia, LLC
(continuation). 8

Case Application No. 20422 - Michael Hsu and Seema Gajwani
(continuation). 18

Case Application No. 20439 - Dawn to Dusk Child
Development Center, LLC (continuation). 22

Case Application No. 20406 - 1208 M, LLC (continuation) 29

Case Application 20427 - Parcel 47E, LLC (continuation) 32

Case Application No. 20429 - MADM Development, LLC
(continuation). 42

Case Application No. 20359 - 1301 West Virginia, LLC
(decision to be made on May 17th). 47

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

(9:40 a.m.)

CHAIRPERSON HILL: All right. The hearing will please come to order.

Good morning, ladies and gentlemen. We are convening and broadcasting this public hearing by videoconference. This is the May 12th, 2021 public hearing of the Board of Zoning Adjustment, District of Columbia. My name is Fred Hill, Chairperson.

Joining me today is Lorna John, Vice Chair; Board members Carl Blake and Chrishaun Smith, and representing the Zoning Commission are Michael Turnbull, Rob Miller, and Peter May.

Today's hearing's agenda is available to you on the Office of Zoning's website. Please be advised that this proceeding is being recorded by the court reporter and is also webcast live via Webex and YouTube Live. The webcast video will be available on the Office of Zoning's website after today's hearing. Accordingly, everyone who is listening on Webex or by telephone will be muted during the hearing and only persons who have signed up to participate to testify will be unmuted at the appropriate time. Please state your name and home address before providing oral testimony or your presentation. Oral presentation should be limited to its summary of your most important points.

When you're finished speaking, please mute your audio

1 so that your microphone is no longer picking up sound or
2 background noise. If you're experiencing difficulty accessing
3 Webex or with your telephone calling or if you have forgotten to
4 sign up 24 hours prior to hearing, then please call our OZ hotline
5 number at 202-727-5471 to sign up to testimony and to receive
6 Webex login or call and instructions.

7 All persons planning to testify either in favor or in
8 opposition should have signed up in advance. They'll be called
9 by name to testify. If this is an appeal, only parties that are
10 allowed to testify by signing up to testify. All participants
11 complete the oath or affirmation as required by Subtitle Y 408.7.
12 Request to enter evidence at the time of an online virtual hearing
13 such as written testimony or additional supporting documents
14 other than live video, which may not be presented as part of the
15 testimony, may be allowed pursuant to Subtitle Y 103.13 provided
16 that the person making the request to enter an exhibit explain
17 how the proposed exhibit is relevant the good cause that justifies
18 allowing the exhibit into the record and an explanation of why
19 the requester did not file the exhibit prior to the hearing,
20 pursuant to Y 206 and how the proposed exhibit would not
21 unreasonably prejudice any parties.

22 The order of procedures for special exceptions and
23 variances are pursuant to Y 409, the order of appeals are pursuant
24 to Y 507. At the conclusion of each case, an individual who is
25 unable to testify because of technical issues may file a request

1 for leave to file a written version of the plan testimony to the
2 record within 24 hours following the conclusion of public
3 testimony in the hearing. If additional written testimony is
4 accepted, then parties will be allowed a reasonable time to
5 respond as determined by the Board. The Board will then make
6 its decision at the next meeting but no earlier than 48 hours
7 after the hearing.

8 Moreover, the Board may request additional specific
9 information to complete the record. The Board and the staff will
10 specify at the end of the hearing exactly what is expected in
11 the date when person must submit the evidence to the Office of
12 Zoning. No other information are being accepted by the Board.
13 The Board's agenda may include previous cases set for decision.
14 After the Board adjourns the hearing, the Office of Zoning, in
15 consultation with myself, will determine whether a full summary
16 order may be issued. A full order is required when the decision
17 contains is adverse to a party including an affected ANC.

18 A full order may also be needed if the Board's decision
19 differs from the Office of Planning's recommendation. Although,
20 the Board favors the use of summary orders that are possible, an
21 applicant may not request the Board to issue such an order. The
22 District of Columbia Administrative Procedures Act require
23 there's a public hearing on each case be held in the open for
24 the public, however, pursuant to Section 405B and 406 of the Act,
25 the Board may consistent with its rules and procedures in the

1 Act, entering the closed meeting on a case for purposes of seeking
2 legal counsel on a case pursuant to D.C. Official Code Section
3 2-575(b)(4) and/or deliberating on a case pursuant to D.C.
4 Official Code Section 2-575(b)(13), but only after filing
5 necessary public notice and then the case of emergency closed
6 meeting after taking a roll call vote. Preliminary matters are
7 those whether a case will or should be heard today.

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

9 MR. MOY: Good morning, Mr. Chairman, members of the
10 Board.

11 We do. But as usual, I would suggest that the Board
12 address those specific preliminary matters per the specific case
13 that's before, that's on today's docket.

14 Other than that, Mr. Chairman, I'd like to take a moment
15 to record, for the record, of cases that were originally on
16 today's docket that have been rescheduled. There were three of
17 them. The first one is Application No. 17702A, A as in Alpha,
18 which is the Application of District-properties.com. This has
19 been rescheduled to July 28th, 2021. And we have two appeals
20 similarly rescheduled. The first one is 20452, the Appeal of
21 Michael Hays; and 20453, the Appeal of DECCA, that's the Dupont
22 East Civic Association, also rescheduled to July 28th, and that's
23 it for me, Mr. Chairman.

24 CHAIRPERSON HILL: Okay. Great. Thank you.

25 All right. Mr. Moy, could you call our first case,

1 please.

2 MR. MOY: This is Case Application No. 20359 of 1301
3 West Virginia, LLC. This application has been amended for special
4 exception under the Residential Conversion Requirements Subtitle
5 U, Section 320.2. This would convert the existing principal
6 dwelling unit into a three-unit apartment house in the RF-1 Zone
7 at premises 1301 West Virginia, Hampton Northeast, Square 4064,
8 Lot 75.

9 As the Board will recall, you last heard this case on
10 April 21st. The Board heard testimony and continued the hearing
11 and decision to May 12th, 2021. Since that day -- rather since
12 April 21st, there have been filings from the applicant and from
13 the opposition party. The applicant is Exhibits 100 through 103.
14 From the opposition parties, Exhibit 104. There is also a ANC
15 5D report that was submitted actually yesterday, May the 11th.
16 And other than that, Mr. Chairman, other than the applicant's
17 team and the opposition party, no one else has signed up to
18 testify today.

19 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Moy.

20 Mr. Williams, could you introduce yourself, please, for
21 the record?

22 MR. WILLIAMS: Yes. Zachary Williams, Land Use
23 attorney with Venable, representing the applicant.

24 CHAIRPERSON HILL: Great. And Mr. Williams, who's here
25 with you today?

1 MR. WILLIAMS: The applicant, Matt Medvien and Sam
2 Medvien are here today with me.

3 CHAIRPERSON HILL: Okay. Great. All right.

4 Let me see. Okay. I got both you guys. All right.

5 Ms. Dale, could you introduce yourself for the record?

6 MS. DALE: Yes, I'm Benita Albury-Dale. I'm
7 representative of my mom, Mrs. Lottie Albury.

8 CHAIRPERSON HILL: Okay. Great.

9 And is that your sister there, Ms. Featherstone?

10 MS. DALE: Yes.

11 CHAIRPERSON HILL: Okay. All right. I'm just going
12 to -- okay. Great.

13 All right. Mr. Williams, and I guess, Commissioner,
14 would you like to introduce yourself for the record, please?

15 MR. HOFFMAN: Sure. I'm Zachary Hoffman. I'm the ANC
16 5D06 Commissioner representing ANC 5D today.

17 CHAIRPERSON HILL: Great. Thank you.

18 And for the record, I think Mr. Blake, you're not on
19 this one, correct, or are you?

20 MR. MOY: Yeah. Yeah. Mr. Blake is not participating.

21 CHAIRPERSON HILL: Okay. Great.

22 MR. MOY: It's only the Commissioner and yourself, the
23 Vice Chair, Mr. Smith.

24 CHAIRPERSON HILL: Mr. Blake, if you wouldn't mind just
25 turning off your camera, so we know that you're not part of this

1 proceeding, but please, you know, feel free to watch obviously.

2 Mr. Williams, can you hear me?

3 MR. WILLIAMS: Yes, I can.

4 CHAIRPERSON HILL: Mr. Williams, is that your child's
5 room?

6 MR. WILLIAMS: It's my 2-year-old daughter's room, yes.

7 CHAIRPERSON HILL: I see. Are you trying to also get
8 a little bit of, you know, softness to you as well because we
9 got Ms. Albury there and now, you got your child's room? We're
10 just trying to balance it out a little bit. Is that what you
11 got going?

12 MR. WILLIAMS: I wasn't thinking of that, but if that's
13 the case, I won't argue with that either.

14 CHAIRPERSON HILL: Right. Okay. So Mr. Williams,
15 we've seen everything that's in the record. We saw the ANC stuff,
16 we saw your CMA and I'm sure you saw the most recent exhibit from
17 the Albury's, correct?

18 MR. WILLIAMS: Yes, I did.

19 CHAIRPERSON HILL: Okay. So Mr. Williams, I'm going
20 to start with you because you obviously are representing your
21 client. I do have -- I still have concerns about this in terms
22 of, you know, what I think the effects on the, you know, the
23 light and air issues as well as even the additional added
24 resonance will possibly add to, you know, density issues. So I'm
25 a little -- I just want to, if you would, kind of go back and

1 | tell me. I remember, I guess what I'm curious of and now this
2 | is where we're talking to -- I'm just curious of the negotiations
3 | that have gone on, right? You know, if you guys were at one
4 | point at 15K and now, you're not, are you -- is your client, can
5 | you explain to me if your client is interested in going back to
6 | the 15K or where you are with all of this.

7 | MR. WILLIAMS: Sure. And I think as we've been through
8 | before, this has been -- since August, we've been through many
9 | iterations of negotiations. I think this is our fourth BZA
10 | hearing, we've been to six ANC meetings, so there has been a lot
11 | of negotiation and discussion throughout the process.

12 | So the Construction Management Agreement draft that I
13 | filed with the BZA included certain payments, I think up to 5,000
14 | for the Albury family to use as they saw fit. They could use it
15 | for whatever they wanted to use it for. Wasn't tied to anything
16 | but it was meant to represent payments for potentially a deck or
17 | a walkway, payments for Ubers for Ms. Albury to leave the house
18 | during particularly type office that were in construction and
19 | also payments for cleaning the home. Those were things that had
20 | been sought.

21 | Prior to the last hearing, BZA hearing that we had,
22 | there was an offer that was made by the applicant to pay the
23 | 15,000 for the mini-splits. That offer was rejected by the Albury
24 | family and they sought to -- it wasn't rejected necessarily in
25 | the sense that they made a counteroffer, they didn't accept the

1 offer. The counteroffer that they made was not acceptable to the
2 Medviens. We ended up going back to another hearing and went
3 back for another ANC meeting, went back to another architectural
4 changes, and at this point, I let the Medviens speak for
5 themselves. This is not a big developer. These are two brothers.

6 They have been through ten hearings now for a third
7 drawing unit, and they've had to pay me, they've had to pay
8 architects, they've had to pay engineers including their own
9 time. So they're just not in a position to make a \$15,000 offer
10 at this point after everything that's occurred. The reason for
11 that offer was in exchange for dropping opposition. They've been
12 through almost a year of opposition now. And so that is their
13 concern and perspective and I will let them weigh in on that as
14 well. But I think our feeling about this is that we have and
15 they have tried repeatedly to find ways to meet common ground
16 with the Alburys and despite that, they continued to be vilified
17 as though they just don't care about Ms. Albury. This happened
18 again --

19 CHAIRPERSON HILL: That's okay. That's okay. I
20 understood.

21 MR. WILLIAMS: -- that happened last night at the (audio
22 interference).

23 CHAIRPERSON HILL: Just that's the way -- Mr. Williams,
24 I got you like it's not helping. This is also our fourth hearing,
25 right?

1 MR. WILLIAMS: I know.

2 CHAIRPERSON HILL: I understand where we are, right?
3 So I'm just -- I'm giving one last shot here. You guys are the
4 first case and there's a reason why you're the first case.

5 MR. WILLIAMS: I understand.

6 CHAIRPERSON HILL: Okay. Because you now have ANC sign
7 off and now you got --

8 So Ms. Dale. Can you hear me?

9 MS. DALE: Yeah. Good morning. Yes.

10 CHAIRPERSON HILL: Good morning. And Ms. Dale, I
11 understand you guys have also been going through this for a very
12 long time and even in your exhibit, I know that had to come from
13 your attorney and that took time also, right?

14 MS. DALE: Yes.

15 CHAIRPERSON HILL: So I don't know where you guys are
16 with this, right? And so, I don't know if there was a 15K offer
17 that at one time was on the table. If that 15K offer was still
18 on the table, is that something that you would consider?

19 MS. DALE: No, sir.

20 CHAIRPERSON HILL: Okay. So Mr. Williams?

21 MS. DALE: Okay. I'm sorry, Mr. Hill. I'll -- again.

22 CHAIRPERSON HILL: Yes? No, Ms. Dale. What were you
23 going to say?

24 MS. DALE: The 15 -- the 10,000 was offered at the time
25 they received Certificate of Occupancy, and that is why we -- our

1 attorney went back to Mr. Williams with the offer of saying we
2 will accept the 15,000 -- or the 5,000 was going to be given
3 upfront. 10,000 was they had offered to give at the time they
4 received Certificate of Occupancy. But because we needed to do
5 the mini-splits, my mom didn't have the finances to cover the
6 cost to do the mini-split. So our attorney went back to say,
7 "Okay. Can you give them the 10,000 at the time that you received
8 the permits?" and that's when the offer was taken off the table.

9 CHAIRPERSON HILL: Okay. Oh, my gosh.

10 All right. Mr. Williams, I mean you probably are pretty
11 good at your job, right? They need the money ahead of time and
12 I don't -- and this is like going down at different road that I
13 -- and I can tell you about my concerns that are way -- my
14 concerns deal with zoning. Okay. I'm just trying to help get
15 to a point just because Ms. Albury also is 98 years old, right?
16 And so, you know, nobody's vilifying everybody, so your client
17 is currently at 5,000, they're at 15, you're a \$10,000 difference
18 and the difference between a summary order and a full order is a
19 long time, right? So I'm going to let you, Mr. Williams, talk
20 to your client, talk to Ms. Dale. Okay. And then we're going
21 to come back to you at the end of the day. Okay?

22 MR. WILLIAMS: I think that -- I don't think that it's
23 going to change and I will say that you're -- that putting my
24 zoning attorney hat on here, I think we are way outside the bounds
25 of what's the relief is being mitigated for a third dwelling

1 unit. The discussion with the Albury family is separate. It's
2 a separate process and the developer (audio interference).

3 CHAIRPERSON HILL: (Audio interference). If you want
4 -- so you're saying you're not interested in any more time?

5 MR. WILLIAMS: I think the reason why that the timing
6 matter was it was legitimate.

7 CHAIRPERSON HILL: No, I got you. I'm just -- I'm
8 asking you if you're interested in any more time today?

9 MR. WILLIAMS: You mean to further discuss this?

10 CHAIRPERSON HILL: Yeah. In other words, I'm -- I have
11 one question, which is that if you're interested in having, I'm
12 going to close this portion of hearing, we're going to let you
13 have your, you know, couple hours to try to talk with the Dales
14 there, right, and then I'm going to come back at the end of the
15 day, right? That's what I'm offering. If you're saying you're
16 not interested in that then you're saying you're not interested
17 in that, we'll see what happens next.

18 MR. WILLIAMS: Yeah. I just haven't had a chance to
19 talk to the Medviens about it.

20 CHAIRPERSON HILL: Right. So that's what I'm saying.
21 So Mr. Williams, I'd like to do this, okay? I'm going to close
22 this hearing, okay, and we're going to bring you back. Okay?

23 MR. WILLIAMS: Okay.

24 CHAIRPERSON HILL: Okay. Does my fellow Board members,
25 do you guys see me?

1 MR. MAY: Yes.

2 CHAIRPERSON HILL: If anybody has a problem with what
3 I'm planning, please raise your hand.

4 MR. WILLIAMS: No problem at all.

5 CHAIRPERSON HILL: Okay. I don't see anybody raising
6 their hand. All right.

7 So Mr. Williams, I'm going to go ahead and close this
8 hearing. I'm going to see what you can talk to your client; you
9 can talk to Ms. Dale and I'm going to bring you back at the end
10 of the day. Okay?

11 MR. WILLIAMS: Okay. Thank you.

12 CHAIRPERSON HILL: Thank you. Commissioner Hoffman?

13 MR. HOFFMAN: Yes, sir.

14 CHAIRPERSON HILL: I don't think you need to stick
15 around unless you want to, but, you know, you're welcome to do
16 whatever you want to do. I mean I know that they'll, you know,
17 I mean you guys went to the ANC. We saw your report there and
18 everything. I mean if you'd like to give any further testimony,
19 please do.

20 COMMISSIONER HOFFMAN: Chairman Hill, I think the
21 report is pretty inclusive of our thoughts and opinions and our
22 conditional support of the project as outlined, and unless you
23 had any questions for me, I think the report speaks for itself.

24 CHAIRPERSON HILL: Okay. Before you go, actually --
25 and Mr. Williams, can you hear me again?

1 MR. WILLIAMS: Yes.

2 CHAIRPERSON HILL: Your client didn't have any issues
3 with the conditions of the ANC, correct?

4 MR. WILLIAMS: I don't think so. I think they're
5 related to the parking pad, the curb-cut issue. That was the
6 only -- yeah. Yeah. No, there is no issues there.

7 CHAIRPERSON HILL: Okay. Great. All right. Perfect.

8 All right, Commissioner -- oh, sorry. Commissioner
9 May?

10 COMMISSIONER MAY: Yeah. I just want to clarify that
11 you're saying that they'll come back at the end of the day, but
12 I think it's going to be a relatively short day, so --

13 CHAIRMAN HILL: Yes.

14 COMMISSIONER MAY: -- we're not talking about 5
15 o'clock, we're talking about, you know, could be noon?

16 CHAIRPERSON HILL: Yeah, could be noon and I'm hoping
17 --

18 COMMISSIONER MAY: Could be 11 o'clock.

19 CHAIRPERSON HILL: Right. I mean Mr. Moy will reach
20 out, I mean Mr. Williams, you can just watch. I mean there's
21 not a lot, there's not a lot of time going on, and, you know,
22 I'd like to -- so anyway, there you go. Okay?

23 MR. WILLIAMS: Okay.

24 CHAIRPERSON HILL: All right. Thank you, Mr. May.
25 Thank you, Commissioner. We'll see you all in a little bit.

1 Thank you. Bye-bye.

2 COMMISSIONER MAY: Thank you.

3 CHAIRPERSON HILL: Okay. Okay. All right. Have you
4 all seen the Princess Bride? Yeah. I always think everything -
5 okay. All right. I think that he's patting his keys down. Okay.
6 All right.

7 Okay. Mr. Moy, you want to call our next case? Oh,
8 it's Ms. John's case.

9 MR. MOY: Yes, it is.

10 VICE CHAIR JOHN: Thank you, Mr. Chairman. I thought
11 you were going to just keep going, you know?

12 CHAIRPERSON HILL: Bye-bye.

13 VICE CHAIR JOHN: Bye.

14 So could you call the next case Mr. Moy?

15 MR. MOY: Yes, Madam Vice Chair and for the staff to
16 remind -- as a reminder, Commissioner Rob Miller is on this case.

17 So this is Case Application No. 20422 of Michael Hsu
18 and Seema Gajwani. This is an application captioned and
19 advertised for special exception from the lot occupancy
20 requirements Subtitle E, Section 304.1. This application would
21 construct a one-story rear addition to an existing attached two-
22 story principal dwelling unit, RF-1 Zone. The property is located
23 at 610 South Carolina Avenue, Southeast, Square 875, Lot 37. The
24 Board last heard this case on March 24th. The Board heard
25 testimony and scheduled a continued hearing and decision on May

1 12th.

2 The Board did not request any supplemental information
3 and since March 24th, there have been no new filings in the
4 record. Except for the applicant's team, no one else has signed
5 up to testify today. And again, participating on this application
6 is Zoning Commissioner Rob Miller, the Vice Chair and Mr. Smith.

7 VICE CHAIR JOHN: Thank you, Mr. Moy. Is the applicant
8 here?

9 MR. FOWLER: Yes.

10 VICE CHAIR JOHN: Fowler.

11 MR. FOWLER: Yes, Mike Fowler.

12 VICE CHAIR JOHN: Mike Fowler. Mr. Fowler can you
13 introduce yourself for the record please?

14 MR. FOWLER: Yes. Let me just get my audio.

15 Representing our clients, Mike Hsu and Seema Gajwani
16 at 610 South Carolina Avenue, Southeast.

17 VICE CHAIR JOHN: Thank you.

18 Ms. Elliott, are you here?

19 MS. ELLIOTT: Yes, I am.

20 VICE CHAIR JOHN: Can you introduce yourself for the
21 record, please:

22 MS. ELLIOTT: Sure. I'm Brandice Elliott representing
23 the Office of Planning for this application, BZA Case No. 20422.

24 CHAIRPERSON JOHN: Thank you.

25 So Mr. Fowler, there is nothing new in the record and

1 I believe this case is ready for deliberation, so we're going to
2 excuse you at this time.

3 Is the Board ready to deliberate? If not, can you
4 raise your hand. Okay. So I see no hands raised. So I'll go
5 ahead and start.

6 This is an application to construct a one-story rear
7 addition to create a nine-foot-high porch in the RF-1 Zone. It's
8 fairly straightforward and the applicant is speaking a special
9 exception relief for long occupancy. And I've looked at OP's
10 analysis and I give great weight to how OP describes the
11 applicant's case and how it meets the burden of proof in order
12 to get relief under the regulation. The ANC is in support and
13 DDOT has no objection. Several neighbors, including an adjacent
14 neighbor, are in support as well as the Capitol Hill Restoration
15 Society. So I can support this application and I'd like to go
16 ahead and go next to Mr. Miller.

17 COMMISSIONER MILLER: Thank you, Madam Chair. I concur
18 with your analysis and support this application.

19 VICE CHAIR JOHN: Thank you.

20 May I go to you next, Mr. Smith?

21 BOARD MEMBER SMITH: Yes, Madam Chair. I concur with
22 your analysis as well and would just also add that the applicant
23 have the support of the adjacent neighbors so it would be most
24 directly impacted by this relatively modest expansion of their -
25 - to their property. So I gave great weight to OP's analysis

1 and their staff report, and I will be prepared to support this
2 application.

3 VICE CHAIR JOHN: Thank you, Mr. Smith and thank you
4 for adding that other detail.

5 So I'll go ahead and make a motion to approve Case No.
6 20422 as captioned and read by the Secretary and ask for a second?

7 BOARD MEMBER SMITH: Second.

8 VICE CHAIR JOHN: Mr. Moy, can you take a roll call?

9 MR. MOY: Yes, thank you.

10 When I call your name, if you would please respond with
11 a yes, no or abstain to the motion made by Vice Chair John to
12 approve the application for the relief being requested. The
13 motion was seconded by Mr. Smith.

14 Zoning Commissioner, Rob Miller?

15 COMMISSIONER MILLER: Yes.

16 MR. MOY: Mr. Smith.

17 BOARD MEMBER SMITH: Yes.

18 MR. MOY: Vice Chair John.

19 VICE CHAIR JOHN: Yes.

20 MR. MOY: Staff would report vote as 3-0-2. This is
21 on the motion made by Vice Chair John to approve the application
22 seconded by Mr. Smith. Also, in support of the motion is Zoning
23 Commissioner Rob Miller. We have two Board members who are --
24 have not or are not participating on this application. The motion
25 carries on a vote of 3-0-2.

1 CHAIRPERSON JOHN: Thank you, Mr. Moy. And I believe
2 Mr. Chairman Hill is ready to rejoin us.

3 COMMISSIONER MILLER: And I think I'm ready to leave
4 you.

5 VICE CHAIR JOHN: Oh, thank you. Thank you,
6 Commissioner.

7 COMMISSIONER MILLER: Thank you for making it so easy.

8 VICE CHAIR JOHN: You're welcome.

9 COMMISSIONER MILLER: Have a great day.

10 VICE CHAIR JOHN: Bye-bye. Chairman Hill, you're on.

11 CHAIRPERSON HILL: Thank you, Vice Chair John.

12 VICE CHAIR JOHN: You're welcome.

13 CHAIRPERSON HILL: All right. Mr. Moy, you can call
14 our next case when you get a chance.

15 MR. MOY: The next case application before the Board
16 is Application No. 20439 of Dawn to Dusk Child Development Center,
17 LLC. This application was captured and advertised for special
18 exception relief under the Used Provisions of Subtitle U, Section
19 203.1(h). This would maintain a daytime care use in an existing
20 two-story detached building in the R-2 Zone. The property is
21 located at 2907 7th Street, Southeast, Square 5951, Lot 40. The
22 Board last heard this case on April the 14th. Heard testimony
23 and scheduled a continued hearing and decision on May 12th, 2021.
24 The Board did not request supplemental information and since
25 April 14th there have been no new filings in the case record.

1 Except for the applicant's team, no one else has signed up to
2 testify today. That's it.

3 CHAIRPERSON HILL: Okay. Great.

4 Ms. Brown, could you introduce yourself for the record,
5 please?

6 MS. BROWN: Yes. Good morning. Carolyn Brown with the
7 Brown Law firm on behalf of Dawn to Dusk Child Development Center.

8 CHAIRPERSON HILL: Okay. Great. Thank you.

9 Just to go over this. I mean nothing's changed. We
10 had to postpone this because of some timing issues that we had
11 on our side or opposing issues I should say. And the only thing
12 that I remember is that the Office of Planning had three
13 conditions. One was that Child Development Center shall enroll
14 no more than 47 students. The Child Development Center shall be
15 limited to no more than ten persons -- I'm sorry, the staff should
16 be limited to no more than ten persons, and then the hours of
17 operation, you guys wanted them to be from 7:00 a.m. to 11:45
18 p.m. Monday through Friday, and the Office of Planning also didn't
19 have any issues with that, so is that correct, Ms. Brown?

20 MS. BROWN: Yes, sir. That's correct.

21 CHAIRPERSON HILL: Okay. Great. All right.

22 Does anybody have any questions for the applicant,
23 because I do not, and if so, please raise your hand.

24 All right. Mr. Young, is there anyone here wishing to
25 testify?

1 MR. YOUNG: We do not. Thanks.

2 CHAIRPERSON HILL: Okay. Oh, sure.

3 BOARD MEMBER SMITH: Mr. Chair, I do have one additional
4 question. The hours of operation, it looks like there will be a
5 condition that says 6:00 a.m. to 6:00 p.m. Monday through Friday.
6 Is the Daycare operating outside of those hours or are they open
7 later than 7?

8 MS. BROWN: Yes. Right now, they're accommodating six
9 children after the hours of 6:00 p.m. up until 11:45 p.m. and
10 they would like to like to have the limit of 12, after the hours
11 of 6.

12 CHAIRPERSON HILL: Mr. Smith, when I asked about the
13 conditions, I mentioned that they wanted it to be from 7:00 a.m.
14 to 11:45 p.m. And the Office of Planning was to go with that
15 and the applicant was also fine with that.

16 BOARD MEMBER SMITH: Sorry about this.

17 CHAIRPERSON HILL: No, that's all right. Okay.

18 Anyone else?

19 Mr. Smith, I'm talking really fast today apparently.
20 I don't know exactly why. I mean maybe it's like four cups of
21 coffee or something. Okay.

22 Ms. Brown, do you have anything else you'd like to add?

23 MS. BROWN: No, sir.

24 CHAIRPERSON HILL: Okay. I'm going to go ahead and
25 close the hearing on the record.

1 Mr. Young, if you could excuse everyone, please. Since
2 I have been talking so much, can somebody else go first?

3 Mr. Smith, would you like to go first?

4 BOARD MEMBER SMITH: It's really, I'm the first. So
5 with the changes in the conditions, I had no major concern to
6 this particular project. I do believe that the conditions set
7 forth by OP successfully mitigate the impacts by regulating or
8 putting a cap on the max amount of students that can be enrolled,
9 the max amount of staff that would be at the site at any given
10 time and operation. So with that, I rest on OP's staff report,
11 give great weight to their staff report. I also believe that
12 the ANC does not have any major concerns and DDOT does -- and
13 they supported and DDOT has no objections, so with that, I would
14 support the application.

15 CHAIRPERSON HILL: Thank you.

16 Commissioner Turnbull?

17 COMMISSIONER TURNBULL: I would concur with everything
18 that my esteemed colleague, Mr. Smith, has said, and I would also
19 support the application. Thank you.

20 CHAIRPERSON HILL: Thank you.

21 Vice Chair John?

22 VICE CHAIR JOHN: Mr. Chairman, I'm in support of the
23 application. I think I need to mention though, that the applicant
24 had also asked for no time limit. Am I correct in that?

25 CHAIRPERSON HILL: Yes, thank you. Thank you, Vice-

1 Chair John. I appreciate that.

2 VICE CHAIR JOHN: All right.

3 CHAIRPERSON HILL: Yeah. I think that, you know, since
4 they have been in operation for such a long time and that the
5 community seems to be comfortable with the way they have been
6 handling their business, I don't have any issues with the time
7 limit myself, but thank you for bringing that up.

8 Commissioner Turnbull and Mr. Smith, since you have
9 already gone, do you have any comment on the time limit, and if
10 so, please raise your hand?

11 COMMISSIONER TURNBULL: That's fine.

12 CHAIRPERSON HILL: Okay. Okay. Great.

13 Mr. Blake, do you have anything you'd like to add?

14 BOARD MEMBER BLAKE: I do not, Mr. Chair. I believe
15 that my colleagues have covered all the issues and I would be
16 supportive of the special exception. I also would be supportive
17 of the time limit -- removing the time limitation.

18 CHAIRPERSON HILL: Thank you. Thank you, Mr. Blake.
19 All right. Well, I will also agree with all of you and I will
20 make a motion to approve Application No. 20439 as captioned and
21 read by the Secretary including the conditions that the Office
22 of Planning have set forth; however, having the hours of operation
23 go from 7:00 a.m. to 11 45 p.m. Monday through Friday and also
24 removing any kind of a time limit on this application and ask
25 for a second. Ms. John?

1 VICE CHAIR JOHN: Second.

2 CHAIRPERSON HILL: The motion have made and seconded.

3 Mr. Moy, could you please take a roll call?

4 MR. MOY: When I call your name, if you would please
5 respond with a yes, no or abstain to the motion made by Chairman
6 Hill to approve the application for the relief being requested,
7 along with the stated three conditions that is contained in the
8 Office of Planning report, as well as removing any time
9 limitations. Second the motion was made by Vice Chair John.

10 Mr. Smith?

11 BOARD MEMBER SMITH: Yes.

12 MR. MOY: Zoning Commissioner Michael Turnbull?

13 COMMISSIONER TURNBULL: Yes.

14 MR. MOY: Mr. Blake?

15 BOARD MEMBER BLAKE: Yes.

16 MR. MOY: Vice Chair John?

17 VICE CHAIR JOHN: Yes.

18 MR. MOY: Chairman Hill?

19 CHAIRPERSON HILL: Yes.

20 MR. MOY: Staff would record the vote as 5-0-0 and this
21 is on the motion made by Chairman Hill to approve along with the
22 three conditions and removing the time limitations. It was
23 seconded by Vice Chair John. Also, in support of the motion is
24 Zoning Commissioner Michael Turnbull, Mr. Smith and Mr. Blake.
25 And again, the motion carries 5-0-0.

1 CHAIRPERSON HILL: Thank you.

2 Commissioner Turnbull, is that it for you or not?

3 COMMISSIONER TURNBULL: I believe that is it for me,
4 so I will leave you and I wish you have the rest of a good day.

5 CHAIRPERSON HILL: Thank you, you as well.

6 VICE CHAIR JOHN: Bye Mr. Turnbull.

7 CHAIRPERSON HILL: I miss seeing everybody in person.
8 I really do. I miss seeing Mr. Turnbull and Mr. May, Commissioner
9 Turnbull. Haven't even met Mr. Blake or Mr. Smith in person.
10 Mr. Smith can be like six feet. Did I ever make that joke like
11 you can be like seven feet tall or something?

12 BOARD MEMBER SMITH: I wish I'll buy some stilts at our
13 first meeting in person.

14 CHAIRPERSON HILL: That is a good one. That Fred guy
15 is short. My god.

16 VICE CHAIR JOHN: I think he is the guy in the insurance
17 commercial myself.

18 CHAIRPERSON HILL: Which insurance commercial?

19 VICE CHAIR JOHN: Mr. Smith knows which one it is. The
20 guy who likes to ride.

21 BOARD MEMBER SMITH: The hands. Oh, oh the other --
22 okay. I got you. State Farm.

23 VICE CHAIR JOHN: Is this the State Farm?

24 BOARD MEMBER SMITH: That would be (audio
25 interference).

1 CHAIRPERSON HILL: All right. Mr. Moy, you can call
2 the next one when you get a chance.

3 MR. MOY: The next case before the board is Application
4 No. 20406 of 1208 M, LLC. This application is captioned and
5 advertised for special exception relief from the rear yard
6 requirements Subtitle I, Section 205.1, which would raise the
7 existing building and construct a new attached seven-story 14-
8 unit residential building with cellar and penthouse in the E1-R
9 Zone.

10 The property is located 1208 M Street, Northwest,
11 Square 282, Lot 31. This Board will recall. You last heard this
12 on March 31st. You heard testimony and then scheduled a continued
13 hearing and decision on May 12th, 2021. At that time, the board
14 did not request supplemental information and since March 31st,
15 there have been no new filings in the case record for today.
16 Except for the applicant, there is no one else signed up to
17 testify.

18 CHAIRPERSON HILL: All right. Thank you, Mr. Moy.

19 Mr. Sullivan, could you introduce yourself for the
20 record, please?

21 MR. SULLIVAN: Thank you, Mr. Chair and members of the
22 Board. Martin Sullivan with Sullivan & Barros on behalf of the
23 applicant.

24 CHAIRPERSON HILL: Thank you, Mr. Sullivan.

25 All right. We didn't have -- this was again, a timing

1 | issue on our side, so we didn't have anything new that we were
2 | requesting or asking for.

3 | Mr. Young, is there anyone wishing to speak here?

4 | MR. YOUNG: We do not.

5 | CHAIRPERSON HILL: Okay. Does the Board have any
6 | questions for the applicant and if so, raise your hand? Okay.

7 | Mr. Sullivan, do you have anything you'd like to add?

8 | MR. SULLIVAN: No. Thank you.

9 | CHAIRPERSON HILL: Okay. I'm going to go ahead and
10 | close the hearing in the record.

11 | Mr. Young, can you please excuse everyone? Okay. Are
12 | we ready to deliberate? Okay. I can begin. I thought it was
13 | an interesting project. I was actually a little jealous by the
14 | lot and that I think that I would agree with the argument that
15 | the applicant is making as to how they're meeting the criteria
16 | for us to grant the relief requested. I also would agree with
17 | the analysis that the Office of Planning has provided as well as
18 | that of the ANC. So I agree with their argument and I'm going
19 | to be voting to support. Commissioner May?

20 | COMMISSIONER MAY: I agree with you, Mr. Chairman?

21 | CHAIRPERSON HILL: Okay. Mr. Smith?

22 | BOARD MEMBER SMITH: I second Mr. May's agreement.

23 | CHAIRPERSON HILL: All right. Vice Chair John?

24 | VICE CHAIR JOHN: I agree with you Mr. Chairman and the
25 | other members of the Board.

1 CHAIRPERSON HILL: All right. Mr. Blake?

2 BOARD MEMBER BLAKE: I, too, would be in support and
3 agree with the analysis presented.

4 CHAIRPERSON HILL: Thank you. I'm going to go ahead
5 and make a motion to approve Application No. 20406 as captioned
6 and read by the Secretary and ask for a second. Ms. John?

7 VICE CHAIR JOHN: Second.

8 CHAIRPERSON HILL: Mr. Moy, the motion has made and
9 seconded. If you could please take a roll call.

10 MR. MOY: Thank you, Mr. Chairman.

11 When I call your name, if you would please respond with
12 a yes, no or abstain to the motion made by Chairman Hill to
13 approve the application for the relief requested. The motion was
14 seconded by Vice Chair John. Zoning Commissioner Peter May?

15 COMMISSIONER MAY: Yes.

16 MR. MOY: Mr. Smith?

17 BOARD MEMBER SMITH: Yes.

18 MR. MOY: Mr. Blake?

19 BOARD MEMBER BLAKE: Yes.

20 MR. MOY: Vice Chair John?

21 VICE CHAIR JOHN: Yes.

22 MR. MOY: Chairman Hill?

23 CHAIRPERSON HILL: Yes.

24 MR. MOY: Staff would record the vote as 5-0-0 and this
25 is on the motion made by Chairman Hill to approve. The motion

1 was seconded by Vice Chair John. Also, in support of the motion
2 to approve is Mr. Smith, Mr. Blake and Zoning Commissioner Peter
3 May. The motion carries on a vote of 5-0-0.

4 CHAIRPERSON HILL: Thank you, Mr. Moy. When you have
5 an opportunity, Mr. Moy, please call our next case.

6 MR. MOY: Before the Board is Case Application 20427
7 of Parcel 47E, LLC. This is a request for special exception from
8 the penthouse use restrictions of Subtitle C, Section 1500.3
9 which would permit a restaurant use within the penthouse of a
10 proposed 13-story, 353-unit mixed-use apartment building, T-5
11 Zone. Property is located at Maryland Avenue, Southwest/D Street
12 Southwest, Square 267, Lots 804 and 807.

13 At the last hearing on this case, the Board met on
14 March 31st, heard testimony and scheduled a continued hearing and
15 decision on May 12th, 2021. The Board requested supplement
16 information from DDOT and I believe that was filed under Exhibit
17 56 dated April 30th. The applicant responded under Exhibit 57
18 dated May the 6th and there's also a filing for an affidavit of
19 maintenance under Exhibit 57 dated May 7th. Except for the
20 applicant's team, Mr. Chairman, there's no one else has signed
21 up to testify.

22 CHAIRPERSON HILL: All right. Great. Thank you, Mr.
23 Moy.

24 Ms. Bloomfield, could you introduce yourself for the
25 record, please?

1 MS. BLOOMFIELD: Yes. Can you hear me okay?

2 CHAIRPERSON HILL: Yes.

3 MS. BLOOMFIELD: Okay. Jessica Bloomfield with the law
4 firm of Holland & Knight.

5 CHAIRPERSON HILL: Okay. Ms. Bloomfield, could you
6 just kind of review what happened since the last time you're with
7 us?

8 MS. BLOOMFIELD: Absolutely. We had our full hearing.
9 We presented our case and our architectural drawings. At the end
10 of the hearing, we agreed to all of DDOT's TDM conditions that
11 were listed in their report. Can you all still hear me?

12 CHAIRPERSON HILL: Yes.

13 MS. BLOOMFIELD: Okay. I'm going to turn off my video
14 because it's not -- it's buffering on my side. We agreed to all
15 the TDM conditions. Commissioner May raised a question as to why
16 those conditions are at all related to the relief being requested,
17 which is for a bar and restaurant use in a penthouse, a very
18 small bar. And they asked DDOT -- you all asked DDOT to submit
19 a response to that saying why the TDM measures being requested
20 were related, so DDOT submitted that response. They did not
21 change the proposed TDM measures. Their response was at Exhibit
22 56. We submitted a response saying that we continue to agree
23 that we will implement the TDM measures recommended by DDOT
24 despite the fact that we may or may not agree with their analysis
25 as to how those are related. So we are in agreement with DDOT

1 | if the Board is in agreement as well.

2 | CHAIRPERSON HILL: Okay. Great.

3 | Does the Board have any questions for the applicant or
4 | anyone and if so, raise your hand? Okay. All right.

5 | Mr. Young, is there anyone here wishing to testify?

6 | MR. YOUNG: We do not.

7 | CHAIRPERSON HILL: All right. Okay. Ms. Bloomfield,
8 | do you want to add anything at the end?

9 | MS. BLOOMFIELD: I'd like to just add one thing, thank
10 | you, which is at the hearing you all went over with us the
11 | flexibility that we requested due to the CFA continued review,
12 | which we went over with the architect is pretty minor. You looked
13 | at the exhibit where we identified what that relief -- I'm sorry,
14 | what that design flexibility would be and you seemed to be okay
15 | with it. So we would request that you approve, if you decide to
16 | approve this case, approve it with the flexibility identified for
17 | CFA continued review, and that is all I have.

18 | CHAIRPERSON HILL: Okay. Thank you.

19 | All right. Ms. John?

20 | VICE CHAIR JOHN: Mr. Chairman, I don't recall if we
21 | discussed the request for flexibility for exterior -- I'm sorry,
22 | interior changes like partitions and stairs and elevators. I
23 | don't recall a discussion of that or any explanation because
24 | typically we approve the plans as they're presented except for
25 | minor modifications later on.

1 CHAIRPERSON HILL: Okay. Ms. Bloomfield are you there?

2 MS. BLOOMFIELD: Can you all hear me? I fell off.

3 CHAIRPERSON HILL: That's right. We can hear you.

4 MS. BLOOMFIELD: Oh, okay.

5 CHAIRPERSON HILL: Can you point us to which exhibit
6 has the design flexibility you're speaking of again? Ms.
7 Bloomfield? Maybe we lost Ms. Bloomfield again. I'm looking for
8 the exhibit.

9 VICE CHAIR JOHN: Let's see, 29C, I believe Mr.
10 Chairman.

11 MR. DOVE: This is George Carroll Dove. Is there
12 something I can help you with on this? I'm the architect of the
13 project.

14 CHAIRPERSON HILL: Sure. Mr. Dove --

15 MS. BLOOMFIELD: I'm back. I'm back. I fell off.
16 Exhibit 48 is --

17 CHAIRPERSON HILL: Exhibit 48.

18 Mr. Dove, can you introduce yourself for the record
19 since you spoke?

20 MR. DOVE: Yes. My name is Carroll Dove. I'm the
21 design consultant for the project under WDD (ph).

22 CHAIRPERSON HILL: Great. Thank you. It's in Exhibit
23 48.

24 MS. BLOOMFIELD: The flexibility is on Exhibit 48. I'm
25 so sorry.

1 CHAIRPERSON HILL: It's all right. It's okay.

2 MS. BLOOMFIELD: I'm not sure if you're still talking
3 about that.

4 CHAIRPERSON HILL: Yeah, we are. We are.

5 MS. BLOOMFIELD: Okay.

6 CHAIRPERSON HILL: And Mr. May -- I mean you're -- I'm
7 going to give you kind of like -- I mean do you have any questions
8 about this flexibility that we have or haven't talked about the
9 last time?

10 COMMISSIONER MAY: No. I think that the -- I mean the
11 only aspect of flexibility that I think would be relevant to the
12 relief requested would be if there were a need to relocate the
13 rooftop use into a position that's more likely to affect adjoining
14 residential buildings. That is not what's being requested.
15 What's being requested is some ability to, you know, tweak the
16 interior layout and make some other changes to materials and
17 things that are just immaterial when it comes to the relief. So
18 I don't have any problem with granting the relief that's been
19 requested or the flexibility that's requested.

20 CHAIRPERSON HILL: Okay.

21 Ms. John, do you have any questions or comments or
22 thoughts?

23 VICE CHAIR JOHN: Thoughts not necessarily question in
24 response to Commissioner May. I only raised it because the CFA
25 had comments about the exterior changes not interior changes, so

1 I'm fine if you're fine with this.

2 CHAIRPERSON HILL: Okay. I mean I know and I appreciate
3 that, Ms. John that we -- whatever flexibility is something that
4 is discussed, we can to take a close look at that so we understand
5 what's going on. Given that this is something that's a little
6 bit -- you know, I've had an opportunity to look at this exhibit
7 and also then speak with you and Commissioner May, I'm also
8 comfortable with the CFA flexibility. So unless you have any
9 continued thoughts, Ms. John, I'm going to go ahead and move
10 forward.

11 VICE CHAIR JOHN: I have no continued thoughts, Mr.
12 Chairman.

13 CHAIRPERSON HILL: Okay. All right. Let's see. Okay.
14 Ms. Bloomfield, are you still there?

15 MS. BLOOMFIELD: I'm on and off.

16 CHAIRPERSON HILL: Okay. Do you have anything else to
17 add?

18 MS. BLOOMFIELD: I didn't fully hear your conversation.

19 CHAIRPERSON HILL: I don't think you have any -- do you
20 have anything -- I think you're okay. Do we have anything else
21 to add? Okay. I think we're good. Okay. All right.

22 Mr. Dove -- anyway. Okay. I'm going to --

23 Mr. Dove, do you have anything else you'd like to add?

24 MR. DOVE: No, I don't. Thank you.

25 CHAIRPERSON HILL: Okay. All right. I'm going to go

1 ahead and close the hearing in the record. I'm going to start
2 with Commissioner May if I might because it's the DDOT thing that
3 I found the most interesting about this, you know. But if
4 Commissioner May, if you would begin our discussion, if you would
5 be so kind.

6 COMMISSIONER MAY: I would be very happy to, but I've
7 only had two cups of coffee, so I'm going to speak a little more
8 slowly.

9 I really appreciate the fact that we got further
10 information from DDOT and thank you, Mr. Moy, for making sure
11 that we got that from them explaining the rationale for requiring
12 TDM for a 25-seat rooftop bar. I appreciate DDOT's response and
13 I at least understand where they are coming from. And I also
14 appreciate the aggressiveness with which they are trying to
15 manage traffic demand within the city.

16 It seems like a real stretch to have a use like this
17 suddenly trigger TDM for the whole project. But if that's their
18 hook to get what they need and the applicant is willing to go
19 along, then okay. But I don't -- you know, if the applicant were
20 not willing to go along with that, I would have still been okay,
21 because I don't think that it's really relevant to the question
22 that's before us as to whether this would cause objectional
23 impacts. It's just hard for me to imagine that in an area that
24 dense with buildings that large with, you know, so much
25 underground parking around it that there is going to be any

1 substantial impact associated with adding this 25-seat rooftop
2 bar.

3 So I'm fully in favor of this and if the applicant is
4 okay with TDM, then the TDM plan that they've negotiated with
5 DDOT, that's fine by me, and yeah. So I don't think I have
6 anything further to offer other than repeating that I'm okay with
7 the flexibility that they've requested, so everything's good.

8 CHAIRPERSON HILL: Okay. Thank you, Commissioner.

9 Mr. Smith.

10 BOARD MEMBER SMITH: I don't have anything in addition
11 to add. I thank Mr. May for asking for clarification from DDOT
12 on the reason why they were questioning this TDM. I'm also with
13 Mr. May I'm fine with granting them the flexibility and looking
14 at the request for flexibility, it seems to me to be immaterial
15 of the request before us today and I don't have any major issues
16 with it. Also, with that, I rest on the record of OP's staff
17 report and give great weight to the staff report and analysis,
18 and I would support the application with the TDM and the requested
19 condition by the applicant in (audio interference) or for
20 flexibility.

21 CHAIRPERSON HILL: Great. Thank you.

22 Vice Chair John.

23 VICE-CHAIR JOHN: Thank you, Mr. Chairman.

24 I am in agreement with all of the comments so far.

25 CHAIRPERSON HILL: Thank you.

1 Mr. Blake.

2 BOARD MEMBER BLAKE: I, too, in agreement with the
3 comments made so far. I did note that there were some remaining
4 public space issues that will likely be resolved through the
5 public space permitting process and giving substantial weight to
6 the reports of the appropriate bodies, which are in support of
7 granting relief. I'm prepared to support the approval of the
8 special exception and the desired flexibility. The key is that
9 the applicant understands that the desired flexibility for the
10 plans may be granted so long as the changes don't increase the
11 relief being requested or create any new areas of zoning relief,
12 so with that, I'm fully aware to support.

13 CHAIRPERSON HILL: Thank you, Mr. Blake and thank you
14 for that clarification.

15 I'm going to go ahead and make a motion to approve
16 Application No. 20427 as captioned and read by the Secretary,
17 including the TDM conditions from DDOT as well as flexibility for
18 CFA review. And as long as it doesn't increase any of the zoning
19 relief necessary, I ask for a second, Ms. John?

20 VICE CHAIR JOHN: Second.

21 CHAIRPERSON HILL: The motion has made and seconded.

22 Mr. Moy, can you please take a roll call?

23 MR. MOY: When I call your name, if you would please
24 respond with a yes, no or abstain to the motion made by Chairman
25 Hill to approve the application for the relief being requested

1 including the conditions of; one, condition contained in the TDM
2 document; two, allowing design flexibility per CFA. Seconded the
3 motion is Vice Chair John. Also, in support of the motion is
4 Zoning Commissioner Peter May, Mr. Smith, Mr. Blake and -- yeah.
5 So staff would record the vote.

6 COMMISSIONER MAY: Do we actually vote?

7 MR. MOY: No, (audio interference) to vote? Did you
8 vote?

9 COMMISSIONER MAY: No.

10 MR. MOY: Oh, that's right. That's right. I haven't
11 had my second cup of coffee, so I apologize.

12 VICE CHAIR JOHN: Never mind, Mr. Moy. I thought I
13 missed it. I said, "Oh, we did vote."

14 MR. MOY: Okay. Roll call vote. Zoning Commissioner
15 Peter May.

16 COMMISSIONER MAY: Yes.

17 MR. MOY: Mr. Smith.

18 BOARD MEMBER SMITH: Yes.

19 MR. MOY: Mr. Blake.

20 BOARD MEMBER BLAKE: Yes.

21 MR. MOY: Vice Chair John.

22 VICE CHAIR JOHN: Yes.

23 MR. MOY: Chairman Hill.

24 CHAIRPERSON HILL: Yes.

25 MR. MOY: Staff would record vote as 5-0-0, and this

1 is on the motion made by Chairman Hill to approve along with the
2 conditions as previously cited by the Chair, seconded the motion
3 is Vice Chair John. Also, in support of the motion to approve
4 is Zoning Commissioner Peter May, Mr. Smith and Mr. Blake. The
5 motion carries on a vote of 5-0-0.

6 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.

7 Do we want to do one more and take a break or we want
8 to take a break? Okay. Let's do one more and take a break.
9 Okay?

10 VICE CHAIR JOHN: Okay.

11 CHAIRPERSON HILL: Mr. Moy, could you please call our
12 next case?

13 MR. MOY: The next case is Application No. 20429 of
14 MADM Development, LLC. This application was captioned and
15 advertised for and as amended for special exception from the
16 penthouse setback requirement Subtitle C, Section 1502, rear yard
17 additional requirement Subtitle E, Section 205.4, height
18 restrictions Subtitle E, Section 503.2, which would construct a
19 new three-story two-unit flat in the RF-3/PDR-5 Zone. Property
20 is located at 411 New Jersey Avenue, Southeast, Square 693, Lot
21 96. As the Board will recall, you last heard this on March 31st,
22 heard testimony and scheduled a continued hearing and decision
23 on May 12th, 2021. The Board requested a CFA letter and I believe
24 it was filed under Exhibits 48 and 48A. Since March 31st, there
25 have been no other filings in the record. Except for the

1 applicant's team, no one else has signed up to testify.

2 CHAIRPERSON HILL: All right. Great. Thank you.

3 Mr. Sullivan, could you introduce yourself for the
4 record, please?

5 MR. SULLIVAN: Thank you, Mr. Chair and members of the
6 Board.

7 Martin Sullivan with Sullivan & Barros on behalf of the
8 applicant.

9 CHAIRPERSON HILL: Okay. Let's see.

10 Mr. Sullivan, I don't think there's -- nothing's
11 happened since the last time, right? We needed some information
12 with the CFA and we got that. Can you tell us what's happened
13 since the last time?

14 MR. SULLIVAN: Yeah. That's it. There were no other
15 outstanding questions or requests just the CFA letter.

16 CHAIRPERSON HILL: Okay. Great. All right. Thank
17 you. Does the Board have any questions for the applicant and if
18 so, please raise your hand? All right.

19 Mr. Young, is there anyone here wishing to testify?

20 MR. YOUNG: We do not.

21 CHAIRPERSON HILL: Okay.

22 Mr. Sullivan, do you have anything to add at the end?

23 MR. SULLIVAN: No. Thank you.

24 CHAIRPERSON HILL: All right.

25 Mr. Young, I'm going to ahead and close the -- I'm

1 going to close the hearing and the record. Mr. Young, can you
2 please excuse everyone?

3 Okay. Is the Board ready to deliberate?

4 Okay. I -- this was again, pushed back because we had
5 our own notice issues. I did not have any issues with this
6 particular application. I thought that I would agree with the
7 arguments that the applicant has made concerning how they're
8 meeting the criteria for us to grant the relief requested. I
9 would also agree with the analysis that Office of Planning has
10 provided. I know there was, you know, some issues at some point
11 whether or not this was a variance or when they were trying to
12 get a variance and I'm glad that, you know, we were able to get
13 to a point where I believe that the applicant has met the
14 criteria. I would also agree with the analysis of the ANC as
15 well as DDOT and I'm going to vote in support of this application.

16 Commissioner May?

17 COMMISSIONER MAY: I have nothing to add. I appreciate
18 getting the final CFA letter.

19 CHAIRPERSON HILL: Mr. Smith.

20 BOARD MEMBER SMITH: I have nothing to add.

21 CHAIRPERSON HILL: Vice Chair John?

22 BOARD MEMBER SMITH: I support the application. I do
23 believe that the applicant's --

24 CHAIRPERSON HILL: Mr. Smith, I lost you there for a
25 second, I'm sorry.

1 BOARD MEMBER SMITH: I don't have anything to add.
2 I'll rest on the record. I do believe that applicant has met
3 the burden of proof and us being able to support special
4 exception.

5 CHAIRPERSON HILL: All right. Vice Chair John.

6 VICE CHAIR JOHN: I have nothing to add. I think the
7 applicant has met the burden of proof and I support everything
8 that my colleagues have said so far.

9 CHAIRPERSON HILL: Okay. Okay.

10 Mr. Blake.

11 BOARD MEMBER BLAKE: I have nothing to add to this. I
12 feel that the applicant has met the burden of proof. I'm prepared
13 to support to grant special relief for rear addition, height and
14 penthouse setbacks.

15 CHAIRPERSON HILL: Okay. Mr. Moy, I'm going to -- I'm
16 sorry. I'm going to go ahead and make a motion then to approve
17 Application No. 20429 as captioned and read by the Secretary and
18 ask for a second, Ms. John?

19 VICE CHAIR JOHN: Second.

20 CHAIRPERSON HILL: The motion has made and seconded.

21 Mr. Moy, could you please take a roll call vote?

22 MR. MOY: When I call your name, if you would please
23 respond with a yes, no or abstain to the motion made by Chairman
24 Hill to approve the application for the relief requested. The
25 motion was seconded by Vice Chair John.

1 Zoning Commissioner Peter May?

2 COMMISSIONER MAY: Yes.

3 MR. MOY: Mr. Smith.

4 BOARD MEMBER SMITH: Yes.

5 MR. MOY: Mr. Blake.

6 BOARD MEMBER BLAKE: Yes.

7 MR. MOY: Vice Chair John.

8 VICE CHAIR JOHN: Yes.

9 MR. MOY: Chairman Hill?

10 CHAIRPERSON HILL: Yes.

11 MR. MOY: Staff would record the vote as 5-0-0 and this
12 is on the motion made by Chairman Hill to approve the application.
13 It was seconded by Vice Chair John. Also, in support of the
14 motion to approve is Zoning Commissioner Peter May, Mr. Smith and
15 Mr. Blake. Again, the motion carries on a vote of 5-0-0.

16 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Moy.
17 All right. So for those who are listening also in terms of time,
18 I think we're going to take a break, so maybe we'll come back
19 at, you know, 5 of 11, right, or try and come, you know, take a
20 15-minute break and then I have a meeting case. That meeting
21 case to read that might go another 15 minutes and then we'll be
22 back here probably like, you know, 11:30 is what I suspect with
23 that last case again maybe a little earlier. All right. So
24 we'll take a break everyone. Thank you.

25 (Whereupon, the above-entitled matter went off the

1 record at 10:41 a.m. and then resumed at 11:09 a.m.)

2 CHAIRPERSON HILL: Okay. Let's see. All right.

3 Mr. Moy, if you could go -- do I have to read back into
4 the hearing, Mr. Moy?

5 MR. MOY: No. I think the first time you read in is
6 sufficient unless you want to.

7 CHAIRPERSON HILL: No, I do not. Thank you. If you
8 could go ahead and call our first case back then, Mr. Moy.

9 MR. MOY: Yes, sir. I would like to call that fully.
10 Makes it easier for the transcript.

11 CHAIRPERSON HILL: Sure.

12 MR. MOY: All right.

13 So once again, this is, before the Board is Case
14 Application No. 20359 of 1301 West Virginia, LLC as amended for
15 special exception under the Residential Conversion Requirement
16 Subtitle U, Section 320.2, which would convert the existing
17 principal dwelling unit into a three-unit apartment house. This
18 is in the RF-1 Zone at premises 1301 West Virginia Hampton,
19 Northeast, Square 4064, Lot 75.

20 CHAIRPERSON HILL: All right. Great. Thank you, Mr.
21 Moy.

22 Ms. Dale, can you hear me? Can you introduce yourself
23 for the record, please?

24 MS. DALE: Yes. I'm Benita Albury-Dale, Lottie
25 Albury's representative.

1 CHAIRPERSON HILL: Okay. Thank you.

2 Mr. Williams, are you there?

3 MS. DALE: (Audio interference)

4 CHAIRPERSON HILL: Ms. Dale, you should mute your
5 microphone, please. I'm going to wait for Mr. Williams.

6 MR. WILLIAMS: I'm back.

7 CHAIRPERSON HILL: Oh, great. Perfect.

8 Mr. Williams, could you introduce yourself for the
9 record, please?

10 MR. WILLIAMS: Yes. Zach Williams, Land Use attorney
11 representing the applicant.

12 CHAIRPERSON HILL: Okay. Mr. Williams, can you let me
13 know if anything happened?

14 MR. WILLIAMS: Yes, something did happen. We sent over
15 a proposal and we received a response back from your attorney
16 with a couple of questions. That's what -- that's all that's
17 occurred so far. I received the response literally like a minute
18 ago.

19 CHAIRPERSON HILL: Okay. You want to take a look at
20 the response?

21 MR. WILLIAMS: Yes, I think we ought to.

22 BOARD MEMBER SMITH: Mr. Chair, do you want to take a
23 15-minute break?

24 CHAIRPERSON HILL: Yeah, yeah, yeah. That's great.

25 Mr. Smith, I like your idea.

1 Mr. Williams, I will take a 15-minute break. Okay?

2 MR. WILLIAMS: That sounds good. Thank you.

3 CHAIRPERSON HILL: We'll come back in 15 minutes. Thank
4 you. And Mr. Williams? Mr. Williams?

5 MR. WILLIAMS: Yes, I'm back.

6 CHAIRPERSON HILL: Okay. Yeah. And I know like just
7 if you can -- I mean if there's anything, if we can -- if we
8 somehow get to something like some way that we can figure out
9 that something is signed but it's in the record or all that stuff,
10 you can think about that while you're doing the 15 minutes. Okay?

11 MR. WILLIAMS: Yes, I think we will.

12 CHAIRPERSON HILL: Thank you.

13 (Whereupon, the above-entitled matter went off the
14 record at 11:11 a.m. and then resumed at 11:32 a.m.)

15 CHAIRPERSON HILL: Okay. So let me ask this question
16 of you guys, right. So Mr. Williams, you used to -- you've been
17 with us when we're actually live in the hearing room, correct?

18 MR. WILLIAMS: Yes. Right.

19 CHAIRPERSON HILL: So this isn't actually that odd
20 meaning I'm just letting you know and also my fellow Board members
21 who actually haven't been -- although we missed, we've lost now
22 Mr. Blake because he's no longer with us. I mean he's done for
23 the day. And I'm just going to wait and see if Ms. John is with
24 us actually before I call us back officially. Okay. Great.
25 Perfect. Okay. So this is what I'm thinking, right? So we are

1 here again because -- first of all, I'm officially calling us
2 back. Okay. And if everybody can mute, unless they're speaking
3 because I'm getting a little bit of feedback. Thanks.

4 The application is here for, again, this conversion to
5 add a third unit. Okay. And the developmental standards are
6 primarily, you know, a matter of right in terms of the building
7 envelope. What we're here really to evaluate is really kind of
8 this increased intensity of the third unit, right? Now, even
9 though that is the case, I've been extremely concerned about the
10 impacts of the project on light and air and construction, and how
11 it affects the neighbor. And even though it's outside the scope
12 of the Board's review, there are some impacts that worry me,
13 right? Again, the light and air and the construction. However,
14 what really also does kind of worry me that I can kind of speak
15 more to is the intensity of the use, right? The third unit.
16 Okay. So I'm just kind of laying that out but there are some
17 zoning issues that I actually have some concerns about.

18 So Mr. Williams, can you tell me where in this -- and
19 this is just now my curiosity -- in this negotiation you guys
20 are you sent over what?

21 MR. WILLIAMS: A proposal.

22 CHAIRPERSON HILL: Pardon me?

23 MR. WILLIAMS: A proposal.

24 CHAIRPERSON HILL: Right. And what was included in
25 that proposal?

1 MR. WILLAMS: Well, it's a confidential proposal.

2 CHAIRPERSON HILL: Okay. That's interesting. All
3 right.

4 Then Ms. Dale, you apparently have a confidential
5 proposal in front of you, right? Okay?

6 So this is what I believe we should do. Okay. My
7 fellow Board members are there. I didn't -- and this is what
8 I'm trying to do is, again, I'm going to look at -- this is what
9 I'm saying. There are two other people that got party status
10 for this project that I had forgotten about. Okay.

11 VICE CHAIR JOHN: Yes.

12 CHAIRPERSON HILL: So there is three now people that
13 have party status, right? The Alburys, I believe, there was a
14 church and then someone named Durban. That's all I can kind of
15 recall, right? So this is my -- and I'm sorry to do this, but I
16 really think I'm going to have to take a look and, again, this
17 increased use this one unit and I'd like to take one week to do
18 it. Okay. And I don't think it's going to be a long week for
19 me to figure it out but I want to look at it, right? So that
20 gives one more week for the attorneys and the party to at least
21 see if there's a possible resolution about these other issues
22 that I had some concerns about it.

23 And then also find the other two people, the Durbans -
24 - I'm sorry, Ms. Durban and the church, because in order for us
25 to have this a little bit more tidy, everyone would have to

1 withdraw formally their party status, right? So if the Board is
2 okay and I don't know if my fellow Board members are fine with
3 this and I know Mr. May --

4 Oh, Mr. May, you're getting out a lot earlier today.
5 It's only costing you till noon today. So that means you have
6 to come back for me for one thing in the morning on Wednesday
7 and I promise it won't take long. But if you would be willing
8 to come back and give me one more week to think about these zoning
9 issues and what I think about with the case, I would appreciate
10 it.

11 So therefore, my proposal to my fellow Board members
12 is that we come back for a decision, a decision meeting. We
13 won't talk to anybody; we won't see anybody and we'll ask for
14 some filings in the record if there are any, but we will come
15 back for a decision Wednesday morning.

16 Commissioner May?

17 COMMISSIONER MAY: So I have an all-day meeting on the
18 19th, but if we can do this right away at 9:30, I should be okay.

19 CHAIRPERSON HILL: Excellent. I will do it with 9:30.
20 It will not take long, I promise.

21 Mr. Smith, are you comfortable with my proposal?

22 BOARD MEMBER SMITH: I'm comfortable.

23 CHAIRPERSON HILL: Vice Chair John? Bless you.

24 VICE CHAIR JOHN: I'm sorry Mr. Chairman, I had a
25 sneezing fit. Yes, I'm comfortable. Thank you.

1 CHAIRPERSON HILL: Bless you. Okay. So Mr. Moy, my
2 thought would be that we come back for a decision with this on
3 the 19th. Okay. On Wednesday the 19th. We're going to do it
4 first thing in the morning, we'll be done by 9:45. We don't need
5 to see anybody. Okay. We're going to have a decision meeting
6 and then if there are, if there is anything that we can get from
7 the applicants, right?

8 I'm trying to remember, Mr. Moy, the deadline. Is it
9 24 hours?

10 MR. MOY: Yes. Yes. The case records are closed 24
11 hours prior to the hearing.

12 CHAIRPERSON HILL: Okay. So that means that the record
13 could be open for items that I might request now up until 24
14 hours prior to hearing, so I, you know, close at the 17th, right?

15 MR. MOY: Yes, that Monday.

16 CHAIRPERSON HILL: Okay. Great. All right.

17 So Mr. Williams, can you hear me?

18 MR. WILLIAMS: Yes. Yeah.

19 CHAIRPERSON HILL: Okay. So we're done, right and I'm
20 going to, as I mentioned, go back and take a look at the record.
21 I'm really going to look at, you know, the additional third unit
22 and what I think that may or may not have in terms of the impact.
23 But I do appreciate your time, Mr. Williams, and that of your
24 applicant.

25 Ms. Dale, can you hear me?

1 MS. DALE: Yes, I can hear you. Thank you.

2 CHAIRPERSON HILL: I appreciate your time as well and
3 Mr. Williams, you know, whatever you want to put into the record
4 by Monday and then we're going to have a decision on Wednesday.

5 MR. WILLIAMS: Are there any other -- you mentioned
6 some zoning issues questions. Are there any particulars that we
7 can provide feedback on that address those concerns?

8 CHAIRPERSON HILL: If the Board has any other questions
9 -- I mean I just want to have -- I want to take some time to look
10 at the increased use. Like we've talked about -- a lot about
11 light and air and shadowing and snow slopes and all this stuff,
12 right? But I'm actually just concerned about the increased use,
13 so I'm just going to take a look at that. And so I don't need
14 anything additional. I just need a little bit of time. Okay.

15 MR. WILLIAMS: Okay.

16 CHAIRPERSON HILL: All right. Does the Board have any
17 final questions of anyone? Okay.

18 Ms. Dale, do you have any final questions?

19 MS. DALE: Since this may be the last time that we
20 appear before the Board, I just want to thank all of you all for
21 taking our issues seriously and working with us, and trying to
22 saw what the best in the interest of my mom, our mother here.
23 I'm sure that you realized that we've given this our best fight
24 and we know in our hearts that you will make the best decision
25 in the end what will be best in her, this little lady here, in

1 best and of her interest to keep her safe in her home, to be able
2 to -- for her to enjoy her space throughout the rest of her years
3 and I really appreciate, Mr. Chairman Hill, for you to be here
4 for us to do just that.

5 CHAIRPERSON HILL: All right, Ms. Dale. Thank you very
6 much for your comment.

7 Ms. Cain, you have something you'd like to add?

8 MS. CAIN: I would just say that if the Board wants to
9 determine the status of these other two parties, I mean they want
10 to direct the Office of Zoning to reach out to them and to submit
11 something into the record either confirming that they're still
12 in opposition or whether they've withdrawn their opposition
13 status just so it's clear when the Board makes the decision.

14 CHAIRPERSON HILL: Okay. Great.

15 Mr. Moy, can you reach out to the two other parties?

16 And Ms. Dale, what this means also is if you want to
17 reach out, if -- I'm just trying to -- we need everybody to pull
18 out their party status if this is going to work, right? And I'm
19 not, you know, I'm just -- this is outside of our purview. I'm
20 just kind of giving my comments, but again, you know.

21 So Mr. Moy, if you could reach out to those two people
22 and find out what their situation is. Okay?

23 MR. MOY: That'd be my pleasure to do so, Mr. Chairman.
24 As to the final filings by the applicant and of course, hopefully
25 from -- to hear back from the other two-party status and maybe

1 also, Ms. Albury, as to their status on their party status.

2 For that Monday, do you want to set a time for Monday?
3 Do you prefer close of business on Monday or any time up to
4 midnight?

5 CHAIRPERSON HILL: Let's do any time up to midnight,
6 Mr. Moy. We'll do what the attorneys do. Okay? You got midnight,
7 right? And so, I mean my wife's an attorney and midnight's a
8 very interesting number, so we'll go ahead and leave it for
9 midnight.

10 But, you know, Ms. Dale, Mr. Williams, you know, I'm
11 going to look at again, my zoning -- I'm going to look at what
12 I'm responsible to do which is look at the zoning issues. I'm
13 going to look at the intense use, increase intense use, sorry,
14 for the third unit is what I'm going to do, which is my job, but
15 hopefully, you all can work out something.

16 So Mr. Williams, do you have anything at the end?

17 MR. WILLIAMS: I do not.

18 CHAIRPERSON HILL: It's a very cute room, Mr. Williams.

19 MR. WILLIAMS: Thank you.

20 CHAIRPERSON HILL: All right.

21 Ms. Dale, are you good?

22 MS. DALE: I'm good. Thank you.

23 CHAIRPERSON HILL: Okay. Bye, Ms. Albury.

24 MS. ALBURY: Bye. Bye. Thank you so much, Mr. Hill.

25 Thank you.

1 CHAIRPERSON HILL: Ms. Albury, it's been a pleasure
2 speaking with you.

3 MS. ALBURY: Thank you.

4 CHAIRPERSON HILL: You have a wonderful day.

5 MS. ALBURY: Thank you. You too.

6 CHAIRPERSON HILL: Thank you. If we ever get live, Ms.
7 Albury, you come down to the hearing room. Okay?

8 Okay. All right. I'm going to close the hearing and
9 the record and you may can be excused. Okay. I guess that's
10 it, right? Are we done? Okay. All right. Well, this is a
11 weird day. It's 11:45. All right. Okay, we'll come back for a
12 decision. We'll get Mr. May there first thing in the morning on
13 Monday, Mr. Moy and thank you all very much.

14 VICE CHAIR JOHN: Thank you.

15 CHAIRPERSON HILL: Bye-bye.

16 VICE CHAIR JOHN: Bye.

17 (Whereupon, the above-entitled matter went off the
18 record at 11:45 a.m.)

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C E R T I F I C A T E

1
2 This is to certify that the foregoing transcript

3
4 In the matter of: Public Hearing

5
6 Before: DCBZA

7
8 Date: 05-12-21

9
10 Place: Teleconference

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

14
15
16 

17
18 Walter Murphy