

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY

MAY 26, 2021

+ + + + +

The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened via videoconference, pursuant to notice at 9:41 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

- PETER MAY, Commissioner
- ROBERT MILLER, Commissioner
- MICHAEL TURNBILL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

- TRACY ROSE, Secretary
- PAUL YOUNG, Zoning Data Specialist

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The transcript constitutes the minutes from the
Regular Public Meeting held on May 26, 2021

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

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

(9:41 a.m.)

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

5 Good morning, ladies and gentlemen. We are convening
6 and broadcasting this decision meeting by video conference. This
7 is the May 26, 2021, public meeting session of the Board of Zoning
8 Adjustment of the District of Columbia. My name is Fred Hill,
9 Chairperson. Joining me today is Lorna John, Vice Chair, and
10 Board members Carl Blake and Chrishaun Smith. And representing
11 the Zoning Commission will be Peter May, Robert Miller and
12 Michael Turnbull for different caseS.

13 Today's meeting agenda is available to you on the Office
14 of Zoning's website. Please be advised that this proceeding is
15 being recorded by a court reporter and is also webcast live via
16 Webex and YouTube Live. The video of the webcast will be available
17 on the Office of Zoning's website after today's meeting session.
18 Accordingly, everyone who is listening on Webex or by telephone
19 will be muted during the meeting. We do not take any public
20 testimony at our decision meetings.

21 If you're experiencing difficulty accessing Webex or
22 with your telephone call line, then please call the OZ Hotline

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1 number at 202-727-5471 to receive Webex login or call in
2 instructions. That's also on the screen.

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

11 Preliminary matters are whether those which relate to
12 whether a case will or should be heard today, such as a request
13 for a postponement, continuance, withdrawal, or whether proper and
14 adequate notice has been given.

15 Ms. Secretary, do we have any preliminary matters?

16 MS. ROSE: None for the meeting, just before the
17 hearing.

18 CHAIRPERSON HILL: Okay. Great. All right, Mr. Smith,
19 can you hear me again?

20 MR. SMITH: Yes, I can hear you.

21 CHAIRPERSON HILL: Okay. Great. Are you going to do
22 video or not? Ms. John can't use the video today. Oh, great.
23 All right. Okay. Then I guess it's all working.

1 Okay. Ms. Rose, if you could read our first meeting
2 case.

3 MS. ROSE: Good morning, Mr. Chairman, and members of
4 the Board. The first case set for decision today is application
5 number 20359 of 1301 West Virginia, LLC, as amended, pursuant to
6 11 DCMR Subtitle X, Chapter 9, for a special exception under the
7 residential conversion requirements of Subtitle U Section 320.2,
8 to convert the existing principal dwelling unit into a three-unit
9 apartment house in the RF-1 Zone, at premises 1301 West Virginia
10 Avenue, Northeast, Square 4064, Lot 75.

11 At the hearing on May 12 the Board directed the parties
12 to work toward a resolution and requested an update on the status
13 of the parties in opposition. The Board scheduled the case for
14 decision on May 19. And at the May 19 meeting the Board deferred
15 its decision to May 26, today, to allow Mr. Smith to review the
16 record to participate. The Board members on this case are Mr.
17 Hill, Ms. John, and Mr. May. And Mr. Smith can indicate whether
18 he reviewed the record to participate.

19 The Board has received various filings from the parties
20 and a waiver of the filing deadline would be needed for the most
21 recent filing from Ms. Durbin.

22 CHAIRPERSON HILL: Mr. Smith, I can't remember, did you
23 have to read into this?

24 MR. SMITH: I guess I didn't have to, but I can --

1 MS. ROSE: He was just absent just last week, that was
2 all.

3 CHAIRPERSON HILL: Okay. Right, right, right, right.
4 Because you've been on it with everything. All we did last week
5 was just put it off a week.

6 MS. ROSE: Yes.

7 CHAIRPERSON HILL: Got it. Okay. All right. Thank
8 you, Ms. Rose.

9 So, let's see, in terms of allowing -- in terms of the
10 filing deadline, I mean, I would like to allow everything into the
11 record in terms of what we had wanted to see or ask for. So
12 unless the Board has any opposition, and if so please say aye, I'm
13 going to go ahead and allow everything into the record. So, Ms.
14 Rose, if you could please go ahead and do that.

15 I guess I'm happy to kind of just start talking about it
16 just a little bit. I did have pretty serious concerns about this.
17 And what I was concerned about, again, was, you know, the adverse
18 impact to neighboring properties. And that was, again, per X
19 901.2. And as I mentioned at the beginning of the decision
20 hearing last week, you know, and I'm just going to read from X
21 901.2, the Board of Zoning Adjustment is authorized under Zoning
22 Act DC Official Code, you know, to grant special exceptions as
23 provided in the time, where in the judgment of the Board of
24 Adjustments the special exception -- and then et cetera and so

1 | forth. Right. So it's the special that we actually are looking
2 | at, not necessarily what the property owner would have been able
3 | to do by matter of right.

4 | So I'm just going to go on a little bit of a discussion
5 | here. But this matter of right issue comes up a lot. And I agree
6 | and understand that it's helpful to compare what is available by
7 | matter of right versus what is available due to the special
8 | exception or the increase intensity. Right. And so -- and I've
9 | mentioned this before, and I do mean it. Like, if it were truly a
10 | matter of right they wouldn't be here. Nobody would be here. And
11 | that's great. I think that you can do this project matter of
12 | right, then go ahead and do it, and then you don't have to figure
13 | out whether or not it's meeting the regulation.

14 | This is not a matter of right project. In fact, there
15 | is an increased use, which is the third unit. Right. So that
16 | third unit, if you look at the design, is actually all in the rear
17 | of the property. Right. That third unit is actually what is
18 | causing the additional shadowing, the additional shading, the
19 | additional snow, whatever the people were originally concerned
20 | about. Right. And then that third unit adds additional trash
21 | cans. Right. There's more trash cans there because of that third
22 | unit. So there is an increased use that is above and beyond the
23 | matter of right.

1 Now, the envelop of the building, that is a matter of
2 right envelop. But I would even further argue that if somebody
3 was going to build a two-unit flat, they wouldn't build that big a
4 property. Right. Because it wouldn't economically be feasible.
5 You would have like two four-unit units, or whatever it is that
6 they would have to decide. Right. So I'm glad that the applicant
7 and the adjoining property owner were able to come together. Now,
8 again, I'm just saying this for my Board members, is that, again,
9 the adverse impact to the adjoining property neighbor, it is
10 unique because this is a neighbor who might have some health
11 problems or whatever it is. Like, if it were a different
12 situation I might not have been as concerned about it. Right.
13 But I am glad that they were able to come to some kind of an
14 agreement. But, however, in terms of whether I think that this is
15 something that I can vote for, I'm probably going to say yes that
16 I can vote for it. But I don't think that the increased use is
17 something that is just benign. I don't think that it just does,
18 you know, this third unit actually is in the rear of the property.
19 And so I'll kind of go with that and wait with everybody else has
20 to say. And I'm going to start with you, Commissioner, if that's
21 all right.

22 MR. MAY: Sure. So I don't have exactly the same
23 perspective on this. The -- first of all, let me say I am glad to
24 know that the applicant has settled all matters with the parties

1 who have been in opposition, and have come to some sort of an
2 agreement so that they would withdraw their opposition. It makes
3 everything easier and the project can move forward more quickly.
4 All of that is good. I would say that while I, you know, I
5 appreciate the chairman's perspective on this third unit
6 essentially being the cause of the adverse impacts about which we
7 are concerned, I have a different perspective.

8 I have seen many of projects where they make, you know,
9 an existing flat into two very large condos essentially and then
10 put them up for sale. There is one 100 feet away from me where
11 they took a very large house and they made it into two pretty
12 large four-bedroom condos with, you know, family rooms. They're
13 big units. It's not unheard of. It's not the norm. Right.
14 There's more money I think in having three units than having two.

15 But the bar for me is that the, there was a presumption
16 that what is allowed as a matter of right will not cause a
17 significant adverse impact. We've already said at the Zoning
18 Commission that you can build 10 feet further back and you can go
19 up 35 feet. And the other thing, you know, that -- so that
20 massing is a matter of right is presumed to not have a substantial
21 adverse impact or an unacceptable adverse impact. So it's hard
22 for me to leap from the fact that they have to do it configured
23 there, you know, units in a particular way so that all or most of
24 the third unit is, you know, part -- is what's causing that

1 adverse impact. I don't think that that's, those two are
2 connected. I appreciate the perspective, but I just happen not to
3 agree.

4 So I would have been, you know, had they not come to
5 agreement on this, I still would have been in support of it
6 because of the, you know, we've already defined what are the
7 limits about what you can build. Really when it comes down to a
8 third unit, I think that the impacts have to be very specifically
9 associated with that third unit. And it usually comes down to
10 issues like traffic and other, I think less related height bulk.
11 That's typically what it comes down to. I'll admit that there
12 can be circumstances where, you know, it might be a concern. But
13 in this circumstance I don't think there was.

14 And I don't buy into the trash can argument either
15 because, you know, there are trash cans everywhere. And I -- you
16 know, I look out the window at my house all the time and see
17 everybody's trash can. Even though they're all supposed to be in
18 their yards, they're all in the public space. It's sort of the
19 fact of life. Sorry about that. So those are my thoughts.

20 CHAIRPERSON HILL: Okay. I appreciate your thoughts.
21 I'm glad we probably aren't going to have to have a real long
22 discussion about trash cans or that (audio interference).

23 Mr. Smith?

1 MR. SMITH: I won't, you know, have a long
2 conversation on this. I do agree with you, Mr. Chair. I was
3 concerned about the impacts of that third unit. And just as you
4 noticed, I noticed that the third unit was in that addition, which
5 I understand is a bulk and mass that's allowed by right. But
6 being that they were asking for this third unit, I think we kind
7 of back into this discussion on whether that large bulk and mass
8 that is by right does have some impact on the adjacent property
9 owner.

10 And I do believe initially, in the original design, that
11 there was some impact. And thankfully, the applicant went back
12 and made some modifications to the design to mitigate that impact.

13 But I do believe that that additional bulk mass did prevent some
14 level of impact to the adjacent property owner. And it sounds
15 like being that the adjacent property owner has withdrawn their
16 opposition, that that issue has been mitigated. So being that
17 that has been mitigated for the property owner, and given the
18 redesign of this case by the applicant a couple meetings ago, I
19 would be in support of this special exception.

20 CHAIRPERSON HILL: Okay. Thank you, Mr. Smith.

21 Ms. John?

22 VICE CHAIR JOHN: Thank you, Mr. Chairman. I'm in
23 support of the application. And I can see both sides of the
24 argument, both sides. And, you know, it's difficult in these

1 cases where there is an adverse impact on the neighbor. And I can
2 see the argument that it's due to the third unit. And I can also
3 see Commissioner May's point of view as well. So I guess it would
4 be a continuing discussion of the Board.

5 In any event, I'm in support of the application.

6 CHAIRPERSON HILL: Okay. All right. Thank you. And I
7 will also mention that, you know, the Office of Planning gave
8 their analysis, and I would agree with that in terms of how
9 they're in support as well as that of the ANC.

10 So I'm going to go ahead and make a motion to approve
11 application number 20359 as captioned and read by the secretary,
12 and ask for a second, Ms. John.

13 VICE CHAIR JOHN: Second.

14 CHAIRPERSON HILL: The motion has been made and
15 seconded. One second. Ms. Cain, is there something I need to do?

16 MS. CAIN: I just wanted to note that DDOT did have a
17 condition that they were recommending for this case. I just
18 wanted to see if the Board was planning to adopt that condition as
19 part of the approval?

20 MR. MAY: That's for the curb pad?

21 CHAIRPERSON HILL: Yeah.

22 MR. MAY: They have the power to require that under
23 public space anyway. I'm not sure why we need to put that in. It
24 doesn't go to --

1 CHAIRPERSON HILL: And I remember the applicant was also
2 agreeable to this. So I don't have an issue with it. So I'll
3 just, you know, unless -- I mean, it's right there. So I don't
4 want to -- okay.

5 So I'm going to remake the motion to approve application
6 number 20359 as captioned and read by the secretary, including
7 DDOT's condition that the applicant shall close the existing curb
8 cut and driveway to Neal Street and restore the former driveway to
9 green space, subject to DDOT approval, and ask for a second, Ms.
10 John.

11 VICE CHAIR JOHN: Second.

12 CHAIRPERSON HILL: The motion has been made and
13 seconded. Ms. Rose, can you take a roll call vote?

14 MS. ROSE: Yes. When I call your name please respond
15 with a yes, no, or abstain.

16 Mr. May?

17 MR. MAY: Yes.

18 MS. ROSE: Mr. Smith?

19 MR. SMITH: Yes.

20 MS. ROSE: Ms. John?

21 VICE CHAIR JOHN: Yes.

22 MS. ROSE: Mr. Hill?

23 CHAIRPERSON HILL: Yes.

1 MS. ROSE: Staff will record the vote as 4 to 0 to 1 on
2 a motion made by Mr. Hill, seconded by Ms. John, with Mr. Smith
3 and Mr. May in support of the motion, and Mr. Blake not
4 participating, with the condition as read by the chair. Okay.

5 CHAIRPERSON HILL: Okay. Great. Thanks, Ms. Rose.
6 Commissioner May, is that it for you?

7 MR. MAY: Thankfully, yes.

8 CHAIRPERSON HILL: Are you just -- are you going to go
9 do something? I mean, you have a whole day ahead of you.

10 MR. MAY: Yeah. I'm just going to goof off all day
11 long. I've got many, many meetings to go before I sleep. See you
12 later.

13 CHAIRPERSON HILL: Okay. Bye-bye.

14 I think we have Commissioner Miller next. Okay. There
15 we go. Commissioner Miller, can you hear me?

16 MR. MILLER: Yes, I can hear you, Mr. Chairman.

17 CHAIRPERSON HILL: Okay, perfect. Great. Thank you.

18 All right. Ms. Rose, could you call our next case when
19 you get a chance?

20 MS. ROSE: Yes, sir. That would be application number
21 20424 of Shaw 927, LLC, for special exceptions from the apartment
22 house requirements of Subtitle U, Section 301.4; the lot occupancy
23 restrictions of Subtitle E, Section 304.1; the rear yard
24 requirements of Subtitle E, Section 306.1; the minimum court

1 dimensions of Subtitle E, Section 203.1; the side yard
2 requirements of Subtitle E, Section 207.4; and parking
3 requirements of Subtitle C, Section 701.5, pursuant to Subtitle U,
4 Section 320.2; Subtitle E, Section 5201; Subtitle X, Section
5 901.2, to construct a three-story rear addition to and to renovate
6 an existing nonconforming three-story four-unit residential
7 building with cellar in the RF-1 Zone at premises 927 N Street,
8 Northwest, Square 0367, Lot 13. This case was last heard on May
9 19. The Board requested that the applicant submit a document
10 clarifying HPRB's design recommendations and how the affected
11 requested zoning relief. The filings are in the record at
12 exhibits 47 through 47E.

13 Mr. Smith can indicate if he reviewed the record to
14 participate in this case.

15 CHAIRPERSON HILL: Okay. I think it's Mr. Blake and I
16 are the ones that read it. And you were here, correct, Mr. Smith?

17 MR. SMITH: Yes, but I wasn't -- you heard it last
18 week. And --

19 CHAIRPERSON HILL: Oh, I'm sorry. I keep forgetting.
20 I'm sorry, Ms. Rose. Ms. Rose, I don't mean to correct you.
21 That's right. He was here -- he was not here last week.

22 MS. ROSE: Right.

23 CHAIRPERSON HILL: So did you catch up from last week?

1 MR. SMITH: Yes. I read through the record. I've been
2 thoroughly briefed. So I can -- I'm ready to go.

3 CHAIRPERSON HILL: Okay, great. All right. So this one
4 has gone on for quite some time, as we all know. So much so that
5 we had to bring in Mr. Smith and myself to kind of go through
6 this. There is -- I'd like to propose something, which is the
7 applicant was interested in -- I think I kind of know where some
8 of this is going to go, and I kind of don't know where some of
9 this is going to go. And the applicant has to bifurcate this to
10 remove the parking.

11 So what I'd like to propose is we go ahead and bifurcate
12 this, have a discussion about the relief without the parking, and
13 then have a discussion about the parking relief. And if we do not
14 approve the parking, then I'm going to reopen the case and ask the
15 applicant to submit drawings that reflect that there's no parking
16 there. Right. Or if we do end up approving the parking, then we
17 can keep the drawings the way they are. So that's my thought,
18 unless anybody has a problem with it. Just go ahead and raise
19 your hand.

20 (No response.)

21 CHAIRPERSON HILL: Okay. So then we're going to go
22 ahead. And Ms. Cain, you can hear me. And I don't know, you
23 know, I don't -- we'll see how the motion goes with the
24 bifurcation. But I'm just going to -- I don't want to read

1 through the whole thing. I'm just going to bifurcate it without
2 the parking. And I think you'll understand the order. And if so,
3 Ms. Cain, you can also pop in and raise your hand.

4 In terms of the, all of the other relief, Ms. Cain, is
5 that okay?

6 MS. CAIN: (Thumbs up.)

7 CHAIRPERSON HILL: Okay. In terms of all the other
8 relief, I didn't have any issues with all of the other relief. I
9 mean, I thought that the recommendations from the Office of
10 Planning and their analysis, as well as that of the applicant and
11 the ANC, I thought were how -- I thought they met the criteria for
12 us to grant those areas of relief. And I would, again, agree with
13 their argument. And I would be voting in favor of those areas of
14 relief. And I'm going to go around the table in a particular
15 order today.

16 But let me go ahead and start with you, Commissioner; is
17 that all right?

18 MR. MILLER: Sure. Thank you, Mr. Chairman. Yes, I
19 support the special exception relief for each of the areas that
20 are delineated in the application, based on the applicant's
21 analysis and the Office of Planning's analysis, and the ANC's
22 support for all of the application.

23 But this -- and this bifurcated part of it, the
24 apartment house requirements -- well, we don't need to go through

1 | them necessarily. It's in the caption, I believe. But the
2 | apartment house apartments, the lot occupancy restriction, the
3 | rear yard requirements, the minimum court dimensions, the side
4 | yard requirements, and the side yard requirements. They're -- I
5 | support -- I support all of them based on the analysis of OP, and
6 | the support of ANC, and obviously the applicant.

7 | CHAIRPERSON HILL: Okay, great. Thank you Mr. Miller.

8 | Mr. Smith?

9 | MR. SMITH: I agree with your analysis Chairman Hill
10 | and Commissioner Miller's analysis. I do support the bifurcated
11 | cases that Commissioner Miller just read out. I rest on the staff
12 | report, the analysis completed by OP of those particular special
13 | exceptions, and I wholeheartedly support those special exceptions
14 | and would approve them.

15 | CHAIRPERSON HILL: Okay. Vice Chair John

16 | VICE CHAIR JOHN: OP's analysis

17 | CHAIRPERSON HILL: Okay, great. Vice Chair John?

18 | VICE CHAIR JOHN: Thank you, Mr. Chairman. I also will
19 | give great weight to OP's analysis with respect to those special
20 | exception areas of relief. And I can support the application for
21 | those areas.

22 | CHAIRPERSON HILL: Okay, great. Thank you, Ms. John.

23 | Mr. Blake?

1 MR. BLAKE: Yes. I would have nothing to add to that.
2 And I too would be in position to support the special exception.

3 CHAIRPERSON HILL: Okay, great. All right. Then, Ms.
4 Cain, are you there? I'm not going to read through all of the --
5 well, actually, I can do it this way. Okay. So I'm going to go
6 ahead and make a motion to approve application number 20424 as
7 captions for the special exception from the apartment house
8 requirement, the lot occupancy restriction, the rear yard
9 requirements, the minimum court dimensions and the side yard
10 requirements and ask for a second, Ms. John?

11 VICE CHAIR JOHN: Second.

12 CHAIRPERSON HILL: Okay. The motion has been made and
13 seconded, Ms. Rose. Could you please take a roll call?

14 MS. ROSE: Yes. When I call your name please respond
15 with a yes, no, or abstain.

16 Mr. Miller?

17 MR. MILLER: Yes.

18 MS. ROSE: Mr. Smith?

19 MR. SMITH: Yes.

20 MS. ROSE: Mr. Blake?

21 MR. BLAKE: Yes.

22 MS. ROSE: Vice Chair John?

23 VICE CHAIR JOHN: Yes.

24 MS. ROSE: Chairman Hill?

1 CHAIRPERSON HILL: Yes.

2 MS. ROSE: The staff would record the vote as 5 to 0 to
3 0 on the motion by Mr. Hill, seconded by Ms. John, with Mr.
4 Miller, Mr. Blake and Mr. Smith in support of the motion to
5 approve the application, the portion that Mr. Chair read.

6 CHAIRPERSON HILL: Okay, great. All right. Thank you.
7 All right. So now what that brings us to, again, is the parking
8 requirements of Subtitle C, 701.5, pursuant to Subtitle C, 703.2,
9 Subtitle X 901.2.

10 I'm going to go last. So that way I can take the heat
11 one way or the other. And I think that -- I don't know if we need
12 to have a long discussion about any of this. I mean, I'm just
13 going to -- whatever you all want to do. But, I mean, Mr. Smith,
14 like you haven't changed your opinion on this, have you?

15 MR. SMITH: No, I haven't changed my opinion on this.

16 CHAIRPERSON HILL: Right. You Wouldn't be in support?

17 MR. SMITH: No.

18 CHAIRPERSON HILL: And Vice Chair John, you haven't
19 changed your opinion on this, correct?

20 VICE CHAIR JOHN: No, I haven't changed my opinion on
21 the parking relief.

22 CHAIRPERSON HILL: Okay. Commissioner Miller, you
23 haven't changed your opinion on this, correct?

1 MR. MILLER: No, I have not changed my opinion on the,
2 on my support for the parking relief, whether it was the variance
3 as originally applied for and supported by the Office of Planning
4 and ANC or whether it's the special exception as supported by the
5 Office of Planning, I would not be in favor. I would be strongly
6 opposed to somehow requiring the applicant -- I realize there may
7 not be three votes for this. But I strongly oppose requiring the
8 applicant to come back with parking, showing no parking on this
9 site. So we can get to that discussion whenever you want to get
10 to that discussion, Mr. Chairman. I don't have to go into that
11 now.

12 CHAIRPERSON HILL: Yeah, that's okay. I mean, you're
13 kind of making your pitch right now, Commissioner Miller. I mean,
14 I don't know -- and it's okay. I don't know if we need to
15 necessarily go into a big pitch about it. I mean, and I just --
16 you kind of mentioned it. I mean, I think I know where you are.
17 I think we all know where you are. I'm just trying to find out
18 where Mr. Smith is and where I am. And so I think, I don't know
19 if we need to go into a big discussion about it. But if you want
20 to, you can go ahead and provide more input.

21 MR. MILLER: Okay. Well, all I would say is that
22 there is a reasonable interpretation of the existing zoning
23 regulations that supported the parking relief, whether it was a
24 variance as originally applied for and supported by the Office of

1 Planning and ANC, or the special exception that is now before us
2 which is supported by the Office of Planning.

3 There are four criteria which are eligible, four
4 criteria which apply for this type of special exception relief.
5 The Office of Planning, they only have to meet one of the four.
6 The Office of Planning specifically called out three of the four
7 that they met. They only had to meet one. The applicant think
8 they met four of the four. I think they met four of the four.
9 The argument that they should have to come back with an
10 application, with a design that shows no parking on the site, talk
11 about what will have an adverse impact on the neighbors. There
12 are two existing parking spaces currently on that site, the
13 surface parking spaces. They're expanding the four units that are
14 there. They're not expanding it beyond the four units.

15 This all predates the zoning regulations that apply in a
16 lot of these, apply here. But they had two existing parking
17 spaces. So they're required to have two under the regulations.
18 They can't meet the alley line center back requirement under the
19 variance center because members have concerns that they didn't
20 meet the first and second prongs of the, or the second prong of
21 the variance test, even though Office of Planning thought they
22 did. I thought they did. ANC thought they did. So I give great
23 weight.

1 They can't provide the compliant parking spaces that
2 would comply with the HPRB specific approval of this case, which
3 they require. We don't have to give HPRB great weight, but it's a
4 factor that you should, that one should take into consideration,
5 that they can't build the project with compliant parking spaces
6 because they can't meet the two feet -- they're two feet shy. Our
7 regulations need to be clarified. They always need to be
8 clarified. They probably will be clarified to reduce that center
9 line setback requirement to spell out what's compliant and what
10 isn't, and if you don't meet the compliance spaces can you still
11 provide other spaces. But they aren't physically able to provide
12 compliant parking spaces because HPRB will not give a permit
13 unless that garage access, that whole facade is at the property
14 line, which is a defining characteristic of this historic
15 district, which is a better design than setting it back. It looks
16 better. They're one of the -- to say that they don't -- they have
17 to show plans with no parking, when they haven't had parking for
18 God knows how many decades there. And it -- that will have an
19 adverse impact upon the neighbors. Where are they going to park?
20 And it's really not the fact that it's less marketable than --
21 which is what the applicant did say, it would be less marketable
22 to market this renovated, historic resource property without
23 parking in a congested area of the city, that is near transit,
24 that is near public transit and the rest of it.

1 I just think if there's a reasonable interpretation --
2 I'm sorry to go on so long, but since you said this might be my
3 only pitch, I'm giving it. There's a reasonable interpretation of
4 the zoning regulations which has been used before, which the
5 Office of Planning supports in terms of even if they don't meet
6 the compliance space, compliant parking, and we get special
7 exception relief from that, they can still provide the parking.
8 It's been done before by the BZA. OP supports it. Maybe it needs
9 to be clarified in the future by the Zoning Commission, and it
10 should. But that's not going to happen anytime soon. I think if
11 we can get to a common sense result where there's no adverse
12 impact currently with the application, supported by OP and the
13 ANC, and I think an adjacent neighbor as well. I just don't see
14 making the applicant jump through more hoops than they've already
15 had to jump through to get this property renovated.

16 And so -- but I understand why it's a reasonable
17 interpretation to come up with that, but where there isn't any
18 adverse impact, you know, I don't see why it's such a huge issue
19 and how we spend so much time on it, how I've spent so much time
20 on it, how every has spent so much time on it. So we're going to
21 spend more time now because I'm the only one who has given their
22 pitch. So I'm open ears and I'm always willing to be persuaded
23 otherwise.

1 CHAIRPERSON HILL: Okay. Since Commissioner Miller had
2 his pitch, I don't know if you guys want to pitch or not pitch. I
3 mean, you guys have pitched before. But Mr. Smith, do you have
4 anything you want to say?

5 MR. SMITH: (Shakes head negatively.)

6 CHAIRPERSON HILL: You're shaking your head no. Ms.
7 John, do you have anything you want to say?

8 VICE CHAIR JOHN: No, Mr. Chairman. I had a lengthy
9 discussion at the first time this case was heard. And I don't have
10 anything to add. I appreciate the applicant's additional
11 submissions, which I've reviewed. But I continue to feel that the
12 regulations as they exist today, the applicant does not meet the
13 requirement of 703.4, which says that any reduction shall only be
14 for the amount that the applicant is physically unable to provide.
15 And I don't read the word "physically" to mean something else.
16 It's can they provide it physically? So I would just rest my
17 discussion there. And I would not be able to support the relief
18 to allow the special exception relief and then turn around and say
19 that the applicant can still provide parking in the same location
20 for which it got relief. It's kind of difficult for me to cross
21 that. So I would not be able to support the parking.

22 CHAIRPERSON HILL: Okay. Thank you, Ms. John.

1 All right. Mr. Blake, do you want to go first? Do you
2 want me to be the end? Do you want to be the end? What do you
3 want to do?

4 MR. BLAKE: I'm happy to say -- speak. It seems that a
5 number of issues have come up in this case, none of which will be
6 resolved today. And certainly an argument could be made for
7 reasonable interpretation or strict interpretation of Subtitle C
8 703.3. But the applicant has met the criteria of 703.2 in several
9 areas, only one of which is required. SO giving substantial
10 weight to the analysis and the testimony and recommendations of
11 the Office of Planning, I would be prepared to support the relief
12 with or without conditions on parking.

13 CHAIRPERSON HILL: Okay. So that means you're supporting
14 the parking, correct?

15 MR. BLAKE: That would be correct.

16 CHAIRPERSON HILL: Okay. So, all right. So on my side
17 now -- what was I going to say. I know the applicant is, you
18 know, watching and listening. Like, I think that this is a, you
19 know, a situation that comes upon a little bit, and it is unique.
20 I don't want to think that this is necessarily anything that's
21 like a precedent or precedent setting. If this were to actually
22 go through it would be a summary order regardless. And so, you
23 know, I know that the Office of Planning, I think, and
24 Commissioner Miller, you're here for the Zoning Commission, you

1 know, can hopefully get Office of Planning on top of this sooner
2 rather than later, so this is something that we don't have to
3 struggle with in the future. And so that this is something that
4 can get resolved. And, again, what I was speaking to is that
5 the, you know, the community, the development community, if they
6 think that this is necessarily going to be approved all the time,
7 or a way -- if they think this is going to be approved all the
8 time, you can see how this has already split this Board. And so
9 there's a greater risk or a greater chance, you just don't know.
10 It's something that hopefully will get resolved sooner through the
11 Zoning Commission or the Office of Planning.

12 That being all said, I am going to agree with the
13 analysis that is provided by the Office of Planning in terms of
14 the parking relief, as well as that that the ANC has provided,
15 again, in terms of how we are giving that a great weight. I do,
16 however, you know, sincerely appreciate my colleagues who are on
17 the other side of this issue and their, I think good points who,
18 again, rest with the analysis of the Office of Planning.

19 So I'm going to go ahead and make a motion to approve
20 application number 20424 with the parking requirements. Is there
21 a second, Mr. Blake?

22 MR. BLAKE: Second.

23 CHAIRPERSON HILL: Motion has been made and seconded.

24 Ms. Rose, if you could go ahead and take a roll call.

1 MS. ROSE: Yes. When I call your name please respond
2 with a yes, no, or abstain.

3 Mr. Miller?

4 MR. MILLER: Yes.

5 MS. ROSE: Mr. Blake?

6 MR. BLAKE: Yes.

7 MS. ROSE: Mr. Smith?

8 MR. SMITH: No.

9 MS. ROSE: Ms. John?

10 VICE CHAIR JOHN: No.

11 MS. ROSE: Mr. Hill?

12 CHAIRPERSON HILL: Yes.

13 MS. ROSE: And staff would record the vote as 3 to 0 to
14 2 to approve the relief with regard to the parking. And that
15 would be it.

16 CHAIRPERSON HILL: Okay. Ms. Cain, do you need anything
17 else from us since we bifurcated the order and everything. Are
18 you good with everything?

19 MS. CAIN: Yes. We're fine with everything.

20 CHAIRPERSON HILL: Okay. All right. Mr. Miller, is
21 that it for you today?

22 MR. MILLER: Yes, that's it for me. Thank you very
23 much. And have a good day.

24 CHAIRPERSON HILL: You as well.

1 MR. MILLER: Thank you.

2 VICE CHAIR JOHN: Mr. Chairman, that's it for me today.

3 CHAIRPERSON HILL: Okay, Ms. John. Yeah, you're not on
4 the reconsideration?

5 VICE CHAIR JOHN: No, I don't think so.

6 CHAIRPERSON HILL: Okay. Ms. John, you have a good day
7 as well then.

8 VICE CHAIR JOHN: Thank you.

9 CHAIRPERSON HILL: Thank you. Is that Commissioner
10 Turnbull. Commissioner, can you hear me?

11 MR. TURNBULL: Yeah, I'm here.

12 CHAIRPERSON HILL: Okay, great. Are you with us for the
13 rest of the day?

14 MR. TURNBULL: Lucky you guys.

15 CHAIRPERSON HILL: So we've lost Ms. John. So, all
16 right. Ms. Rose, can you call our next case?

17 MS. ROSE: Yes. Next is action on reconsideration
18 filed BY ANC6C, and application number 20163 of 719 Sixth Street,
19 LLC, as amended, pursuant to 11 DCMR, Subtitle X, Chapter 9, for
20 special exceptions under Subtitle E, Section 5201, from the rear
21 addition requirements of Subtitle E, Section 205.4, and from the
22 lot occupancy requirements of Subtitle E, Section 304.1, to
23 construct a three-story rear addition to an existing attached
24 principal dwelling unit in the RF-1 Zone at premises 719 Sixth

1 Street, Northeast, Square 859, Lot 121. This matter was last
2 addressed at the public meeting on May 5. The Board requested
3 that ANC6C file a response to the applicants filings at exhibits
4 95 and 95A. No filings have been submitted, as last I checked.
5 And this matter is before you for consideration.

6 CHAIRPERSON HILL: Okay, thank you. So Ms. Cain, just
7 to be clear, we didn't get anything further from the ANC
8 concerning the shadow studies, correct?

9 MS. CAIN: That's correct.

10 CHAIRPERSON HILL: okay. All right. So this is a
11 motion for reconsideration that is up before us for 20163. And
12 the applicant provided updated shadow studies in exhibit 95A,
13 which now I believe clearly demonstrates the matter of right
14 option to the lot occupancy requirements, as well as specific
15 angle of the sun at the standard study times, unlike the prior
16 studies that were in 63C. While these studies do show changes in
17 shadow pattern over that what was previously presented, I don't
18 think that, you know, it changes my opinion in terms of the
19 shadowing or the impact of those shadowing to the property. While
20 the rear addition would result in some shadow impact to the north
21 abutter's property, I still think that they will not undo compared
22 to the shadows resulting from the matter of right, which is over
23 in exhibit 87.

1 So after further looking at the new shadow studies, I
2 don't change my opinion of what I had in the previous case, and
3 also even in this case now. Meaning, I still think they meet the
4 criteria for us to grant the relief requested. And I will still
5 be voting in favor of this relief, and denying the motion -- I
6 don't know -- I have to ask Alex whether it's denying the motion
7 for reconsideration or not, because we are reconsidering it. And
8 so, but I'll get clarity on that from OAG. Commissioner Turnbull,
9 can I get your opinion?

10 MR. TURNBULL: Yes, Mr. Chairman. I think the last time
11 we met we denied the motion. I'm not sure. Maybe Ms. Cain could
12 -- well, --

13 MS. CAIN: So --

14 MR. TURNBULL: We denied the ANC's motion I thought.
15 But I'm not sure.

16 MS. CAIN: So what the Board has done today, you have
17 granted the motion for reconsideration --

18 MR. TURNBULL: Oh, we granted it.

19 MS. CAIN: -- which is why you're now reconsidering it
20 now. But you denied last time with the ANC's motion to strike
21 the applicant's updated shadow studies.

22 MR. TURNBULL: You're right. I stand corrected. I
23 would agree with you, Mr. Chair, that the -- we had asked for a
24 shadow study, sun study that would be done by a licensed

1 individual that is capable of doing those, such as an architect or
2 an engineer. We got that with exhibit 95A, by Lee Design Studio,
3 and those drawings are stamped with their registration, as a
4 registered architect in the City.

5 I would agree. I don't think there's anything added. I
6 think basically I would agree totally with what you said without
7 repeating. And I would stand, I would be in favor of going ahead
8 with this and granting the application.

9 CHAIRPERSON HILL: Okay. Mr. Smith?

10 MR. SMITH: I agree with you, Mr. Chairman. In looking
11 at the sun studies between exhibit 95 and 97, based on what was
12 submitted by Lee Design Studio in exhibit 95, I do not believe
13 it's undue. The vast majority of the shadows are created by the
14 matter of right shading. And the additional shading is fairly
15 well off into the rear yard of the property. It does not directly
16 shade the rear property to the north. So with that, I agree with
17 you, Mr. Chairman, to strike this.

18 CHAIRPERSON HILL: Okay. Mr. Blake?

19 MR. BLAKE: Yes. I looked at the shadow studies and I
20 concur with the others on the Board that it doesn't seem to be an
21 undue impact from the shading, and would be prepared to support
22 the rear --

23 CHAIRPERSON HILL: Okay. Ms. Cain, it's been a while
24 since I've done a reconsideration. So we're denying that we --

1 | what are we -- we approved the reconsidered. We just
2 | reconsidered.

3 | MS. CAIN: So what you would be doing is determining
4 | whether you're upholding the Board's prior decision in the order
5 | or whether you're changing your decision in that prior order.

6 | CHAIRPERSON HILL: Okay. All right. I'm going to make
7 | the motion to uphold the Board's decision in the prior order, in
8 | BZA case number 20163 as captioned and read by the secretary which
9 | approved the application and ask for a second, Mr. Blake?

10 | MR. BLAKE: Second.

11 | CHAIRPERSON HILL: The motion has been made and
12 | seconded. Ms. Rose, if you could take a roll call, please.

13 | MS. ROSE: Yes. When I call your name please respond
14 | with a yes, no or abstain.

15 | Mr. Turnbull?

16 | MR. TURNBULL: Yes.

17 | MS. ROSE: Mr. Blake?

18 | MR. BLAKE: Yes.

19 | MS. ROSE: Mr. Smith?

20 | MR. SMITH: Yes.

21 | MS. ROSE: Chair Hill?

22 | CHAIRPERSON HILL: Yes.

23 | MS. ROSE: Staff will record the vote as 4 to 0 to 1
24 | with a motion -- on a motion made by Mr. Hill, seconded by Blake,

1 with Mr. Smith and Ms. Turnbull in support of the motion. Ms.
2 John not participating.

3 CHAIRPERSON HILL: Okay, great. Thank you. If it's okay
4 with you guys, I want to read into the hearing and then let's just
5 take a quick break if that's all right.

6 (Whereupon, the above-entitled matter went off the
7 record at 10:28 a.m.)

8

C E R T I F I C A T E

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4 This is to certify that the foregoing transcript

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7 In the matter of: Public Meeting

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9
10 Before: DCBZA

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12
13 Date: 05-26-21

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15
16 Place: Teleconference

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19 was duly recorded and accurately transcribed under my
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