

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

MAY 5, 2021

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via video conference, pursuant to notice at 10:10 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

- PETER SHAPIRO, Commissioner
- PETER MAY, Commissioner
- ROBERT MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary
- PAUL YOUNG, Zoning Data Specialist

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OFFICE OF PLANNING STAFF PRESENT:

CRYSTAL MYERS

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALEXANDRA CAIN, Esquire

The transcript constitutes the minutes from the
Regular Public Hearing held on May 5, 2021

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

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(10:10 a.m.)

CHAIRPERSON HILL: This hearing will please come to order. Good morning, ladies and gentlemen. We're convening and broadcasting this public hearing by video conference. This is the May 5th, 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 will be Peter Shapiro, Peter May and Rob Miller.

Today's hearing agenda is available to you at the Office of Zoning website. Please be advised that this proceeding is being recorded by a 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 on telephone will be muted during the hearing and only persons who have signed up to participate or testify will be unmuted at the appropriate time.

Please state your name and home address before providing oral testimony or your presentation. Oral presentations should be limited to a summary of your most important points. When you're finished speaking, please mute your audio so that your microphone is no longer picking up sound or background noise.

If you're experiencing difficulty accessing Webex or

1 with your telephone call-in or if you have forgotten to sign up
2 24 hours prior to this hearing, then please call our OZ hotline
3 number at 202-727-5471 to sign up to testify or to receive a
4 Webex log in or call-in instructions.

5 All persons planning to testify either in favor or in
6 opposition should have signed up in advance. They will be called
7 by name to testify. If this is an appeal only parties are allowed
8 to testify. By signing up to testify all participants completed
9 the oath or affirmation as required by Subtitle Y 408.7.

10 Requests to enter evidence at the time of an online
11 virtual hearing, such as written testimony or additional
12 supporting documents other than live video, which may not be
13 presented as part of the testimony, may be allowed pursuant to
14 Subtitle -- sorry, I just lost my computer. Pursuant to Subtitle
15 Y 103.13, provided that the persons making the request to enter
16 an exhibit explain how the proposed exhibit is relevant, the good
17 cause it justifies allowing the exhibit into the record,
18 including an explanation of why the requester did not file the
19 exhibit prior to the hearing pursuant to Subtitle Y 206, and how
20 the proposed exhibit would not unreasonably prejudice any
21 parties. The order procedures for special exceptions and
22 variances are pursuant to Y 409. The order of procedures for
23 appeals are pursuant to Y 507. At the conclusion of each case,
24 an individual who was unable to testify because of technical
25 issues may file a request for leave to file a written version of

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

7 Moreover, the Board may request additional specific
8 information to complete the record. The Board and the staff will
9 specify at the end of the hearing exactly what is expected and
10 the date when persons must submit the evidence to the Office of
11 Zoning. No other information shall be accepted by the Board.

12 The Board's agenda may include previous cases set for
13 decision. After the Board adjourns the hearing, the Office of
14 Zoning, in consultation with myself, will determine whether a
15 full or summary order may be issued. A full order is required
16 when the decision it contains is adverse to a party, including
17 an affected ANC. A full order may also be needed if the Board's
18 decision differs from the Office of Planning's recommendation.

19 Although the Board favors the use of summary orders
20 whenever possible, an applicant may not request the Board to
21 issue such an order. The District of Columbia Administrative
22 Procedures Act requires that a public hearing on each case be
23 held in the open before the public. However, pursuant to Section
24 405(b) and 406 of that Act, the Board may, consistent with its
25 rules and procedures and the act, enter into a closed meeting on

1 a case for purposes of seeking legal counsel in a case pursuant
2 to D.C. Official Code, Section 2-575(b)(4) and/or deliberating
3 on a case pursuant to D.C. Official Code, Section 2-575(b)(13),
4 but only after filing the necessary public notice in the case for
5 an emergency closed meeting after taking a roll call vote.

6 Preliminary matters are those which relate to whether
7 a case will or should be heard today, such as a request for a
8 postponement, continuance, or withdrawal, or whether proper and
9 adequate notice of the hearing has been given. If you're not
10 prepared to go forward with the case today, then we will hear
11 from you when we turn on the cameras.

12 Mr. Moy, are there some preliminary matters? I think
13 we had a couple things to discuss, correct?

14 MR. MOY: Yes, we did, Mr. Chairman. As is customary,
15 I would suggest that the specific preliminary matters to specific
16 cases -- it's more appropriate I call those when I call the case,
17 number one. Number two, I like to recite for our transcript five
18 cases that originally were scheduled today, but they've been
19 rescheduled.

20 Two cases have been rescheduled to June the 9th, 2021,
21 and these are application number 20450 of John and Katie Durcan;
22 20454 of 4243 Benning, LLC.

23 The third case is 20457, this is the application of S5
24 District, LLC, rescheduled to May 19, 2021.

25 The fourth case is 20456, this is the application of

1 1002 Rhode Island, LLC, rescheduled to June 16th, 2021.

2 And the final and fifth case is 20252, which is the
3 appeal of Citizens Against Developers Greatly Obfuscating, and
4 this is rescheduled to November 3rd, 2021.

5 Finally, Mr. Chairman, I'd like to bring to your
6 attention this issue where -- is related to two appeals. This
7 is appeal 20452 of Michael Hays; and 20453, the appeal of DuPont
8 East Civic Association -- Action Association. As you're well
9 aware, the appellants had filed a joint motion to revise
10 submission schedule under Exhibits 20 and 26, respectively, both
11 were dated March 11th, 2021. The appellee, in this case DCRA,
12 responded in opposition under Exhibits 21 and 27, respectively,
13 to the two appeals, both dated March 17th. And, in turn, the
14 appellants responded in opposition to those filings under
15 Exhibits 22 and 28, respectively, dated March 28th.

16 So, in summary, Mr. Chairman, essentially, the
17 appellants are requesting the same number of days to reply to
18 responsive brief, as they -- and this would actually change the
19 required timeline days that are attended, Subtitle Y, Sections
20 302.17 and 302.18. And clearly, since the hearing date was
21 rescheduled from May 12th to July 28th, the motion is essentially
22 rendered moot. So what I'm asking you, Mr. Chairman, is you could
23 either direct me to submit an OZ memorandum into the record, that
24 gives the established new deadlines, or I can give those dates
25 to you now. So it's your choice.

1 CHAIRPERSON HILL: No, Mr. Moy, please, go ahead. And
2 I mean, I think unless my fellow Board members have any issues,
3 go ahead and submit that into the record and let people know the
4 new dates for everything, because those issues are now moot due
5 to the change of the hearing date anyway.

6 So unless the Board members have any issues with that
7 and if so, raise your hand. No. Seeing nobody raising their
8 hand. All right, Mr. Moy, go ahead and just add that to the
9 record, okay?

10 MR. MOY: Thank you, sir.

11 CHAIRPERSON HILL: All right. So then now we have our
12 first hearing case. If you want to call it Mr. Moy, and bring
13 our participants in.

14 MR. MOY: Okay. So this is Case Application No. 20377
15 of 16th Street Residential, LLC. This application was captioned
16 and advertised for special exception under the use provisions of
17 Subtitle U, Section 420.1(g) and the area variance from the
18 distance requirements, Subtitle U, Section 420.1(g)(5).

19 This is located -- this would allow a ground floor cafe
20 to be accessible to the public as an accessory use to an existing
21 apartment house in the RA-4 zone. And this is located 1630
22 Columbia Road NW, Square 2578 Lot 834.

23 Finally, Mr. Chair, I'd like to add that this was last
24 heard by the board on April the 7th. You heard testimony and
25 then established a continued hearing date and decision on May

1 5th. The Board requested supplemental information, those are in
2 the records and at the moment, the applicant's team is available
3 in the hearing and there's no other persons in the hearing and
4 no other filings in the record, other than what was requested.

5 CHAIRPERSON HILL: Okay, great. Thank you, Mr. Moy.
6 Mr. Blake, you had something you wanted to mention?

7 BOARD MEMBER BLAKE: Yes, I'd like to recuse myself
8 from this case.

9 CHAIRPERSON HILL: Okay. All right, Mr. Blake, you can
10 just go ahead then and turn off your camera and microphone and
11 we'll just bring you back -- or Mr. Young, you can just excuse
12 Mr. Blake, please, and then we'll bring him back in after the
13 case is over. Thank you.

14 All right, Ms. Moldenhauer, could you introduce
15 yourself for the record?

16 MS. MOLDENHAUER: Good morning. My name is Meridith
17 Moldenhauer from the law firm of Cozen O'Connor. I am here today
18 on behalf of the applicant.

19 CHAIRPERSON HILL: Okay, great. And who's here with
20 you, Ms. Moldenhauer?

21 MS. MOLDENHAUER: Hope Richardson and Anthony Lanei
22 (ph) are both here from the applicant and they can introduce
23 themselves.

24 CHAIRPERSON HILL: Okay. Well, let's see if we need
25 them. I just wanted to know who else is here with you in the

1 room but thank you. All right. So I don't think we asked for
2 anything really additionally. Ms. Moldenhauer, did we ask for
3 different things, or we were just waiting for the -- I know the
4 Office of Planning had a supplemental report. We have different
5 supplemental statements from you that we've all gone over.

6 MS. MOLDENHAUER: Yes. So, I mean, we filed a
7 submission answering some of the Board's questions and would be
8 happy to kind of take a moment to walk through some of our
9 additional information regarding the variance test. And then
10 there was also a question, I believe, from Mr. Shapiro, sorry,
11 Commissioner Shapiro, about the condition. We modified that
12 language and worked with the Office of Planning to modify that
13 language and they filed their supplemental OP report referencing
14 the modified OP condition.

15 CHAIRPERSON HILL: Okay. So, I mean, I looked at all
16 of your supplemental filings and they were very helpful, by the
17 way, I thought it was easy to kind of read through, particularly
18 the different orders with the different cases that you were
19 citing, and I also saw the Office of Planning supplemental
20 report, which I even printed out. But I don't have any additional
21 questions for you, Ms. Moldenhauer. Does the Board have any
22 questions for Ms. Moldenhauer? Commissioner Shapiro?

23 COMMISSIONER SHAPIRO: I don't have any additional
24 questions, Mr. Chair.

25 CHAIRPERSON HILL: Vice Chair John.

1 VICE CHAIR JOHN: I have no additional questions.

2 CHAIRPERSON HILL: Mr. Smith?

3 BOARD MEMBER SMITH: I think I have one additional
4 question.

5 CHAIRPERSON HILL: Okay. Great.

6 BOARD MEMBER SMITH: For the facility that you're
7 proposing to construct, who would be primarily financially
8 supporting that facility; if you've got percentages of what you
9 expect or what your client expects?

10 MS. MOLDENHAUER: So, the by right facility that's
11 being constructed now is obviously going to be supported by the
12 apartment use and is intended to being constructed as a by right
13 community dining facility for the tenants and their guests, as
14 is allowed by right. The proposed non-residential adjunct use
15 would be subordinate to the apartment building and would provide
16 for additional use by the Scottish Rite members and their guests
17 or individuals from the public that attended events or are here
18 for programmatic reasons. But the facility would be supported
19 by the apartment building. I think -- does that answer your
20 question? I think Mr. Lanei can supplement that if necessary.

21 COMMISSIONER SHAPIRO: If he would like to supplement,
22 that would be great.

23 MR. LANEI: Our intention is simply to make it a viable
24 restaurant rather than one that is solely functioning for the
25 support of the residents, which is going to limit its options and

1 | therefore its service potential. And it doesn't, you know, it
2 | doesn't result in the success we were seeking, which was an
3 | interaction with the community rather than the isolation from the
4 | community.

5 | COMMISSIONER SHAPIRO: Okay. Thank you so much.

6 | CHAIRPERSON HILL: Okay. All right. Thank you. Mr.
7 | Young, is there anyone here wishing to speak?

8 | MR. YOUNG: We do not.

9 | CHAIRPERSON HILL: Okay. Ms. Moldenhauer, do you have
10 | anything you'd like to add at the end? I can't hear you, Ms.
11 | Moldenhauer, sorry.

12 | MS. MOLDENHAUER: Sorry, I took a second to unmute. I
13 | just -- if the Board doesn't have any questions, but I want to
14 | make sure that, obviously, we have outlined how we satisfy the
15 | variance and just identify that this is a unique condition based
16 | on the configuration of the building and that the connection
17 | between the Scottish Rite Temple and the apartment building,
18 | which is similar to the Call Your Mother case, as well as the
19 | Domino Pizza case, both which relied upon the configuration of
20 | the structures, as is the case here. We would believe that we
21 | satisfy the special exception conditions for the non-residential
22 | adjunct use as well as the variance test.

23 | CHAIRPERSON HILL: Okay. All right. Oh, just for me,
24 | real quick, how many -- okay, Mr. Smith, one second, I'll get
25 | you. How many seats are in the café? Ms. Moldenhauer?

1 MS. MOLDENHAUER: I'm not sure the total number of
2 seats in the cafe. Let me check on that right now. About 70,
3 about 70-ish. Which in -- so, essentially, about 70 seats.

4 CHAIRPERSON HILL: That's the bar?

5 MS. MOLDENHAUER: That's 70 seats, and in BZA Case
6 12704, which allowed for a coffee shop, which was open from 7
7 a.m. to 8:30 p.m., that was supporting 60 seats or 60 people
8 sitting in the same area.

9 CHAIRPERSON HILL: So, there's 70 people, 70 seats.
10 Okay. All right. Do you have a question, Mr. Smith?

11 BOARD MEMBER SMITH: That was part of my question about
12 how many seats was in the facility. And my second question is
13 just, there's other amenity spaces within the apartment house.
14 Currently, programmatically, does the -- being that the Masonic
15 Temple has that connection to that facility, do the visitors of
16 the Masonic Temple also have access to those amenity spaces within
17 the apartment house? And if not, how do they restrict that
18 access?

19 MS. MOLDENHAUER: So the access would, obviously, be
20 on the 1st floor. Other amenities that are not on the 1st floor
21 would be restricted via FOB or other access requirements, but
22 this is all occurring on the 1st floor so that's why this is an
23 exceptionally unique condition for this amenity space for this
24 use, special exception use, because it's all accessible on that
25 one ground floor level versus amenity spaces that are either on

1 the roof that would have to be accessible via an elevator, which
2 can be restricted and does not have the same legal requirements
3 for a meaningful connection and accessibility as the ground floor
4 connection between the Scottish Rite members access and their
5 guests and the accessory dwelling use here on the ground floor.

6 BOARD MEMBER SMITH: Okay. So you're saying that all
7 the amenity spaces with the apartment house are on the ground
8 floor?

9 MS. MOLDENHAUER: There are residential uses that are
10 beyond that are for kind of meeting rooms, but a meeting room,
11 obviously, is different than using the pool, for instance, and
12 the fitness room. Those are on different floors.

13 BOARD MEMBER SMITH: Thank you.

14 CHAIRPERSON HILL: Okay. All right. Well, if anybody
15 doesn't have any more questions -- oh, Ms. John?

16 VICE CHAIR JOHN: Just one follow up. Ms. Moldenhauer,
17 what other amenities are on the 1st floor. Is it just this
18 restaurant?

19 MS. MOLDENHAUER: It's just the restaurant and then the
20 lobby and then there are, I believe, some meeting rooms.

21 VICE CHAIR JOHN: Okay. And those meeting rooms could
22 be used by the members of the temple and their guests?

23 MS. MOLDENHAUER: There would be no -- there's no
24 restriction. U 410(g) restricts the community dining to only
25 tenants and their guests. There's no restriction for meeting

1 rooms being restricted. And that's kind of why we're here for -
2 - because of U 10(g), which says the community dining can only
3 be used by tenants and their guests. I don't know of any zoning
4 requirements that would limit the meeting space for other
5 purposes, but, you know, there are --

6 VICE CHAIR JOHN: I think I didn't state my question
7 correctly. So, the argument is that it would be difficult to
8 monitor the members and the guests of the Temple -- Masonic
9 Temple. So my question is, would you be monitoring the meeting
10 rooms as well, or would anyone from the temple be able to use
11 those rooms? Because the issue is the difficulty of controlling
12 that traffic. I mean, that's what you've said over and over and
13 over again. So my question is then, are those rules also open?

14 MS. MOLDENHAUER: I just got confirmation from the
15 applicant that those rooms would have secure locks and then the
16 tenants would be able to coordinate with the building management
17 to get access to them when they wanted to use them, similar to a
18 D.C. public library that has kind of a separate study rooms that
19 you can use in reserve. So those would not have the same
20 practical difficulty as the open flow of the community dining
21 space that would have the challenge of monitoring for the Scottish
22 Rite members and their guests. So there is a difference there,
23 Board Member John, and I think that might answer your question.

24 VICE CHAIR JOHN: Okay. And you're saying that there
25 is no way to do some sort of a barrier plan or otherwise to limit

1 access to the cafe/restaurant because of its location on the 1st
2 floor? Or it couldn't be done through a greeter or somebody like
3 that? Where is the practical difficulty in that situation?

4 MS. MOLDENHAUER: Correct, Board Member John. The
5 uniqueness is that the cafe has non-visible areas of the
6 courtyard, which are literally parallel to the meaningful
7 connection and behind the Scottish Rite, as well as directly
8 connected to where the community dining area starts from the
9 meaningful connection. And so this creates a unique
10 configuration of the building, which leads to the practical
11 difficulty rather than the, you know, and the inability to,
12 obviously, close off or lock that area.

13 VICE CHAIR JOHN: Okay, thank you.

14 CHAIRPERSON HILL: Okay. Anyone else have any
15 questions? Okay. All right, Ms. Moldenhauer, thank you very
16 much. Thank you to the applicant.

17 Mr. Young, you can excuse everyone. I'm going to close
18 the hearing on the record.

19 Okay. Are we ready to talk about this, or do we want
20 to talk about this? So, this is -- I mean, I can start and I'm
21 going to kind of jump around a little bit because I know that
22 everyone's going to have some things that they want to speak
23 about.

24 To begin with, I wish I could get behind this. Like,
25 I think the project is great. I mean, it looks like to me, you

1 know, a nice cafe, restaurant, whatever you want to call it.
2 Right. I don't think it's, you know, allowed per the zoning
3 regulations, right? And so I'll talk about a couple of the
4 things. I mean, you know, the matter of right use is for a
5 community dining room. And we've had a lot of discussions as to
6 what a community dining room is. And we are supposed to look to
7 Webster's now as to what a community dining room is. And I know
8 we've all looked at the definition in Webster's, right?

9 To quote different people that have been in this
10 situation, you'll know what a community dining room is when you
11 see, right? A community dining room is like, you know, they have
12 a shared kitchen. We've all been to those older buildings where
13 people go in and they have a very small apartment, and they need
14 to have space for like a party and they'll have a shared kitchen
15 and a shared community dining room. And that's a community dining
16 room, right? A community dining room is not a restaurant where
17 there's alcohol served, where there's waiters, where there's, you
18 know. So to me, this seems like a restaurant. And I hate to -
19 - I know the applicant didn't mean to use that word. The
20 applicant used the word restaurant, right? And so cafe,
21 restaurant, whatever it is, it's not a community dining room, in
22 my opinion. So, that's number one.

23 If it were a community dining room and it was a matter
24 of right, fine; then they don't need to talk to us. And probably
25 they're going to have to figure out something about using that

1 space if this fails. I, again, want to be very clear to the
2 applicant, I think it's a great space. I'd love to go there and
3 hang out. So I have no problems with what you're trying to do.
4 We're just here to use these regulations the way we're supposed
5 to use them, right? So, that's number one.

6 Number two, in terms of that this is supposed to be
7 used by -- only supported by the people that are within the
8 building and even by Scottish Rite, right? You know, I guess I
9 could maybe get behind that. So therefore, the ANC -- what the
10 ANC wanted, the ANC wants to be able to use the restaurant, right?
11 Cafe, right? They want to be able to go -- I would want to be
12 able to go, right? Like, I don't -- there's a great cafe with a
13 nice little outdoor seating and everything, and I want to go to
14 it. So if I'm the ANC, I'm voting for that. I can't get behind
15 the ANC. So therefore the ANC isn't going to get what the ANC
16 wants anyway, in terms of my vote, right?

17 I think that if this were to happen, you'd have to go
18 along with the Office of Planning's recommendation and put the
19 condition in there that ties just the Scottish Rite people and
20 the apartment house dwellers. So that kind of takes the ANC's
21 vote. You know, they're not going to get what they want, just
22 because it's not allowed, in my opinion, in the regulations.

23 In terms of the variance, again, the uniqueness of the
24 building and how it ties to being inside the quarter mile of the
25 MU Zone, I never got the connection, right. And so I never

1 | understood why, you know, if the building can't be moved, which
2 | is what the argument is, that means that all buildings that are
3 | inside a quarter mile, they can't be moved, so they're going to
4 | -- it completely changes the zone, the zoning regulations, right?

5 | So really, even if I could get passed the 1st and 2nd
6 | prong of the variance, I couldn't get to the no substantial
7 | impairment of the zone plan, right? I mean, I think that's the
8 | whole thing. I can't get past the 4th prong.

9 | We're always talking about the 1st and 2nd prong as if
10 | the other prongs don't matter. That last prong still matters.
11 | And I can't get past the substantial impairment of zone plan.
12 | Again, I'm going to keep repeating, I like the restaurant, it'd
13 | be great.

14 | As far as the Call Your Mother case -- and again, I'll
15 | let you all kind of, please you all add your stuff to this, right.
16 | As far as to Call your Mother case, that was already there. That
17 | corner store was already there. It was a different case
18 | completely. A different situation completely. They're building
19 | this now. This is brand new. Right.

20 | So anyway, so I can't -- and I'd like to hear y'all's
21 | other statements and thoughts, but I can't get behind this. I
22 | wish I could. Ms. John? Who wants to go next? There's no order
23 | now, somebody just raise their hand. Mr. Smith, let's go with
24 | you.

25 | BOARD MEMBER SMITH: I completely agree with you,

1 Chairman Hill. I don't believe that this is allowed for the
2 zoning regulation. I believe, based on exactly what you're saying
3 what a community dining room is, it is for the residents of the
4 apartment home. I was even struggling with whether visitors or
5 patrons of the Scottish Rite Temple are even eligible to access
6 this particular space, because to me, the regulation is fairly
7 clear to me that it shall be used by residents of the apartment
8 home. It shall be, substantially -- financially supported or
9 substantially by the apartment home. And by admission of the
10 applicant today, it would be for the larger community, not for
11 the residents of this apartment home, which I believe have less
12 than 200 units with it.

13 So, it was stressed to me that a 200-unit apartment
14 building could support a facility of this particular size and
15 scope with 70 seats within it. You know, just starting at the
16 special exception. I didn't believe that it met the criteria
17 for the general special exemption requirements, will be in
18 harmony with the general purpose and intent of the zoning
19 regulations and zoning map. This is a RA-4 zone, this particular
20 use would not, to me, be subordinate to or incidental to the
21 apartment home, based off of what the applicant just said to us
22 today, and previously when we met to discuss this case a couple
23 weeks ago where it's much larger in scope than just supporting
24 the apartment home. It would be functioning a restaurant that the
25 greater community could visit. So to me, that wasn't in harmony

1 with zoning regulations. I do not believe that it would adversely
2 affect the surrounding neighborhood. The majority of the
3 properties within the area are high density residential. I don't
4 believe that it met the intent for the RA-4 zone or high density
5 residential with some incidental dining facilities within there.

6 I also believe that it would hurt -- I'll use advanced
7 criteria. I did not believe that the applicant demonstrated a
8 practical difficulty that they had this connection between the
9 Masonic Temple and the apartment home right where this particular
10 facility would be located. And based on this dialogue today, I'm
11 not completely sold that they couldn't in some way, shape or form
12 close off or wall off a portion of this -- where they're proposing
13 to place this facility, in a design or in a manner where it would
14 imply limited access to residents (audio interference), just as
15 they put up a wall for these other amenity spaces that are on
16 the ground floor, put up some form of a wall. I'm not completely
17 sold that that couldn't occur for this particular space. To me,
18 it is by design, partial to the applicant based on the design,
19 they chose to construct this facility in this particular manner.

20 (Audio interference) carry on assumption of practical
21 difficulty. Again, I'm struggling with that for the same reasons
22 that I stated, you know, recently for the 1st prong without
23 substantial detriment to the public good. So what you're saying,
24 Mr. -- it'll be great to have a restaurant. You know, everybody
25 would like to have some type of corner watering hole within their

1 neighborhood. But to me, it's not necessarily about the niceties.
2 We have to enforce the zoning regulations and the intent of the
3 zoning regulations. And I believe based off of the intent of
4 the RA-4 zone, a full-blown restaurant is not contemplated within
5 that zone.

6 And also, impairing the intent, purpose and integrity
7 of the zoning plan, for the exact same reasons that are stated
8 in RA-4 zones, primarily for higher density or medium density
9 residential and this quarter mile requirement to me is to protect
10 the intent of the (audio interference) R Zones, which are intent
11 -- the intent of those are to be mixed use zones with a mixture
12 of different commodities and goods to support the surrounding
13 residential, i.e. this RA-4 zone.

14 And the applicant hasn't demonstrated to me that the -
15 - these other MU -- the MU zones that are fairly close in
16 proximity to this facility, being that it's zoned RA-4, does not
17 have businesses that have the commodities and goods that could
18 support the residents of this facility within a relatively close
19 distance of this facility. So to me, it fails that test. So
20 with that, I can't support this at all.

21 CHAIRPERSON HILL: Okay. Commissioner Shapiro?

22 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I have a
23 few things to add, and I agree with everything that I've heard
24 from my colleagues so far. I mean, the primary issue for me is
25 that as described by the applicant, the intent is to create a

1 mixed-use structure that, you know, it's hard not to see that as
2 an impairment of the regs.

3 So that's a difficult piece for me -- so, this is a
4 comment that maybe also a question for my colleagues here. You
5 know, if there were a condition that said that this establishment,
6 the cafe, was limited to folks who had -- either were part of
7 the apartment building or had a programmatic connection to the
8 Scottish Rite Center, I think that would be easy to enforce, but
9 that's a separate enforcement issue. How would we feel about
10 supporting this with that condition?

11 CHAIRPERSON HILL: Okay. Welcome, Ms. John. We'll
12 come back to you, Commissioner.

13 VICE CHAIR JOHN: I have a couple thoughts and I'll
14 just go through them if I can find my notes. So we've been
15 talking about what type of facility this is and the definition
16 of a restaurant in Subtitle B100.2. It's a business that does
17 not meet the definition of an establishment -- I'm sorry, that
18 does not meet the definition of a fast-food establishment or
19 prepared food shop.

20 So this is what -- so what this is, is a restaurant.
21 and the owner has also admitted that that is his intention. And
22 the owner also said that his intention would be to support the
23 larger community and not be closed off from the larger community.
24 So the applicant then is proposing to include a restaurant in an
25 apartment building as a non-residential or commercial adjunct use

1 and, of course, needs the special exception under 420 -- U
2 420.1(g).

3 And it's clear that the building permit authorizes a
4 matter of right use for community dining room under Subsection
5 410.1(g). There was a little bit of confusion about that, but
6 it was cleared up.

7 And now we get to the special exception to allow this
8 community dining room to operate -- to be granted the special
9 exception. And so one of the preconditions or the one
10 precondition for granting the special exception is that the
11 apartment cannot be located within a quarter mile of the MU Zone.
12 In this case, the front door of the apartment building is located
13 30 feet from the MU Zone, which means that they do need a
14 variance.

15 The variance that they're requesting is very steep
16 because of that 30-foot distance from the MU Zone. We're not
17 talking about several blocks. It's practically next door to the
18 MU Zone and that I have to take into consideration. So the
19 applicant has come back time and again to the fact that the --
20 let us assume that the building is unique because of the
21 meaningful connection and let us assume that there is a large lot
22 and that those two conditions create an exceptional condition.
23 We still have to get to the practical difficulty caused by that
24 exceptional condition, and I cannot get there.

25 And I have asked the applicant to explain how the

1 meaning and meaningful connection means that the applicant cannot
2 meet the area requirement, the requirement to be located within
3 a quarter mile of -- to not be located within a quarter mile of
4 the MU Zone. So I don't see the relevance between the meaningful
5 connection and that location.

6 The temple is existing, there's no restaurant being
7 proposed in the temple. I could perhaps understand if the
8 application were for an existing restaurant within the temple,
9 so you can't move the temple, and I think that's what the
10 applicant was alluding to in mentioning the Call Your Mother
11 case. But that case is entirely different from this one. That
12 case involved an as built corner store. And so in that case,
13 the argument that the corner store can't be moved may have made
14 sense. But the issue is that the applicant's design choice is
15 what is driving the need for this variance. The applicant chose
16 to create a meaningful connection with a temple to take advantage
17 of whatever zoning benefits are available. And then the applicant
18 decided to locate a restaurant in that apartment building.

19 And everyone else has spoken eloquently about the harm
20 to the surrounding -- to the zoning regulations and the public
21 good and I agree with all of that, so I won't belabor the point.
22 It seems to me that the applicant's -- even if we got through
23 the variance test, even if we say the application is entitled to
24 -- it meets the criteria for the variance, we still have to get
25 to another provision of the regulations, which is Subtitle

1 420.1(g)(7), which says that and I believe Board Member Smith
2 alluded to it, that the size and character of the apartment has
3 to be considered because the tenants of the apartment house will
4 be expected to furnish all or substantially all of the financial
5 support of the required adjunct. So the Board still has to
6 consider this. And based on what the applicant stated, the
7 application will not meet that criteria.

8 So I think Board Member Smith also alluded to the fact
9 that the restaurant will be close to the Columbia Heights area,
10 where there are lots of restaurants, as well as the Adams Morgan
11 area. And I believe the Office of Planning recognized that there
12 could be some adverse impact on that location -- based on that
13 location. And that is the need for -- and that is why OP is
14 recommending that condition.

15 Now, we can address that condition if we decide to
16 approve the variance, but I can't get to an approval for the
17 variance. So in my view, if we grant this special exception and
18 the variance, I agree with the Chairman, how would we ever close
19 this door? I mean, anyone could build a new apartment building,
20 you know, next to -- within a quarter mile radius and claim some
21 exceptional condition, which doesn't really exist.

22 So I have difficulty supporting the application. And
23 so I can't great weight to either OP's analysis or the issues
24 and concerns of the ANC. I agree with the Chairman that this
25 appears to be a great cafe, which I would like to visit myself,

1 but unfortunately, we have to comply with what the regulations
2 require. And I wish I didn't have to say this every week, but
3 the Board is not bound by prior decisions of the BZA. The Board
4 is bound by decisions of the Court of Appeals. And every week
5 we have persons suggesting that we review transcripts of prior
6 BZA hearings where there are summary decisions that offer no
7 guidance to the Board. So I would just like to say again that
8 the Board is not bound by previous BZA decisions, because the
9 principle is that every case is decided on its own particular
10 facts and circumstances, which we saw with the Call Your Mother
11 case, and so I would like to stop there, Mr. Chairman.

12 CHAIRPERSON HILL: Commissioner Shapiro?

13 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

14 Vice Chair John, just one -- and maybe this is to Board
15 Member Smith too. Just one way that I might interpret one piece
16 of what you said differently, under 420.1(g)(7)(b), related to
17 the size and character of the apartment house and whether that's
18 what's going to financially support the café. The way I
19 understood what's being presented to us is we wouldn't just look
20 at the apartment house. We would look at the apartment house
21 and the Scottish Rite Temple and therefore, it would be the --
22 patronage would be both the residents of the apartment building,
23 plus the users, the visitors to the Scottish Rite Temple.

24 Now, I'm curious, because that was my interpretation,
25 but I'm hearing that you all would interpret that differently.

1 VICE CHAIR JOHN: So the regulation applies to the
2 apartment house, not the Scottish Rite Temple.

3 COMMISSIONER SHAPIRO: But I thought if this was
4 meaningful connection that we would be considering both as a
5 facility?

6 VICE CHAIR JOHN: But they're separate uses. One is a
7 temple, and one is an apartment house. The entire regulation is
8 focused on the front door of the apartment house and its location,
9 in terms of the variance and its location. So I believe when
10 you read the regulation, the provisions as a whole, it doesn't
11 appear to be an exclusion of non-residents. Where the regulations
12 put some restriction on the operation of this cafe/restaurant is
13 in whether or not it can be advertised and so on, to limit
14 participation by the public. So putting that restriction on
15 about the temple doesn't really achieve a lot. It just reinforces
16 what's already in the regulation, which is an attempt to limit
17 public participation/community participation and use of this
18 restaurant so that the financial support will be substantial --
19 will be coming from substantially -- substantially, all of the
20 financial support will be coming from the tenants of the apartment
21 building.

22 So the meaningful connection really doesn't have any
23 relevance to all of this. I don't accept the applicant's
24 statement that the café/restaurant cannot be constructed as a way
25 to limit access to the members of the temple. I just can't accept

1 that. We see we see this every day in the city. You go to places
2 where there's somebody in the front who finds out what your
3 affiliation is to a particular business and allows you in. I
4 mean, I don't see that as a practical burden, as an exceptional
5 condition. Sorry, I'm losing my train of thought, probably
6 talking too much. It is not a burden to the applicant to do
7 that.

8 CHAIRPERSON HILL: Mr. Shapiro? Commissioner? Can I
9 ask you a question? So I mean, are you okay with the variance?

10 COMMISSIONER SHAPIRO: I'm trying to find a way around
11 this because I go back to what you said. I think this is a
12 worthwhile project, but I'm really struggling. I mean, I'm really
13 more aligned with where you all are. I'm really struggling to
14 figure out --

15 CHAIRPERSON HILL: I mean, the problem is then,
16 Commissioner -- we're just jumping around, that means that
17 anybody can build an apartment building right next to the MU Zone
18 and throw in a restaurant.

19 COMMISSIONER SHAPIRO: Well, that's where the Scottish
20 Rite Temple and the meaningful connection -- that's where that's
21 -- this is a different situation.

22 CHAIRPERSON HILL: So, then I'll go look around and
23 find a church that I can have a meaningful connection with, build
24 an apartment building and build a restaurant.

25 COMMISSIONER SHAPIRO: They might.

1 CHAIRPERSON HILL: No, I'm just saying, that's what
2 you're then opening --

3 COMMISSIONER SHAPIRO: Then we would consider that,
4 right?

5 CHAIRPERSON HILL: There's churches all around the city
6 that are next to MU Zones, right? And then I'll go and buy a
7 church, throw in a -- I mean, that's what I'm saying, like you're
8 buying that meaningful connection.

9 COMMISSIONER SHAPIRO: I'm doing it because I don't
10 think the goal of the apartment building -- I don't think --look,
11 we're making assumptions, but I'm assuming that the (audio
12 interference) wasn't let's build an apartment building, so that
13 would be a way that we could sneak in a restaurant. I think,
14 practically, what we're seeing before us feels pretty
15 straightforward. You know, this Scottish Rite Temple is there,
16 there's the apartment building, there's an opportunity to put
17 this ancillary use that's there that would benefit from serving
18 more than just the residents of the apartment building, but it
19 could also serve patrons of the Scottish Rite Temple, visitors
20 to the Scottish Rite Temple and folks who are doing programming
21 there. So it kind of makes sense to me. But again, even that
22 feels like yeah, okay, I don't mind that -- anyhow, I'll stop.

23 CHAIRPERSON HILL: Okay. And I'm just going to make
24 one last point and I'll let everybody -- and if the regulations
25 weren't here, I'd be down with the cafe restaurant.

1 COMMISSIONER SHAPIRO: Right. Right, right, right. I
2 mean, and I think we're all pretty aligned around that. It's
3 just -- is there a way that this could -- that we could imagine
4 this would not be in violation of the zoning regs, and it's hard.
5 Now the argument that we shouldn't do it because somebody else
6 might build a building next to a church just so they could get a
7 restaurant in -- I mean, first of all, I don't think that's the
8 way it works. But also to Vice Chair John's point, we take these
9 case by case, so I'm less worried about the precedent of this.

10 CHAIRPERSON HILL: I mean, Commissioner, I don't mind,
11 I mean, again, we just seem to be kind of discussing a problem
12 that we wish we could solve.

13 COMMISSIONER SHAPIRO: Yeah.

14 CHAIRPERSON HILL: But again, we're here every week and
15 they come -- people come back to us every week with something we
16 did and even though Vice Chair John keeps saying what she says,
17 if there's something that exactly matches up with the argument,
18 then we've changed the zoning regulations and that's not our
19 role. That's your role.

20 COMMISSIONER SHAPIRO: Right.

21 CHAIRPERSON HILL: That's your role. That's your role
22 at the Commission, right?

23 COMMISSIONER SHAPIRO: (Audio interference.)

24 CHAIRPERSON HILL: Okay. So anyway, so I don't think
25 anybody's made any changes in -- so I'm going to make a motion

1 | because Commissioner May is next. I'm going to make a motion to
2 | deny Application No. 20377 as captioned and read by the secretary
3 | and ask for a second, Ms. John?

4 | VICE CHAIR JOHN: Second.

5 | CHAIRPERSON HILL: Motion made and seconded. Mr. Moy,
6 | could you take a roll call.

7 | MR. MOY: When I call your name, if you would please
8 | respond with a yes, no, or abstain to the motion made by Chairman
9 | Hill to deny the application for the relief being requested.
10 | Motion was seconded by Vice Chair John. Zoning Commissioner Peter
11 | Shapiro?

12 | COMMISSIONER SHAPIRO: I vote yes to deny.

13 | MR. MOY: Mr. Smith?

14 | BOARD MEMBER SMITH: Yes, to deny.

15 | MR. MOY: Vice Chair John?

16 | VICE CHAIR JOHN: Yes, to deny.

17 | MR. MOY: Chairman Hill?

18 | CHAIRPERSON HILL: Yes, to deny.

19 | MR. MOY: Staff would record the vote as 4-0-1. This
20 | is to the motion made by Chairman Hill to deny. The motion was
21 | seconded by Vice Chair John. Also in support of the motion to
22 | deny is Mr. Smith, Zoning Commissioner Peter Shapiro, and we have
23 | one Board member who is not participating on the vote. Staff
24 | would record the vote as -- again, 4-0-1. The motion to deny is
25 | carried.

1 CHAIRPERSON HILL: All right, Commissioner Shapiro.

2 COMMISSIONER SHAPIRO: All right. I hope your day gets
3 better. Enjoy everybody.

4 CHAIRPERSON HILL: Have a good day. Bye-bye.

5 I'm confused, I thought Commissioner May -- oh,
6 Commissioner May is on -- he's only on one case. Oh, no, right,
7 he is on that other case. Okay. Commissioner May, can you hear
8 us?

9 COMMISSIONER MAY: Now I can.

10 CHAIRPERSON HILL: Okay, great. Perfect. Thank you.
11 Mr. Blake, are you there?

12 BOARD MEMBER BLAKE: Yes, I am.

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

15 MR. MOY: Thank you, Mr. Chairman. So this would be
16 Case Application No. 20386 of Simone Management, LLC. This
17 application is captured and advertised for a special exception
18 under the new residential development provisions, Subtitle U,
19 Section 421.1, which would convert an existing two- story
20 detached principal dwelling unit to a three-story 16-unit
21 apartment house with cellar in the RA-1 Zone. This is at premises
22 3044 30th Street, SE, Square 5720, Lot 12.

23 As the Board will recall, this was last heard at your
24 hearing on March 31st when you heard testimony and then scheduled
25 a continued hearing and decision to May 5th. The Board requested

1 supplemental information from the applicant, as well as providing
2 filings for responses from the Office of Planning and the ANC.

3 There are no other filings in the record, and except
4 for the applicant's team, there's no one else in the waiting
5 room.

6 CHAIRPERSON HILL: Okay, thank you. Mr. Carballo, could
7 you introduce yourself for the record, please?

8 MR. CARBALLO: Yes. Adam Carballo representing
9 Carballo Architecture, the architect of record.

10 CHAIRPERSON HILL: Okay. I don't know, Mr. Carballo,
11 if we're going to need to hear from anybody else. We'll see what
12 questions we have, but who is here with you today?

13 MR. CARBALLO: We have Johnson Kunlipe from Simone
14 Management. We also have Gladys Sera, who is the civil and
15 landscape.

16 CHAIRPERSON HILL: And then I see a Sheena?

17 MR. CARBALLO: Sheena is part of my team.

18 CHAIRPERSON HILL: Okay. All right. Okay. Mr.
19 Carballo, if you could tell us what happened since the last time
20 you were here?

21 MR. CARBALLO: Yes, thank you. We took the feedback
22 that we received at the last meeting. We made a number of sort
23 of minor adjustments. Specifically, there was questions that
24 arose regarding bicycle parking. If I could actually share my
25 screen, if that's possible?

1 CHAIRPERSON HILL: I don't know if it is, I always
2 forget. Mr. Young, is that possible?

3 MR. YOUNG: Yeah, we can do that.

4 CHAIRPERSON HILL: Okay.

5 MR. CARBALLO: Thank you. What we have done is, in
6 order to comply with the recommendations for OP, we did add an
7 additional bicycle storage space at the end of the building, it
8 is attached to the building. We still have the bicycle storage
9 in the cellar, but we added an additional bicycle storage area
10 that is going to be a lot easier to access for the residents that
11 would like to store their bicycles on site, not in their
12 individual residence. That's one change we made.

13 In addition, we did provide a sun study that presented
14 here are both, you know, different times of day, different times
15 of the year, depending on the angle of the sun in the air. We
16 did sort of show that there is no adverse effect to the adjoining
17 lots, as you can see from our study here.

18 In addition to that, those comments, we also were
19 requested to find the specific height of some of the adjoining
20 apartment buildings. This block has a number of -- it's mostly
21 apartment buildings and there are several larger apartment
22 buildings that are adjacent to the site.

23 We did confirm with on-site measurement that the larger
24 apartment building, two doors down from us is actually 35 feet
25 in height, the apartment building behind us is 37 feet, and at

1 | the end of the block it's actually 34 feet. In the -- in our
2 | previous presentation we had estimated that those heights were
3 | between 35 and 40 feet and we confirmed that estimate based on
4 | field measurements.

5 | And finally we, we did also have a question regarding
6 | access from the rear parking to the entrances. We did look at
7 | the grading of the lot and we were able to determine that there
8 | was a condition where from the parking -- there's four parking
9 | spaces in the rear -- and I believe there's four parking spaces
10 | one, two, three, four -- four parking spaces in the rear that is
11 | the requirement. And there's issue of window wells and crossing
12 | over window wells. We looked at the grading of the land and we
13 | determined that we actually do not need -- we no longer need the
14 | window wells at the rear of the building. So walking from those
15 | four parking spaces to the front of the building would not be
16 | affected by those window well locations.

17 | Finally, there were some questions regarding the site
18 | wall and sort of retaining walls and such. I can have -- Gladys
19 | speak more to that who is landscape and civil.

20 | And that's sort of my synopsis of what we've addressed
21 | since last time. Again, just for reference, we still have -- we
22 | have support from OP, we are also -- as far as the relief, we're
23 | actually conforming with all aspects of the zoning with respect
24 | to lot coverage, building height, parking use, lot coverage,
25 | setbacks, et cetera.

1 CHAIRPERSON HILL: Okay. I need Mr. Young to drop that
2 when you get a chance. Okay. Mr. Carballo, the -- and I think
3 you already talked about this, but for the record, the conditions
4 that are in the Office of Planning's recommendations over in
5 Exhibit 67, that's the ones that you all have now agreed to,
6 correct?

7 MR. CARBALLO: I believe so, yes, sir.

8 CHAIRPERSON HILL: Okay. All right. Does the Board
9 have any questions for the applicant? Sure, Commissioner May?

10 COMMISSIONER MAY: Just a quick one. The Office of
11 Planning's supplemental report indicates that that exterior shed,
12 even though it's attached to the building, does not qualify or
13 does not meet the requirement for indoor -- or, you know, parking
14 within the building, bike parking within the building; is that
15 correct? Is that what you understand it to be?

16 MR. CARBALLO: Well, what we've done is we've actually
17 provided -- we're still providing the parking in the cellar of
18 the building.

19 COMMISSIONER MAY: That's not what I'm asking. I saw
20 what you're doing. I'm just asking whether you think that that's
21 -- whether you got word from anybody in the Office of Planning
22 that that is not compliant?

23 MR. CARBALLO: The outside shed is not, it has to be
24 within the building, but we're providing both options for the
25 residents.

1 COMMISSIONER MAY: I understand what you're doing.
2 Thank you. I just wanted to clarify that you agree that this is
3 not a compliant solution. I mean, I would argue that it is
4 compliant, but this is not the place to argue that. So I just
5 wanted to clarify that question. Thank you.

6 Oh, I do actually have one other thing. I mean,
7 anything that you just showed us, is that all in the record
8 already?

9 MR. CARBALLO: I believe it is.

10 COMMISSIONER MAY: Okay. Because it has to be once you
11 show it to us.

12 MR. CARBALLO: Of course.

13 COMMISSIONER MAY: All right. Thank you.

14 CHAIRPERSON HILL: Okay. Anyone else? Questions,
15 raise your hand. No. All right. Mr. Young, is there anyone
16 here from the public?

17 MR. YOUNG: We do not.

18 CHAIRPERSON HILL: Okay. All right. Mr. Carballo; is
19 that done? Are you done?

20 MR. CARBALLO: Unless anybody else from our team,
21 Gladys or Mr. Johnson would like to speak.

22 CHAIRPERSON HILL: I don't think we have any questions
23 for you, Mr. Carballo. I'm going to go ahead and let you go.

24 MR. CARBALLO: Okay.

25 CHAIRPERSON HILL: All right. So we're going to close

1 | the hearing in the record, excuse, Mr. Carballo. Is the Board
2 | ready to deliberate? Okay.

3 | Commissioner May, I'm tired of talking. Let's start
4 | with you. I know, Commissioner May, you don't mind talking, so.

5 | COMMISSIONER MAY: I don't mind talking and I've been
6 | waiting all morning and you were trying to mute me before.

7 | CHAIRPERSON HILL: Talk away. Tell us all you think.

8 | COMMISSIONER MAY: I don't have a whole lot to say. I
9 | mean, I think the applicant has been responsive to our concerns.
10 | I mean, it's unfortunate that we wind up with a, you know, sort
11 | of a work around on the bike parking, and it's something that I
12 | think the Zoning Commission will have to look at, because clearly
13 | the idea of having an enclosed space that is accessed separately
14 | from outside the main portion of the building should be an
15 | adequate solution. I mean, it's not a freestanding structure,
16 | it is attached, it's part of the building, so I don't know why
17 | it doesn't comply. So but regardless, I appreciate the fact that
18 | the applicant has provided that alternative because I think it
19 | is much better.

20 | And in fact, if they wanted to make it bigger so that
21 | it handled all of the required capacity instead of what looks
22 | like part of it, I would have no issue with that either. And in
23 | terms of the other inquiries, I mean, I'll let others speak to
24 | the height of the building and the solar studies, but I don't
25 | see any issues with that either.

1 And of course, we're all just down to the basic relief,
2 which is, you know, this is a conversion case. And so it seems
3 to me that it meets the test there. So I'm prepared to vote in
4 favor.

5 CHAIRPERSON HILL: Thank you. Mr. Smith?

6 BOARD MEMBER SMITH: So I'm like Mr. May, I don't have
7 too much to say on this. The questions that I'm worried about
8 just -- Mr. May even that off. I had brought up about height
9 and the issue of shadowing. I appreciate the applicant for
10 providing that additional information to provide additional
11 context, to supplement OP's staff report to provide teeth to OP's
12 decision making in their staff report.

13 Based on what was submitted, it looks as if the heights
14 are -- the height of this building is in character with the
15 neighborhood and also the shadowing, while there is some fairly
16 substantial shadowing on some months as presented by the
17 applicant in their presentation, the mass in size is by right
18 within the zone.

19 And based on this information, I don't have any major
20 concerns about the height of the building and shadowing. So with
21 that, I give great weight to OP's staff report and I will be in
22 support of this application.

23 CHAIRPERSON HILL: Okay. Ms. John?

24 VICE CHAIR JOHN: Thank you, Mr. Chairman. I don't
25 have much to add to what's been said so far. I think this is a

1 fairly straightforward application now that the applicant has
2 worked with OP to resolve some of those outstanding issues and
3 has responded to the Board's questions satisfactorily concerning
4 the shadow impacts and the bicycle storage.

5 So I should also note that the ANC is in support of the
6 application and I can give great weight to OP's analysis and
7 recommendations. And I support the application.

8 CHAIRPERSON HILL: Okay. Thank you, Ms. John. Mr.
9 Blake?

10 BOARD MEMBER BLAKE: I would agree with the statements
11 made by our colleagues with regard to the specific conditions of
12 the special exemption. I also think that the only area that was
13 of concern was with 901.2(b) and I think that the actions taken
14 by the applicant, along with OP's conditions, address a lot of
15 that. And we also have addressed those issues through the shadow
16 study and also the representation of the heights within the
17 community, that it doesn't really go against the character of the
18 area. So I would be prepared to support this as well.

19 CHAIRPERSON HILL: Thank you. I have nothing to add.
20 I would agree with my colleagues. I'm going to go ahead and make
21 a motion to approve Application No. 20431 as captioned and read
22 by the secretary, including the conditions for the Office of
23 Planning in Exhibit 67 and ask for a second, Ms. John?

24 VICE CHAIR JOHN: Second.

25 CHAIRPERSON HILL: Motion made and seconded. Mr. Moy,

1 | could you take a roll call?

2 | MR. MOY: Yes. Thank you, Mr. Chairman. When I call
3 | your name, if you would please respond with a yes, no or abstain
4 | to the motion made by Chairman Hill to approve the application
5 | for the relief requested. The motion was seconded by Vice Chair
6 | John. Zoning Commissioner Peter May?

7 | COMMISSIONER MAY: Yes.

8 | MR. MOY: Mr. Smith?

9 | BOARD MEMBER SMITH: Yes.

10 | MR. MOY: Mr. Blake?

11 | BOARD MEMBER BLAKE: Yes.

12 | MR. MOY: Vice Chair John?

13 | VICE CHAIR JOHN: Yes.

14 | MR. MOY: Chairman Hill?

15 | CHAIRMAN HILL: Yes.

16 | MR. MOY: Staff would record the vote as 5-0-0 and this
17 | is on the motion made by Chairman Hill to approve, along the
18 | conditions as cited in the Office of Planning report under Exhibit
19 | 67. Seconding the motion is Vice Chair John. Also in support
20 | of the motion to approve is Zoning Commissioner Peter May, and
21 | Mr. Smith and Mr. Blake. Again, the motion carries on a vote of
22 | 5-0-0.

23 | CHAIRPERSON HILL: Okay. Thank you. Mr. Moy, is the
24 | next one 20431?

25 | MR. MOY: It is.

1 CHAIRPERSON HILL: Okay. Okay. So, do we -- we only
2 have one more with Mr. May, do we need to take a break though
3 before we do that or not? And I'm looking for anybody -- Okay,
4 Mr. May, you just got here. You don't need a break yet, but we
5 know that you do sometimes. Okay.

6 COMMISSIONER MAY: But this case is very short.

7 CHAIRPERSON HILL: Yeah. Okay. All right. Okay. Mr.
8 Moy, go ahead and call the next case, please.

9 MR. MOY: Thank you, sir. So this would be Case
10 Application No. 20431 of Patrick Basse and Dolie Schein. This
11 is captioned and advertised for a special exception for the side
12 yard requirements of Subtitle D, Section 206.7, which would
13 construct a two-story rear addition to an existing two-story
14 detached principal dwelling unit in the R-2 Zone. This is at
15 premises 4403 Garrison Street, NW, Square 1581, Lot 821.

16 As the Board is aware, you last heard this at your
17 hearing on March 31st. You heard testimony and scheduled a
18 continued hearing and decision on May the 5th. There was no
19 request by the Board for supplemental information. There were
20 no other filings in the record. Except for the applicant's team,
21 there's no one else in the hearing waiting room.

22 CHAIRPERSON HILL: Okay, great, let me see. Is it Mr.
23 Basse?

24 MR. BASSE: Yes.

25 CHAIRPERSON HILL: Can you hear me?

1 MR. BASSE: Yes, I can.

2 CHAIRPERSON HILL: Okay. Could you introduce yourself
3 for the record, please?

4 MR. BASSE: Yes. Good morning. This is Patrick Basse,
5 and I am the owner of the house for the special exception. I'm
6 not seeing my video; I suppose it's working.

7 CHAIRPERSON HILL: That's okay. That's okay, sir.
8 Just for the record, again, you had agreed with the ANC and you
9 were going to install a rain barrel to mitigate the loss from
10 the permeable surface?

11 MR. BASSE: Yes. Yes, we did.

12 CHAIRPERSON HILL: Okay. Okay. All right. Does the
13 Board have any questions for the applicant? If so, please raise
14 your hand. Okay. Let's see, Mr. Young, is there anyone here
15 wishing to speak?

16 MR. YOUNG: We do not.

17 CHAIRPERSON HILL: Okay. All right. Mr. Basse, I'm
18 going to go ahead and let you go because no one seems to have
19 any questions for you. All right.

20 MR. BASSE: Thank you very much.

21 CHAIRPERSON HILL: Okay. I'm going to close the hearing
22 on the record. Commissioner May, since you also enjoy speaking,
23 you can speak again.

24 COMMISSIONER MAY: I think this case is very
25 straightforward. I don't really have any comments, I'm ready to

1 | vote in favor.

2 | CHAIRPERSON HILL: Okay. Mr. Smith?

3 | BOARD MEMBER SMITH: I second Mr. May. I don't have
4 | any comments. I feel it's fairly straightforward and I would be
5 | in support of the application.

6 | CHAIRPERSON HILL: Vice Chair John?

7 | VICE CHAIR JOHN: I agree that this case is very
8 | straightforward and I'm ready to support the application. I give
9 | great weight to the Office of Planning's analysis and to the ANC
10 | support and DDOT has no objection.

11 | CHAIRPERSON HILL: Thank you. Mr. Blake?

12 | BOARD MEMBER BLAKE: I would agree with my colleague's
13 | analysis, and I do agree that it -- I feel prepared to accept
14 | this, giving great weight to the analysis and recommendation of
15 | the Office of Planning.

16 | CHAIRPERSON HILL: Okay. All right. Okay, I'm going
17 | to go ahead, make a motion to approve Application No. 20431 as
18 | captioned and read by the secretary, including a condition that
19 | the applicant shall install at least one rain barrel to mitigate
20 | the loss of permeable surfaces and ask for a second, Ms. John?

21 | VICE CHAIR JOHN: Second.

22 | CHAIRPERSON HILL: The motion has been made and
23 | seconded. Mr. Moy, could you please take a roll call?

24 | MR. MOY: When I call your name, if you would please
25 | respond with a yes, no or abstain to the motion made by Chairman

1 Hill to approve the application for the relief requested, along
2 with the rain barrel. Seconding the motion is Vice Chair John.
3 Zoning Commissioner Peter May?

4 COMMISSIONER MAY: Yes.

5 MR. MOY: Mr. Smith?

6 BOARD MEMBER SMITH: Yes.

7 MR. MOY: Mr. Blake?

8 BOARD MEMBER BLAKE: Yes.

9 MR. MOY: Vice Chair John?

10 VICE CHAIR JOHN: Yes.

11 MR. MOY: Chairman Hill?

12 CHAIRPERSON HILL: Yes.

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

18 CHAIRPERSON HILL: Okay. Thank you. All right,
19 Commissioner May; is that it for you? Okay, thank you. Have a
20 good day.

21 Okay. So then we have Commissioner Miller back. Do
22 you guys want to take a break real quick?

23 VICE CHAIR JOHN: Yes, thank you.

24 CHAIRPERSON HILL: Okay. So before we go, I just have
25 to confirm something. Mr. Moy, do we just have 20423 and 20424

1 left?

2 MR. MOY: Yes, sir.

3 CHAIRPERSON HILL: Ms. John is shaking her head. Ms.
4 John, I'm not on either one of these, so I will see you all later.

5 VICE CHAIR JOHN: Sadly, Mr. Chairman.

6 CHAIRPERSON HILL: Okay.

7 VICE CHAIR JOHN: Hey, we wish you could stay awhile.

8 CHAIRPERSON HILL: I'm done.

9 VICE CHAIR JOHN: Do try.

10 CHAIRPERSON HILL: I don't know what is going on today,
11 something weird happened. Okay. So, I will see you guys later.
12 I'll see you all next week. And then Ms. John, when do you want
13 people to come back?

14 VICE CHAIR JOHN: I would say 11:45, is that 30 minutes?

15 CHAIRPERSON HILL: 30 minutes?

16 VICE CHAIR JOHN: Well, how much break would --

17 CHAIRPERSON HILL: I would just take 15 minutes, if I
18 were you, come back with the two cases and be done.

19 VICE CHAIR JOHN: Yeah, yeah. That's a good idea.
20 Thank you, Mr. Chairman. 15 minutes.

21 CHAIRPERSON HILL: Okay. See you guys later. Bye-
22 bye.

23 (Whereupon, the above-entitled matter went off the
24 record and then resumed at 11:32 p.m.)

25 VICE CHAIR JOHN: -- Miller, I don't see his -- oh, his

1 video is on and Board Member Smith, so you can go ahead and call
2 the next case.

3 MR. MOY: All right. The Board is back in session
4 after a quick break and the time is at or about 11:32 p.m.

5 The next case before the board is application number
6 20423 of Philip J. Cross. This is an application captioned and
7 advertised for special exception relief from the residential
8 conversion requirements of Subtitle U, Section 320.2; court
9 requirements of Subtitle E, Section 203.1; and the rear yard --
10 or rather the rear addition requirements, Subtitle U, Section
11 205.4.

12 This would construct a two-story rare addition to an
13 existing attached two-story principal dwelling unit and convert
14 the principal dwelling unit to a three-unit apartment house in
15 the RF-1 Zone. This is located at 1219 Kenyon Street NW, Square
16 2844, Lot 118.

17 As the Board will recall, this was last heard at its
18 hearing on March 24th. You heard testimony and then scheduled a
19 continued hearing and decision on May 5th. The Board did not
20 request any supplemental information. There were no other filings
21 in the case record since March 24th and except for the applicant's
22 team, Madam Vice Chair, there's no one else in the waiting room.

23 VICE CHAIR JOHN: Thank you, Mr. Moy. Good morning,
24 Mr. Sullivan. Can you introduce yourself for the record, please?

25 MR. SULLIVAN: Good morning, Madam Chair and members

1 of the Board, Marty Sullivan from Sullivan & Barros, on behalf
2 of the applicant.

3 VICE CHAIR JOHN: Thank you. Is there anyone else on
4 your team who you expect to speak?

5 MR. SULLIVAN: Yeah, if there are questions, Shawn
6 Buehler, the architect, is here and the owner, Philip Cross, is
7 with us as well.

8 VICE CHAIR JOHN: Okay. Thank you. So, Mr. Sullivan,
9 we don't have any new items in the record, and because there's
10 nothing new and no one has signed up to speak, I'm going to go
11 ahead and close the record, unless you have something to add, or
12 any Board member has something to add. No.

13 MR. SULLIVAN: We don't. Thank you.

14 VICE CHAIR JOHN: Okay, thank you. Do any of my fellow
15 Board members have a question before I close the record? Okay,
16 I'll go ahead and close the record then. Are you ready to
17 deliberate? So I -- are you there, Mr. Miller? I don't seem to
18 be able to see you.

19 COMMISSIONER MILLER: I can see me, but I don't know
20 if others can see me.

21 VICE CHAIR JOHN: Okay, I can see you. So, Commissioner
22 Miller, did you want to start?

23 COMMISSIONER MILLER: If you'd like me to, Madam Chair.

24 VICE CHAIR JOHN: Please do.

25 COMMISSIONER MILLER: Okay. So I think the applicant

1 has met the special exception criteria for a conversion of a two-
2 story dwelling to a three-story apartment at this location. And
3 I think the applicant has also met the general criteria for
4 special exception relief. The Office of Planning is in support,
5 which we give great weight to, as well as the ANC 1A, at Exhibit
6 33. And I think there was a neighbor -- next door neighbor who
7 also was in support. So I am ready to support this application
8 today. And DDOT had no objection either, as I recall. So thank
9 you, Madam Chair.

10 VICE CHAIR JOHN: Thank you, Commissioner Miller. May
11 I go to you, Board Member Smith?

12 BOARD MEMBER SMITH: I echo the comments of Mr. Miller.
13 I feel like this is fairly straightforward. I do believe that
14 the applicant has met the burden of proof in granting the special
15 exceptions for residential conversion, the court requirements and
16 the rear addition requirements for us to be able to grant special
17 exception. I don't believe that there will be undo adverse impact
18 on the case of property owners. So with that, I will support
19 the application and you know that I give great weight to OP's
20 staff report, which is recommending approval and the ANC, which
21 is also recommending approval and DDOT has no objection.

22 VICE CHAIR JOHN: Thank you, Board Member Smith. So
23 I, too, support the application. The only issue that I had,
24 initially, was the 25-foot extension that impacted the neighbor
25 to the east, but I believe that the addition of the court will

1 help to minimize some of the adverse impacts. And so I support
2 and agree with OP's analysis and recommendations and give great
3 weight to ANC 1A's recommendation. And I note, as Board Member
4 Smith did, that DDOT has no objection. So, with that I will make
5 a motion to approve Application No. 20423 as captioned and read
6 by the secretary and ask for a second, Board Member Smith?

7 BOARD MEMBER SMITH: Second.

8 VICE CHAIR JOHN: Mr. Moy, can you please call the
9 roll?

10 MR. MOY: Yes, thank you. When I call your name, if
11 you would please respond with a yes, no or abstain to motion made
12 by Vice Chair John to approve the application for the relief
13 requested. The motion was seconded by Mr. Smith. Zoning
14 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 record the vote as 3-0-2 and this
21 is on the motion made by Vice Chair John to approve, seconded by
22 Mr. Smith. And also in support of the motion to approve Zoning
23 Commissioner Rob Miller. We have two Board members not
24 participating on this case. The motion carries on a vote of 3-
25 0-2.

1 VICE CHAIR JOHN: Thank you, Mr. Moy. And I believe
2 the next case is the last case of the day, which is Application
3 No. 20424. So, could you go ahead and call that case, please?

4 MR. MOY: Yes, thank you. This is Case Application No.
5 20424 of Shaw 927, LLC. This is an application captioned and
6 advertised -- it has been amended for an special exception from
7 the apartment house requirements of Subtitle U, Section 301.4;
8 lot occupancy restrictions of Subtitle E, Section 304.1; the rear
9 yard requirements of Subtitle E, Section 306.1; minimum court
10 dimensions of Subtitle E, Section 203.1; side yard requirements
11 of Subtitle E, Section 207.4. The applicant added special
12 exception to the parking requirements of Subtitle C, Section
13 701.5. And the Board had removed the variance relief to the access
14 requirements of Subtitle C, Section 711.7.

15 Participating on this application is Zoning
16 Commissioner Rob Miller, Mr. Smith, and Vice Chair John. As the
17 Board will recall, this was last heard at the Board's hearing on
18 March 24th where the Board heard testimony and then scheduled a
19 continued hearing and decision on May 5th. The Board requested
20 supplemental information from the applicant and allowed responses
21 from the parties. There were no other filings in the record
22 other than that, and I believe there are -- other than the
23 applicant's team, there's no other persons in the hearing room.

24 VICE CHAIR JOHN: Thank you, Mr. Moy. Mr. Young, can
25 you let the applicant's team in, please?

1 Good morning. Can you introduce yourself for the
2 record, please?

3 MR. SULLIVAN: Thank you, Madam Chair, and Members of
4 the Board. This is Marty Sullivan, counsel for the applicant.

5 VICE CHAIR JOHN: Is there anyone else with you today,
6 Mr. Sullivan?

7 MR. SULLIVAN: Yes. I have representatives of the
8 owners of the building and the architect, two people from the
9 architect team as well.

10 VICE CHAIR JOHN: Okay. Do you want to introduce them
11 now or should we wait to see if they need to speak at some point?

12 MR. SULLIVAN: Yeah, I can -- we can -- I think it
13 probably best to wait.

14 VICE CHAIR JOHN: Okay. Thank you.

15 MR. SULLIVAN: Thank you.

16 VICE CHAIR JOHN: So, Mr. Sullivan, can you tell us
17 what happened since we were last here and, you know, go over some
18 of the filings in the record since you were last here?

19 MR. SULLIVAN: So the principal filing was we amended
20 the relief for the parking -- we were asking for variance relief
21 from Subtitle C, 711.7, which is a requirement that when you have
22 parking inside a building, that the entrance to those parking
23 spaces must be 12 feet from the center line of the alley. And
24 we have a 20-foot-wide alley, so we're 2 feet short of that. And
25 we were asking for 2 feet of variance relief on the variance

1 argument resulting from HPO's recommendations that the building
2 be on the property line. This is Naylor Court and Historic
3 Preservation Office desires that buildings built along Naylor
4 Court not be set off back from the alley property line.

5 If you'll recall, the Board had some significant issues
6 with the variance analysis. And so we looked at alternatives and
7 we consulted with the Office of Planning and decided on the
8 alternative to seek special exception relief from the parking
9 requirement itself. We have done this in a few other cases that's
10 included in the filing. And also, we've consulted with the zoning
11 administrator on this, too, as the viability of that request.

12 So effectively, we're asking that the two spaces not
13 be required spaces and we're asking for special exception relief
14 from that requirement, and we believe we meet -- and so that was
15 the substance of that filing. And we submitted a supplementary
16 statement explaining why we met that requirement under 703.2.
17 There are several different conditions that need to be -- only
18 one of which needs to be present in order to justify that relief.
19 And we believe we meet actually four of those conditions and the
20 Office of Planning report noted their opinion that we met at
21 least three of those conditions.

22 So because the spaces are no longer required, it's not
23 subject to 711.7, the center alley line setback. And another
24 point I want to mention about that, and that's what I asked the
25 zoning administrator about. We wanted to make clear that the

1 alley center line set back only applies to required spaces, not
2 to all parking spaces. And the zoning administrator confirmed
3 that for us in an email to myself and to the Office of Planning
4 yesterday.

5 In addition to that, I'll note that the zoning
6 commission just amended the center alley line setback as it
7 applies to the rear yard requirement, as it applies to accessory
8 buildings and to alley lot buildings. And they reduced that
9 requirement from 12 feet down to 7 1/2 feet. And this is a
10 somewhat redundant provision that I think sort of got overlooked
11 in that process because now there's still a 12-foot setback.

12 The reason I bring that up is that I think that the
13 zoning commission has acknowledged that the 12 feet is more than
14 is needed for safe access to a parking space. They made a
15 requirement of 7 1/2 feet, which would mean that a 15-foot-wide
16 alley could have an accessory building with parking on the alley
17 and here we have a 20-foot alley. So I don't think there's any
18 questions about logistics and actually entering the space.

19 So that's what we did. We thought we'd take the
20 difficult variance analysis away from the Board and make it a
21 cleaner case by asking for this special exception relief and we
22 believe we have met that. So we're available. We can answer
23 any questions about that, or if you would like us to go through
24 any of the presentation for the other areas of relief or for the
25 project itself, we can do that at the Board's request.

1 VICE CHAIR JOHN: Thank you, Mr. Sullivan. So let me
2 turn to the Board members. Does anyone have any questions for
3 Mr. Sullivan? Board Member Smith? I see Commissioner Miller
4 shaking his head.

5 BOARD MEMBER SMITH: No questions.

6 VICE CHAIR JOHN: No questions?

7 BOARD MEMBER SMITH: No questions.

8 VICE CHAIR JOHN: So I have question, Mr. Sullivan, and
9 that is the requirement in the special exception regulation that
10 says that the relief can only be for the spaces that the applicant
11 is physically unable to provide. So what other options did you
12 present to OP and HPRB? Did you, for example, consider setting
13 off the entrance to the garage by two feet?

14 In other words, the building itself would sit on the
15 property line, but the entrance would be set off. And so it
16 could be said that you could meet -- you could physically meet
17 the requirement.

18 MR. SULLIVAN: Well, I would say we don't physically -
19 - we can't physically meet the requirement because of C711.7 and
20 the alley and the setback, but the -- and this is in the record,
21 the Historic Preservation Office will not approve this building
22 -- that I mean, we're back to the same argument as variance, if
23 it's on the -- if it's away from the property line. I thought
24 about that. And I'm not sure how to -- if we have to put
25 structure on the property line and we put parking, we did consider

1 that. Could we put the parking two feet inside? The requirement
2 applies to the entrance to the structure itself. So I don't
3 think there's any difference between the entrance to the
4 structure on the alley line and the entrance to the actual
5 parking space.

6 I think the requirement applies to the structure, not
7 the parking space. So, yeah, you could sink the space further
8 in, but you'd still be entering at the same point.

9 VICE CHAIR JOHN: So the structure would sit on the
10 property line. It's a wide structure with more than enough room
11 to create the required access to allow two legal parking spaces.
12 I have to tell you, starting out, that I'm having difficulty
13 saying that these spaces are not required spaces. So anyway, I
14 will leave that to the discussion.

15 But if you could discuss why that option is not
16 feasible.

17 MR. SULLIVAN: Jim, do you want to explain why -- you
18 take a stab at answering the Chair's question?

19 VICE CHAIR JOHN: Mr. Foster, could you please
20 introduce yourself for the record?

21 MR. FOSTER: Hi, my name is Jim Foster. I'm from
22 Arcadia Design (audio interference). I guess I'm at a little bit
23 of a loss because I think Marty has explained this in that the
24 rule says that the parking space starts at the face of the
25 building. If we have to put the face of the building at the face

1 of the alley and if we simply move the spaces in two feet, so
2 that essentially there will be a two-foot inset inside the face
3 of the building only for the width of the parking, then you
4 haven't met the spirit of the rule that says that the face of
5 the space has to be at the face of the building.

6 Furthermore, I think Historic has been very clear to
7 us that they want the wall of this building to be at the property
8 line. Because it's two parking spaces and a large garage door
9 that would enclose those two spaces, if that garage door is set
10 in two feet from the face of the alley, the building is no longer
11 going to appear like it's at the face of the alley, or rather a
12 very large portion of the building won't be at the face of the
13 alley, which I think misses the spirit of what Historic is asking
14 us to do.

15 I think that it's a, you know, it's a matter of
16 semantics, I think, to simply push the spaces in two feet, because
17 according to my understanding of what Marty has said is that the
18 space then doesn't comply with the technical requirement of the
19 code because the space is supposed to be at -- the space starts
20 at the edge of the building, not two feet in. And simply taking
21 what is now, if I'm trying to understand and interpret what you're
22 saying, if I have an existing 16 foot space that starts at the
23 face of the building and I simply move that space in so it's 18
24 feet deep and that I claim that the end of my space is, in fact,
25 two feet in from the edge of the alley, but, in fact, the building

1 | is actually still at the face of the alley, I haven't created
2 | additional space. I've just created a larger space that is still
3 | starting at the edge of the alley. I hope that answers your
4 | question.

5 | VICE CHAIR JOHN: It did. But I just would like to
6 | suggest that the regulation in terms of access, it's the access
7 | to the parking spaces that's the issue, and that was driving the
8 | variance. So the regulation says there has to be 12 feet for
9 | access. So if the building, the rest of the building is on the
10 | property line and the access, the garage door is set back two
11 | feet, there is no problem with the alley centerline requirement
12 | and that gets out of this convoluted argument that required
13 | spaces are not required. So, I mean, I don't know if you want
14 | to respond. I just wanted to say what I'm having difficulty with
15 | right now in terms of the special exception.

16 | MR. SULLIVAN: And I would answer, so as convoluted as
17 | it is, it has been accepted by the Board as a method or a strategy
18 | for getting relief -- effectively getting relief from certain
19 | dimensional or access requirements. One of the cases that we had
20 | was, we had a seven-foot-wide driveway when we needed eight and
21 | a car could get in that, a small car could get in that. But
22 | there's no special exception available for dimensions and I know
23 | the Office of Planning is working on this and the Zoning
24 | Commission has mentioned that they're working on something like
25 | that. So it has been acknowledged by the Board to be a legitimate

1 way of accommodating these questions.

2 And in particular, in this case, while it may seem
3 convoluted, I would say that it's a little convoluted that the
4 requirement even exists, because the requirement was eliminated
5 by the Zoning Commission as it applies to accessory buildings,
6 it was actually reduced to 7 and 1/2 feet, which we would meet.

7 But this provision, C 711.7, which did not exist prior
8 to 2016, I don't think anybody thought about because it now makes
9 those revisions to 7 and 1/2 feet meaningless, because now you
10 still have a 12-foot requirement. So convoluted, however you
11 want to describe it, I think it's a legitimate path. And I think
12 we meet the requirement to reduce -- removed the special exception
13 criteria to reduce the requirement. Once the requirement is
14 reduced, that it doesn't apply to us. And if we meet that test,
15 then the question of complying with the access, I mean, it seems
16 like we're sort of still on a variance argument. What else can
17 we do? What alternatives can we do? And I think it's pretty
18 clear that we don't have that alternative. It comes down to an
19 interpretation, I think, of what is -- well, the word they use
20 is vehicular entrances or exits. And I'm not so sure that you
21 could have a vehicular entrance or exit without having -- without
22 satisfying the Historic Preservation requirements, very well-
23 known requirements for Naylor Court.

24 I just don't know that -- that would seem a little more
25 convoluted to say, well, here's the front of the structure, but

1 | it's not really an entrance. And we'd have to -- I don't think
2 | that's possible to make that argument for the zoning
3 | administrator to say, no, this isn't really the entrance, even
4 | though there has to be some structure and a wall there.

5 | VICE CHAIR JOHN: So thank you, Mr. Chairman -- Mr.
6 | Sullivan, I'll ask my fellow Board members if they have any
7 | questions. Board Member Smith? Commissioner Miller?

8 | COMMISSIONER MILLER: (Audio interference) the
9 | applicant. I'm ready to deliberate.

10 | VICE CHAIR JOHN: Okay. Mr. Moy, -- I'm sorry, Mr.
11 | Young, we have no one else wishing to speak, right?

12 | MR. YOUNG: That's correct.

13 | VICE CHAIR JOHN: So in that case, I'll go ahead --
14 | thank you, Mr. Sullivan. Did you want to add anything before I
15 | close the record?

16 | MR. SULLIVAN: Thank you.

17 | VICE CHAIR JOHN: Was that a no, Mr. Sullivan?

18 | MR. SULLIVAN: No. No, thank you.

19 | VICE CHAIR JOHN: Thank you. So I'll go ahead and
20 | close the record. And Board Member Smith, are you ready to
21 | deliberate?

22 | BOARD MEMBER SMITH: Sure. I'm ready to deliberate,
23 | but I'd rather not start first.

24 | VICE CHAIR JOHN: Okay. Commissioner Miller, that
25 | leaves you or me. Would you like to start?

1 COMMISSIONER MILLER: Whatever the Chair prefers? I
2 will start.

3 Madam Chair, I am in support of the application for a
4 special exception. Can you hear me, first of all?

5 VICE CHAIR JOHN: Yes. Yes, I can hear you.

6 COMMISSIONER MILLER: We've been having internet
7 technical issues all week, and Comcast is scheduled to arrive
8 here momentarily. But if I lose you, I'll call in. I have that
9 number accessible, so let me just say that.

10 VICE CHAIR JOHN: Thank you.

11 COMMISSIONER MILLER: In terms of access, I'll have a
12 different way of accessing this meeting.

13 So, yes, I support the special exception, the revised
14 exception application and believe that the applicant has met the
15 criteria to reduce the required parking in this case, as the
16 Office of Planning has recommended approval as well for that
17 point.

18 And I think it obviously is a method, as the applicant's
19 attorney has stated, that's been used in the past, but regardless,
20 I think it's a reasonable method to avoid the variance argument,
21 which you, Madam Chair, in particular, had some concerns with.

22 For the record, I would not have -- I would have
23 supported the variance application. I think the applicant made
24 the case for the exceptional uniqueness of this property meeting
25 that area variance in this case, which the Office of Planning

1 | agreed with and which the ANC agreed with.

2 | I read the case, the D.C. Court of Appeals case that
3 | you referred to in that -- in our previous hearing in March,
4 | which I had not read carefully before, the Capitol Hill
5 | Restoration Society case at 534A 2nd, 939. And I think it --
6 | respectfully, I disagree with your interpretation that -- about
7 | that case, that you can't just say you're in a Historic District
8 | and make that the reason for the exceptional condition. I think
9 | that is -- I think there's something unique about this particular
10 | specific to this property. And it was the HPRB's absolute
11 | condition, they will not get a permit unless it's at the property
12 | line and the property line not having a setback at the alley
13 | property line is a defining character, as you know, because you're
14 | very familiar with this particular Blagden Alley-Naylor Court
15 | historic area.

16 | So I would have supported the variance application
17 | which was supported by the Office of Planning and the ANC. I
18 | support the special exception revised application to eliminate
19 | the requirement, so that eliminates the issue. The applicant is
20 | making no -- is not hiding the fact that this is an end around
21 | from having to make the area variance argument and it's been done
22 | in the past.

23 | The area variance -- I agree with the applicant that
24 | it should not have to be an area variance and the Zoning
25 | Commission probably should have reduced, when we changed the

1 other alley setback requirements for development standards that
2 it should have been done for the parking access as well to 7 and
3 1/2 feet. And there's a case coming up next week for a hearing
4 before the Zoning Commission, 21-04, a text amendment to clarify
5 and allow special exception relief to certain vehicle parking
6 requirements. And this should certainly be -- I'm going to ask
7 the Office of Planning at that hearing if it's appropriate to
8 look at that issue for the future, not because of -- but this
9 case emphasizes it, that there's a discrepancy here -- either to
10 make it a special exception or to reduce it to 7 and 1/2 or both
11 for the parking access, because there clearly are no adverse
12 impacts here.

13 And so there are a number of ways to try to get the -
14 - there are a number of reasonable interpretations of the existing
15 zoning regulations, I believe, including the pending application
16 before us, that would get the applicant the relief and the
17 development that is recorded by the Office of Planning and the
18 ANC in this Historic District.

19 So, I'm ready to support this application and won't
20 belabor any of the other points at this point unless you want me
21 to get into it, I don't think you do, legal interpretation debate.
22 You can have reasonable interpretations of that case. And that's
23 where -- maybe that's where I should end, that if you could --
24 if we can reasonably interpret the zoning regulations to allow
25 something to go forward, particularly something that's not

1 controversial, that the Office of Planning supports, which we're
2 required to give great weight to, which the ANC in this case,
3 2F, I believe, supports, which we're required to give great weight
4 to, if there's a reasonable interpretation that would get that
5 result that is supported by all those parties, then I think it's
6 appropriate to try to get to yes.

7 If there's a party in opposition, if there was OP
8 against it or ANC against it, maybe we could look a little bit
9 more carefully. And we are going to look more carefully at the
10 regulation in this case. But I don't think we have to wait for
11 that. I don't want to wait for that. I want to proceed today
12 with this. And hopefully there are three votes to do something
13 to allow this development to go forward.

14 If you are more comfortable -- that you would be more
15 comfortable with the variance, I would ask the applicant to come
16 back and revise the application again.

17 But what's pending before is the special exception to
18 eliminate the requirement for parking, which makes moot the issue
19 of parking access. They are providing the spaces, but they're
20 not providing -- they won't be providing required spaces. And
21 that's a reasonable interpretation of the zoning regulations.
22 I'll leave it at that. Thank you, Madam Chair.

23 VICE CHAIR JOHN: Thank you, Commissioner. Board Member
24 Smith?

25 BOARD MEMBER SMITH: In reading the requirements of the

1 special exception, I can't -- I understand has happened with
2 previous Boards and just as Ms. John stated, we're not held to
3 the decisions of the previous Board. And, you know, I would just
4 go out and say that I am reading the regulations at face value
5 and it says, "This particular special exception is a special
6 exception for parking relief which shall be only for the number
7 of spaces that the applicant is physically unable to provide."
8 And based on the application -- so for a variance, they can
9 legally provide these parking spaces.

10 And, you know, I recognize that the applicant is
11 stating that there has been precedent set by these types of
12 applications coming before the Board previously and we've
13 approved them as some kind of a work around for this problem with
14 zoning regulations. But to me that's dangerous because what
15 we're tasked with doing here at the Board of Zoning Adjustment
16 is to adjudicate the regulations, not necessarily to write the
17 policy and the regulations or in a blind spot in the regulations.
18 So in adjudicating the regulations, I believe that they're not
19 eligible for this particular special exception as designed.

20 They do have an option. They can remove the parking
21 entirely with some project design and request a special
22 exception, which we've seen previously in other cases where there
23 have been certain conditions placed on development by the
24 Historic Preservation Board, that create some level of hardship
25 for an applicant to pursue their design or layout and they have

1 requested a special exception or a variance. Now, I can support
2 that. They can redesign like a garage entrance, I believe, to
3 meet the requirements of C 711.7. But as of right now, based on
4 what I'm seeing, I can't support the special exception because
5 it flies in the face of me being able to support it. So, I'm
6 not in support of the special exception at this time.

7 VICE CHAIR JOHN: So, Mr. Sullivan, where we are is we
8 have a situation with a two to one vote because I, unfortunately,
9 am not able to support the special exception because I think that
10 it's not the Board's place to make policy, even though I
11 absolutely agree with your argument that there is good reason for
12 the access requirement to be changed in this case. And I
13 appreciate Commissioner Miller's statement that there is possibly
14 the option of making some sort of a technical amendment to fix
15 the problem and that's the way -- that's what should happen. I
16 just -- I have great difficulty saying, okay, you don't meet the
17 variance test, but we're going to construe --

18 COMMISSIONER MILLER: I never said they didn't meet the
19 variance test.

20 VICE CHAIR JOHN: I'm sorry, I didn't mean to say that.
21 I have great difficulty saying, not Commissioner Miller, sorry.
22 I have great difficulty interpreting the regulation to say that
23 the variance test is not met or could not be met. And I really
24 don't want to go back into all of that because I think I spoke
25 quite at length about it the last time. There is no exceptional

1 condition. I don't want to go back over it because there are
2 other gaps on that street, I know that street well.

3 So, here we are saying that the applicant cannot meet
4 the variance test, but we will relieve the applicant of the
5 requirement to have parking and place the parking in the same
6 place that does not qualify for the access relief. So this is
7 not a happy place for me to be and I am truly reluctant to vote
8 no. So I think, because it's a two to one situation, we should
9 continue this case for another day and ask Mr. Blake and/or
10 Chairman Hill to read into the case. And hopefully, by then, we
11 will know something more about what's happening with the
12 Commission.

13 But these are cases where the Commission needs to --
14 that the Commission needs to expedite. If, in the view of OP
15 and the ANC and at least one commissioner, the regulation is
16 creating a hardship for applicants, I don't think it's the Board's
17 place to make those policy decisions. I'm sorry about that.

18 So I'm going to -- I don't know if I need to make a
19 motion to continue the case, Mr. Moy?

20 MR. MOY: No, you don't have to make a motion. You do
21 that by consensus, Madam Vice Chair. I would only ask when you
22 would want to see this again and whether you would want to see
23 it as a continued hearing or for a decision meeting session.

24 VICE CHAIR JOHN: So, Mr. Moy, is there anyone here
25 from the Office of Planning before we make that decision?

1 MR. MOY: For a moment, I thought I saw Crystal Myers.
2 Mr. Young, is she here in the hearing room?

3 MR. YOUNG: Could you say that again? Sorry.

4 MR. MOY: Yeah. Ms. John was asking whether or not the
5 OP reviewer, Ms. Myers, was in the hearing room or not?

6 MR. YOUNG: Yes, she is; do you want me to bring her
7 in?

8 VICE CHAIR JOHN: Yes, please. Thank you.

9 COMMISSIONER MILLER: While he's bringing her in -- oh,
10 here she is, never mind. I'll say something later.

11 VICE CHAIR JOHN: Okay. Good afternoon, Ms. Myers.
12 Can you introduce yourself for the record, please?

13 MS. MYERS: Hi, Crystal Myers, with the Office of
14 Planning.

15 VICE CHAIR JOHN: Thank you. So, Ms. Myers, I don't
16 want to put you on the spot, but are you familiar with the text
17 amendment 2104 that -- I don't know if you heard the discussion
18 of Commissioner Miller that's supposed to be before the Zoning
19 Commission next week. Is that a technical amendment and something
20 that could potentially cover this issue of the parking access?

21 MS. MYERS: So, I am not the project manager for that
22 case, but I've been advised that we hear you all. We are
23 listening, and we are going to work as quickly as possible to
24 look at this issue. But as for the particulars, I wouldn't be
25 the right person to talk to about it.

1 VICE CHAIR JOHN: Okay, thank you.

2 Can I go to you, Commissioner? Commissioner Miller?

3 COMMISSIONER MILLER: Oh, okay. Thank you. Yes. I
4 was just going to urge that we schedule this as quickly as
5 possible. That they're -- and have another Board member read
6 into it and see if we can get the three votes to decide this one
7 way or the other. This is the kind of -- well, because I don't
8 know what all the issues are in terms of -- there's no technical
9 amendment, let me put it that way. There's no technical amendment
10 that would happen quickly unless we did it by emergency action
11 at our Monday meeting. We've already been criticized for taking
12 emergency action in that particular parking case. And so there's
13 all kinds of notice issues. So I don't think anything is going
14 to happen immediately except OP is going to look at maybe adding
15 it to that that case as we go forward.

16 I mean, theoretically, it's possible we could do it on
17 an emergency basis, but I don't think that's what should be relied
18 upon here when there is a reasonable interpretation of both the
19 various provisions of the zoning regulations and of the special
20 exception provisions of the regulation to allow the variance,
21 the relief that's required or the special exception relief for
22 required parking that would allow this development to go forward.
23 Which won't go forward -- HPRB made it -- its report makes it
24 very clear that it will not go forward, and it shouldn't -- it
25 probably shouldn't go forward in this particular Historic

1 District. But this project will not go forward, they said,
2 without this -- without meeting that without having that
3 structure built right up to alley line.

4 They shouldn't eliminate the parking to address
5 whatever semantic concern. This property had two parking spaces
6 that were on the surface in that gap that exists right now. They
7 are able to provide two parking spaces in a very congested area
8 of the city, which those residents deserve to have. It doesn't
9 create -- it hasn't created problems all these years having them
10 on the surface, other than maybe not looking so great, this will
11 look a lot better having them behind that very nicely designed,
12 HPR approved design.

13 So there's a way to interpret the -- I think we should
14 have the other Board members read into this as quickly as possible
15 and see if we can get to a yes. Because we have the HPRB saying
16 yes, except for the one thing that we're not --that my fellow
17 Board members aren't willing to accept unless they eliminate the
18 parking altogether.

19 This is what drives people crazy about the District
20 government. HPRB requires one thing; BZA makes people run around
21 and figure out how to get it done and is requiring something
22 else. We'll try to fix what we can at the Zoning Commission,
23 but it's not going to happen -- in this case it's been pending
24 for a while. It has the support. Office of Planning thought it
25 met the variance test. They thought it met the special exception

1 test.

2 I don't think you all have overcome the great weight
3 requirement that you're required to give to OP and ANC in this
4 case. I haven't heard the argument that overcame the great weight
5 that was supposed to be given to Office of Planning, which
6 analyzes variances and special exceptions all the time. And the
7 ANC who supported the variance, unanimously.

8 I will leave it at that. We're all obviously a little
9 frustrated. I'm sure the applicant is as well. I just would
10 urge that this be considered as soon as possible and resolved by
11 the BZA.

12 VICE CHAIR JOHN: Thank you, Commissioner Miller. So
13 no one is more frustrated than I am in this moment, because I,
14 like you, do not believe that the applicant should have to run
15 around between two competing bodies. And I am not quite sure -
16 - well, I shouldn't say that. So I'll just leave it there. I
17 don't think the applicant should have to go between HPRB and the
18 BZA to get something done in an area that's squarely within the
19 jurisdiction of the BZA. And where HPRB's opinions with respect
20 to the BZA are advisory. We're not required to give it a great
21 weight. And I think that's something the Commission and the City
22 Council can do something about, because I don't believe that
23 applicants need to be sent between these two bodies. So I will
24 just leave that there.

25 Mr. Moy, how soon can we get this done? I think we

1 have to give the other Board members time to review the record,
2 which is fairly extensive.

3 MR. MOY: Yes, I was going to suggest at least two
4 weeks for the other two Board members to review the case. So if
5 the Board wants to accommodate that two weeks, that would take
6 us to May 19th. If you want it faster than that, that would be
7 next week, which would be May the 12th. So those are the two
8 suggested dates.

9 VICE CHAIR JOHN: Thank you. Could I -- could you let
10 -- Mr. Young, could you let Mr. Sullivan back in? Mr. Sullivan,
11 are you available on the 19th of May?

12 MR. SULLIVAN: Yes.

13 VICE CHAIR JOHN: Okay. So, Mr. Moy, let's continue
14 this to the 19th of May for decision.

15 MR. MOY: Okay. Are you considering this as a continued
16 hearing or a meeting session?

17 VICE CHAIR JOHN: A meeting session.

18 MR. MOY: Okay, very good.

19 VICE CHAIR JOHN: And if I didn't do it before, I'll
20 close the record. Thank you.

21 MR. SULLIVAN: Madam Chair, if I might? If it's going
22 to be a meeting session and people are going to -- I'd like the
23 opportunity to respond to some of the comments because I've heard
24 some things here talking about creating a new policy. I'm not
25 asking to create a new policy. I'm just saying we meet the

1 special exception criteria. And if the Board is going to say
2 that that they're not going to approve it or they don't like the
3 way it is just because it seems like an end around and has nothing
4 to do with whether or not we meet the criteria, I'd like the
5 opportunity to respond to that. And I don't know what kind of
6 comments the new Board members that read in will have too. So I
7 feel like I should have -- the applicant should have an
8 opportunity to interact with the Board on that. Because I think
9 there's a lot of points being brought up that could be cleared
10 up.

11 VICE CHAIR JOHN: Okay. Well, that's fair enough. So
12 we can do that. And I hadn't planned to ask for anything because
13 I think that you -- you know, the record is fairly complete,
14 unless you wanted to address the issue of setting back the door
15 -- the access door with either OP or HPRB, but that's optional
16 for you. I'm not asking anything. And I don't know if any other
17 Board members would be asking for anything.

18 MR. SULLIVAN: I don't think that's an option for us.
19 But what I -- if this position holds and isn't adjusted by the
20 new members reading in, then I would have to ask that at least
21 the relief be bifurcated in some way so that the special exception
22 that we're asking for, for the parking requirement is separated
23 from the other special exceptions. And in that case, at least
24 then this project will be ready for a potential Zoning Commission
25 amendment.

1 But I don't want to throw out the other four areas of
2 relief with this relief, if this area relief might be eliminated
3 through some other means in the future. So I don't know if I
4 should submit something, if this is enough to ask that now or if
5 I should submit something in writing about that.

6 VICE CHAIR JOHN: So I can ask for Mr. Moy's help with
7 this. We can reopen -- we went to deliberations; we're bouncing
8 all over the place. But -- so the record is officially open.
9 And what you're asking is for us to deliberate on the special
10 exception requirements. So that's fine with me. I just want to
11 make sure that procedurally we're okay. So let's see. Is this
12 Mr. Rice, are you there?

13 MS. CAIN: Madam Vice Chair, this is --

14 VICE CHAIR JOHN: Oh, it's you.

15 MS. CAIN: So for this, I think just to sort of keep
16 things clear, I think there's not a problem with bifurcating out
17 the parking relief, if that's what the Board wants to do. I
18 think it would be good just so that the record is clear, if Mr.
19 Sullivan could submit that in writing to the record and then that
20 would be taken up with the rest of it on the 19th. And you would
21 just handle those other special exceptions separately and then
22 deal with the parking relief.

23 MR. SULLIVAN: Thank you.

24 MS. CAIN: All right.

25 VICE CHAIR JOHN: Okay. So Mr. Sullivan -- let me let

1 me start again. Mr. Moy, would we need to give notice if Mr.
2 Sullivan amends the application to remove the parking relief for
3 now? Would we need to give time to the ANC to respond?

4 MR. SULLIVAN: To be clear, I'm not removing the parking
5 relief, just -- they'll be considered separately. So by
6 bifurcating, I'm saying -- asking the Board to approve -- consider
7 them separately so that if the Board decided to deny the parking
8 special exception request, it may, at the same time, approve the
9 other areas of relief.

10 VICE CHAIR JOHN: So I'll leave that to Ms. Cain, I'm
11 not sure how we do that. I haven't heard any objections from
12 the other Board members concerning the other special exception
13 requests, because in my view, those were fairly straightforward,
14 and I would not object to them. So if there was a way for us to
15 do that today, I'd be happy to go ahead. But I am not -- let me
16 hear from the other Board members. Commissioner Miller? Board
17 Member Smith?

18 COMMISSIONER MILLER: I think the bifurcation makes
19 sense. I'm not sure Mr. Sullivan was asking that we do that
20 today, we could, but we might as well just -- I thought he was
21 asking that in two weeks when the Board picks it up, that they
22 consider all the other special exception relief first and then
23 do this parking relief second. I don't think he was asking that
24 we do it today. But if you want to do it today, I'm prepared to
25 vote in favor of that as well.

1 VICE CHAIR JOHN: Board Member Smith?

2 BOARD MEMBER SMITH: I'm with Mr. Miller. If you want
3 to bifurcate it today, that's fine. I think you'll -- or we
4 could do it on the 19th and see how it goes with the other two
5 Board members that read in. I don't have any major concerns with
6 the other special exception. So either way is fine.

7 MS. CAIN: Madam Vice Chair, I would say if you're
8 going to have the other Board members read into the case, again,
9 I just think in terms of it being a clean, straightforward vote,
10 it would be better to hold off and do it all at the same time.
11 So that way you have all of the Board members who are
12 participating, participating on both votes. You don't have three
13 members on the rest of the special exceptions and then five on
14 the other one.

15 VICE CHAIR JOHN: Okay. Thank you, Mr. Cain. So, Mr.
16 Sullivan, I will leave the record open, and we will continue the
17 case until May 19th for a continued hearing. And I don't believe
18 the Board is requesting anything at this time. Okay?

19 MR. SULLIVAN: Thank you.

20 VICE CHAIR JOHN: All right. So go ahead and excuse
21 the applicant. Do we have any other matters, Mr. Moy?

22 MR. MOY: Not from the staff, Madam Vice Chair.

23 VICE CHAIR JOHN: Okay. Well, thank you everyone. I
24 think that does it for us today. And I will see you next week.
25 Bye.

1 (Whereupon, the above-entitled matter went off the
2 record at 12:20 p.m.)

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCBZA

Date: 05-05-21

Place: Teleconference

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