

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY

SEPTEMBER 15, 2021

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The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened via videoconference, pursuant to notice at 9:35 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 SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

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

The transcript constitutes the minutes from the Regular Public Meeting held on September 15, 2021

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

Appeal No. 20580 - Appeal of NL 1271 5 Street, LLC 5

Case No. 20280 - Application of VBS Community Builders,
 LLC 15

1

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

2 CHAIRPERSON HILL: Good morning, ladies and gentlemen,
3 to the Board of Zoning Adjustment. Today's date is 9/15/2021.
4 The public hearing will please come to order. My name is Fred
5 Hill, Chairman for the District of Columbia Board of Adjustment.
6 Joining me today is Lorna John, Vice Chair, Board members Carl
7 Blake and Chrishaun Smith, and Zoning Commission member Peter
8 Shapiro.

9 Today's meeting and hearing agendas are available on the
10 Office of Zoning's website. Please be advised that this
11 proceeding is being recorded by a court reporter and is also
12 webcast live via Webex and YouTube Live. The video of the webcast
13 will be available on the Office of Zoning's website after today's
14 hearing. Accordingly, everyone who is listening on Webex or by
15 telephone will be muted during the hearing. Also, please be
16 advised that we do not take any public testimony at our decision
17 meeting session.

18 If you're experiencing difficulty accessing Webex or
19 with your telephone call line, then please call our OZ Hotline
20 number at 202-727-5471 to receive Webex call in or login
21 instructions.

22 At the conclusion of the decision meeting session, I
23 shall, in consultation with the Office of Zoning, determine
24 whether a full or summary order may be issued. A full order is
25 required when the decision it contains is adverse to a party,

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1 including an affected ANC. A full order may also be needed if the
2 Board's decision differs from the Office of Planning's
3 recommendation. Although the Board favors the use of summary
4 orders whenever possible, an applicant may not request the Board
5 to issue such an order.

6 In today's hearing session everyone who is listening on
7 Webex or by telephone will be muted during the hearing. And only
8 persons who have signed up to participate or testify will be
9 unmuted at the appropriate time. Please state your name and home
10 address before providing oral testimony or your presentation.
11 Oral presentations should be limited to a summary of your most
12 important points. When you're finished speaking please mute your
13 audio so that your microphone is no longer picking up the sound of
14 background noise.

15 Once again, if you are experiencing difficulty, please
16 call our OZ website hotline number at 202-727-5471. Once again,
17 202-727-5471. All persons planning to testify either in favor or
18 in opposition should have signed up in advance. You'll be called
19 by name to testify. If this is an appeal, only parties are
20 allowed to testify. By signing up to testify all participants
21 completed the oath or affirmation as required by Subtitle Y 408.7.

22
23 Request to enter evidence at the time of an online virtual
24 hearing, such as written testimony or additional supporting
25 documents, other than live video, which may not be presented as

1 part of the testimony, may be allowed pursuant to Subtitle Y
2 103.13, provided that the persons making the request to enter an
3 exhibit explain how the proposed exhibit is relevant, the good
4 cause that justifies allowing the exhibit into the record,
5 including an explanation of why the requester did not file the
6 exhibit prior to the hearing, pursuant to Y 206, and how the
7 proposed exhibit would not unreasonably prejudice any parties.

8 The order of procedures for special exception and
9 variances are pursuant to Y 409. If this is an appeal, it is
10 pursuant to Y 507. At the conclusion of each case, an individual
11 who is unable to testify because of technical issues may file a
12 request for leave to file a written version of the planned
13 testimony into the record within 24 hours following the conclusion
14 of the public testimony. In the hearing, if additional written
15 testimony is accepted, then parties will be allowed a reasonable
16 time to respond as determined by the Board. The Board will then
17 make its decision at its next meeting session, but no earlier than
18 48 hours after the hearing. Moreover, the Board may request
19 additional specific information to complete the record. The Board
20 and the staff shall specify at the end of the hearing exactly what
21 is expected and the date when persons must submit the evidence to
22 the Office of Zoning. No other information shall be accepted by
23 the Board.

24 Finally, the District of Columbia Administrative
25 Procedures Act requires that the public hearing on each case be

1 held in the open, before the public. However, pursuant to Section
2 405(b) and 406 of the Act, the Board may, consistent with its
3 rules and procedures and the Act, enter into a closed meeting on a
4 case for purposes of seeking legal counsel on a case pursuant to
5 DC official code Section 2-575(b)4, and/or deliberate on a case
6 pursuant to DC official code Section 2-575(b)13, but only after
7 providing the necessary public notice in the case of an emergency
8 closed meeting after taking a roll call vote.

9 Mr. Secretary, do we have any preliminary matters?

10 MR. MOY: Good morning, Mr. Chairman and members of the
11 Board. Welcome to the September hearing. I do have a brief
12 announcement. First, there are two case applications that were
13 originally scheduled for today, September 15. They have been
14 postponed and rescheduled as follows: Application number 20492 of
15 5116 PSRV LLC. Rescheduled to November 3, 2021.

16 The second case is 20501, the application of Milken
17 Center for Advancing the American Dream, LLC, rescheduled to
18 November 10, 2021.

19 Other than that, Mr. Chairman, there are two action
20 items on your meeting session today.

21 CHAIRPERSON HILL: Okay. Thanks. I guess this first
22 one is the motions for the appeal; is that correct, Mr. Moy?

23 MR. MOY: Yes, sir.

24 CHAIRPERSON HILL: Would you go ahead and call the case
25 please, and invite -- I know we asked people to attend because we

1 had some questions.

2 MR. MOY: Yes, sir, with pleasure. So, for the record,
3 this is in reference to appeal number 20580 of NL 1271 5th Street,
4 LLC. This appeal is captioned as an appeal from the decisions
5 made on June 11, 2021, by the zoning administrator, Department of
6 Consumer and Regulatory Affairs, concerning requisite conditions
7 of a PUD, planned unit development, by zoning commission case
8 number 16-05, in the MU-9 Zone. The property is located at 500
9 through 530 Morse Street, Northeast, Square 3591, Lots 2, 7,
10 129/104. And I believe participating on these motions from the
11 appellant and the responses from the parties -- this is the
12 preliminary matter, and this is -- participating the chairman, the
13 vice chair, Mr. Blake, Mr. Smith and Zoning Commissioner Peter
14 Shapiro.

15 CHAIRPERSON HILL: Okay. Great, thank you. Good
16 morning Ms. Moldenhauer. Could you introduce yourself for the
17 record, please.

18 MS. MOLDENHAUER: Good morning, Board members. My name
19 is Meredith Moldenhauer, from the law firm of Cozen O'Connor. I'm
20 here on behalf of the Appellant.

21 CHAIRPERSON HILL: Great. Thank you. Ms. Moldenhauer,
22 welcome back. I hope you had a nice summer.

23 MS. MOLDENHAUER: I did. It was very nice. I hope
24 everyone did as well.

25 CHAIRPERSON HILL: Good. Mr. Green, could

1 MR. GREEN: Hi. Good morning, Chairman, and members of
2 the Board. I am Hugh Green, attorney with DCRA.

3 CHAIRPERSON HILL: Okay. Mr. Moy, we don't have anybody
4 else joining us today?

5 MR. MOY: We also have the attorney representing the
6 property owner. I believe his name is Mr. Kyrus Freeman.

7 CHAIRPERSON HILL: Where is he; is he on the phone?

8 MR. FREEMAN: Hey, I'm in the attendees and should be
9 moved up to a panelist.

10 CHAIRPERSON HILL: Okay. I can hear you, Mr. Freeman.

11 MR. FREEMAN: Oh, good morning. I'm not sure why, but
12 I'm listed as an attendee, and should be moved up to panelist.
13 But I am on. I can see everybody and can hear everybody.

14 CHAIRPERSON HILL: Gotcha. Mr. Young, could you move up
15 Mr. Freeman if you can, or he can just do on audio.

16 MR. YOUNG: Yeah. For some reason it's not giving me
17 the option to make him a panelist.

18 CHAIRPERSON HILL: Okay. No problem. Mr. Freeman, can
19 you introduce yourself for the record, please?

20 MR. FREEMAN: Sure. Kyrus Freeman, the law firm of
21 Holland and Knight, on behalf of L-Corp.

22 CHAIRPERSON HILL: Okay. Well, Mr. Freeman, also
23 welcome back. I hope you had a nice summer as well.

24 MR. FREEMAN: I did. Thank you.

25 CHAIRPERSON HILL: Okay. So, Ms. Moldenhauer, there is

1 -- I mean, we've read all of the motions. But if you want to just
2 -- I mean, I just want to -- I don't want to take a long time with
3 this. If you can just kind of like go through the three motions
4 that you have. And then I'm going to let Mr. Freeman have a
5 chance to respond, as well as Mr. Green, and then we're going to
6 see what happens. Okay?

7 MS. MOLDENHAUER: Great. Thank you very much. So the
8 first motion I think is a fairly preliminary motion. There's been
9 no opposition filed. It's our motion to amend the appeal to
10 incorporate the certificate of occupancy. We were not aware of
11 the changes in occupancy being issued at the time of our appeal.
12 We have since incorporated that into the appeal that was timely
13 filed.

14 Our second motion is a motion to stay the certificate of
15 occupancy. And we're asking for the Board to issue the stay of
16 the certificate of occupancy for L-Corps' building which abuts
17 this property. This fits squarely within the Board's authority.
18 The Board has broad authority when reviewing zoning appeals.
19 Specifically, the zoning regulations, under Subtitle X 101.1, the
20 Board's authority gives them the ability to "make such order as
21 may be necessary to carry out its decision or authority, and to
22 that end, have all the powers of the official or the body with
23 whom the appeal is taken. So given that, the Board does
24 specifically have the ability to grant this hold or this stay of
25 the certificate of occupancy. In fact, actually, what is not in

1 our appeal, but I wanted to bring the Board, the attention to the
2 Board, is that the Board has actually previously found they
3 possess this power.

4 In BZ appeal number 18027 of Philly Pizza and Grill, the
5 BZA did in fact order a stay. In that order granting a stay,
6 issued on November 17, 2009, the BZA actually spelled out its
7 jurisdiction and possessed the power of the DC code official from
8 DCRA. In that case the Board order evaluated the issue by
9 confirming that the construction code authorizes the code official
10 to revoke or issue a notice of revoke of the certificate of
11 occupancy when the actual occupancy does not conform with that
12 permit. Here the occupancy is not permitted because it did not
13 comply with the conditions of the order that were required in the
14 permit.

15 We don't see the full revocation here, but only a hold
16 on the C of O to maintain the status quo after a hearing on the
17 merits. As in the Philly Pizza case, which proved and confirmed
18 jurisdiction, we looked to the DC building code. And here, under
19 Section 101.5.3.2 and 110.6, it specifically acknowledges that
20 the BZA, that you, as a Board, can issue an order requiring a
21 revocation of a certificate of occupancy. So said simply, because
22 the building code gives a court official the ability to place a
23 hold or a stay on a certificate of occupancy, thus so does the
24 Board have the authority to do the same. So the zoning
25 regulations, the DC building code, and even the past BZA decision

1 all affirm that the Board has jurisdiction to issue the stay.

2 So I guess why are we here asking you to issue the stay
3 prior to the Board adjudicating the order? We submit that L-Corps
4 is unjustly benefitting from a certificate of occupancy that was
5 wrongly issued to the detriment of both the public and to
6 (indiscernible). In Philly Pizza the appeal confirms that
7 administrative agency is required to consider a four-factor
8 analysis when evaluating a motion to stay.

9 First, the likelihood of success on the merits. Which
10 here, we believe, if you actually look at the plain language of
11 the easement, a temporary stay is appropriate and actually would
12 be a good faith action for the Board to take. If an owner on the
13 block can't depend on an alley for vehicular or loading access,
14 then the easement is meaningless, and the C of O was issued
15 erroneously. To put it in perspective, envision a road that you
16 all take to get to your homes every day. You expect the city to
17 keep that road open and accessible for you to get in and out of
18 your house. The road and the alley have these inherent, permanent
19 traits and understanding of perpetual or long lasting access. In
20 this case the alley is built, it exists, but the underlying
21 easement must be permanent, but it is not. The alley is not a
22 public benefit. And as required by the order and this condition,
23 when you read the easement, it is clear that it is unreliable as
24 recorded, as even DDOT has acknowledged. The clear and
25 unambiguous language that L-Corp cannot actually modify the

1 | easement at any time, or that it automatically terminates makes it
2 | easy to feel like we (indiscernible).

3 | Second, irreparable harm. Eden continues to be injured
4 | by L-Corp's bad faith actions of property. As outlined in our
5 | filings, L-Corps presented to Eden, DDOT and the Zoning Commission
6 | that they would provide alley access for the entire square. Not
7 | only did L-Corps covenant in the condition, but they also strung
8 | Eden along for almost two years with attempts at back and forth
9 | thrash of (audio interference) and working with them together.
10 | Eden has continued to be injured by this failure, and we are
11 | asking now for a temporary hold of the C of O until this issue can
12 | be properly adjudicated.

13 | Not only would a hold be the right thing to do, but it
14 | would also be consistent with the fact that there are letters in
15 | the record, also from DDOT, saying that this easement is
16 | unreliable. Additionally, it protects the public by now allowing
17 | L-Corps the benefit from a PZ, for which it failed to comply with
18 | its articulated benefits. Here, the extensive delay is caused by
19 | L-Corps actions for two years is actually an example and is part
20 | of the impact and the extreme harm it has caused. Last,
21 | we look at potential harm to the other additional parties. We
22 | insist there is no harm. Especially seeing that DCRA stands in
23 | the shoes of the public when enforcing a violation of the zoning
24 | regulations. A temporary stay of the hearing of the C of O until
25 | the hearing would not harm but would actually protect the public.

1 Further, a temporary stay would protect the public and preserve a
2 public benefit proffered by L-Corp in the zoning PUD case and
3 order.

4 Lastly, L-Corps asserts that they have complied with the
5 P of E, and DCRA finds they have complied. But if you follow the
6 logic of the easement and the fact that it is unreliable, what
7 they are asking you to do is to allow them to contort the words of
8 the condition to a degree that the intent and the purpose is lost
9 and becomes unrecognizable for any use of the Applicant. For
10 these reasons we would ask that the Board issue a temporary stay.
11 If the Board for some reason is unwilling to issue the temporary
12 stay, and we also have the request for an expedited hearing, but
13 right now we understand that the hearing is scheduled in November.
14 And we are available for questions.

15 CHAIRPERSON HILL: Okay, great. Thank you, Ms.
16 Moldenhauer.

17 Let's see, I'm going to go through everybody and then
18 we'll see what the Board has. Mr. Green, do you have -- would you
19 like to present or respond, what have you?

20 MR. GREEN: You know what, I'd actually prefer to go
21 after Mr. Freeman. Because -

22 CHAIRPERSON HILL: That's fine. That's fine. Mr.
23 Freeman, do you want to go ahead?

24 MR. FREEMAN: Am I unmuted?

25 CHAIRPERSON HILL: Yeah, we can hear you.

1 MR. FREEMAN: Thanks. So actually, I have three points
2 that I'd like to make here. And I might take them a little bit
3 out of order. First, with respect to the request to expedite the
4 hearing. Although it is currently scheduled for November, I think
5 that was possibly done in error. And I would suggest that it
6 should not be in November. It seemed as though the Office of
7 Zoning granted that request prior to this discussion. So I
8 actually think the hearing should be moved to a date in the
9 future. There is no reason to treat this case any differently
10 from the many other cases and applicants that have already been
11 filed that are waiting their turn for a hearing. I personally
12 have a number of equally important cases that were filed before
13 this appeal was filed, and are scheduled as far out as December.
14 So I don't understand why this case would be scheduled for a
15 hearing in November, and jumping this case ahead of all of the
16 other cases that were filed prior to this appeal. I mean, I think
17 that's prejudicial to our applicant. I think that's prejudicial
18 to all of the other applicants, some of which are mine, that have
19 already been scheduled that have waited their turn of the hearing
20 schedule. Quite frankly, I would need more time to prepare for
21 this case. I don't think scheduling it for November 17th is fair
22 or likely going to lead to a good outcome.

23 Second point I'd like to make, I think, respectfully,
24 Ms. Moldenhauer kind of just did exactly what I expected this case
25 to be about. The Appellant asserts that just where L-Core is

1 doing a bunch of bad things. But this case is actually very
2 simple. This case is about what condition A-5 on page 22, a ZC
3 order actually says. Reading the language of the condition is not
4 "parsing words," it's actually what's supposed to happen. You're
5 supposed to read the language of the condition and apply that
6 language. I understand the Appellant wants to make this case
7 about the easement, what the easement says, what it doesn't say,
8 what the condition of the zoning commission order should say, et
9 cetera. But they will not be able to demonstrate in any manner
10 that there is language in the condition that the zoning
11 administrator did not comply with. That's really what this case
12 is about, whether the zoning administrator properly applied the
13 language of condition A-5. So I appreciate everything else Ms.
14 Moldenhauer just said. It's not relevant to what the Board has to
15 decide.

16 Finally, with respect to their request for a stay. It
17 wasn't clear until now exactly what they were asking the Board to
18 do. And I'm not sure that it's clear now. Before it was stay the
19 zoning administrator's decision. Now it stay the C of O. I don't
20 quite understand what that means. We have a properly permitted
21 building. We had a properly issued C of O. We have people that
22 live in the building. We have people that are moving into the
23 building. If what they are saying is you have to stop people from
24 living in the building, or somehow stop people from moving into
25 the building, they have not provided any authority for that. Nor

1 have they provided any precedent for that. The case that Ms.
2 Moldenhauer just mentioned, the Philly Pizza case, what I don't
3 know if she clearly mentioned, what DCRA said in that case is that
4 those permits that were issued were issued in error. That is what
5 that appeal was about, staying the revocation of permits issued in
6 error. DCRA is not taking that position in that case. DCRA is
7 taking the position that these permits were actually issued
8 correctly, the certificate of occupancy was issued correctly.
9 And, therefore, the conclusion of -- if you were to apply the
10 logic of Philly Pizza in this case, you would deny her motion to
11 stay.

12 So I think once we get to a hearing and we kind of get
13 past the, I think I heard a new hypothetical today, get past the
14 multiple hypotheticals and focus on the actual language of the
15 conditions says, the Board will see that this appeal should be
16 dismissed. So there's no reason to grant a stay. There's no
17 reason to expedite it. This case should be heard in due course,
18 as with all of the other cases that have been filed. That's it
19 for me. Thank you.

20 CHAIRPERSON HILL: Okay. Thank you, Mr. Freeman. Mr.
21 Green?

22 MR. GREEN: Just to follow up on a couple of points.
23 One is not retry the same ground. I agree with Mr. Freeman's
24 analysis. And quite frankly, I feel the same, that the fact that
25 the hearing on this initial -- hearing on the merits is scheduled

1 in November, I think that certainly, I agree, should just be
2 scheduled in the normal course. But another thing that I did not
3 hear and see in any of the filings, any of the filings by the
4 Applicant, Ms. Moldenhauer, is that it's unclear whether they --
5 are they currently prevented from using this alley? I haven't
6 heard it. That's one.

7 And issue two is the appeal itself, what they are asking
8 in the prayer for relief is to negotiate better terms for the
9 easement really. I haven't really heard anything that would
10 warrant a stay or an acceleration of this matter. But, again,
11 it's rather muddled in terms of what -- it certainly involved the
12 request by the Appellant what they were looking for in their
13 initial motion today and it seems like they want to stay.
14 Basically, they're looking for some sort of injunctive relief.
15 And quite frankly, that's over in Superior Court. That's
16 certainly something that they, they can join with the zoning
17 administrator, I presume, in joining the property owner from doing
18 something. That equitable relief certainly is available to them
19 in Superior Court. I do not believe the Board should stay
20 anything that's been properly issued. And, obviously, that's the
21 merits of the case. But, again, really, I think this is really
22 something that doesn't warrant an expedited basis or a stay in
23 any way. Thank you.

24 CHAIRPERSON HILL: Okay. Thanks, Mr. Green. All
25 right. I'm going to go around the table and see if anybody has

1 any questions for anybody. I have a few, but I'll wait until the
2 end. May I start with Commissioner Shapiro.

3 MR. SHAPIRO: Okay, Mr. Chair. Yeah, a question for Ms.
4 Moldenhauer. I just -- I want to hear from you, your position on
5 that, that question that was asked around that is there some alley
6 access issue that is happening right now? Not what could happen
7 in the future, but is there a way in which your client doesn't
8 have access right now?

9 MS. MOLDENHAUER: So right now, based on the easement,
10 there is no access. The easement did not allow access. Currently
11 there is no opportunity for construction access. There is only
12 opportunity to join after their building is constructed. So there
13 are multiple flaws in the easement. And to -- so that is an
14 existing problem that is continuing to be at issue. And the
15 condition by that Mr. Freeman referenced was the Applicant shall
16 permit access. So there is an inherent violation of that
17 condition that DCRA should enforce. This is not a question to
18 negotiate better terms, but it's enforcing what was proffered and
19 required in the permit.

20 MR. SHAPIRO: So you're -- I want to make sure I
21 understand. Because, obviously, you all are much more in the
22 weeds on this than we are. You're saying the issue is the order
23 says that you are required to have access. You're saying that
24 that is being interpreted to mean once it's built rather than
25 during construction?

1 MS. MOLDENHAUER: That's how the easement is written.
2 Yes.

3 MR. SHAPIRO: Okay. All right. Mr. Chairman, if it's
4 okay, I have the same question for Mr. Green and Mr. Freeman.

5 CHAIRPERSON HILL: Sure. Mr. Freeman, do you want to go
6 first with Mr. Shapiro's question?

7 (No response.)

8 CHAIRPERSON HILL: Mr. Freeman, can you hear me?

9 (No response.)

10 CHAIRPERSON HILL: Can you hear me?

11 MR. FREEMAN: Yes. Yes. Can you hear me?

12 CHAIRPERSON HILL: Yes. The question was, do they have
13 alley access now?

14 MR. FREEMAN: With all due respect, what Ms.
15 Moldenhauer just said is a hundred percent not true. The alley
16 has been constructed. The easement has been recorded. If Edens
17 wants to use that easement, all they have to do is sign the
18 joinder. There is nothing today blocking Edens from utilizing
19 that --

20 CHAIRPERSON HILL: Mr. Freeman, I'm sorry. Mr. Freeman,
21 all they have to do is sign a what?

22 MR. FREEMAN: Joinder, which is what the condition says
23 we record an easement, and anyone who wants to use it signs a
24 joinder.

25 CHAIRPERSON HILL: I got you. Give me a second. So

1 | this part of the hold up, the signing of the whatever?

2 | MR. FREEMAN: There is no holdup, Mr. Chairman. Number
3 | two, Edens isn't in any type of construction. They haven't filed
4 | a building permit, they haven't tried to use the easement.

5 | CHAIRPERSON HILL: I'm sorry. Hold on. I'll go back to
6 | Mr. Shapiro. Mr. Shapiro, it was your question. I'm sorry to
7 | have interrupted.

8 | MR. SHAPIRO: No, that's fine. Same question for Mr.
9 | Green, just to have him weigh in.

10 | MR. GREEN: I guess the question is, if they have not
11 | even constructed anything, they haven't even applied, from what I
12 | understand, a building permit, they're arguing over theoretical
13 | access after the property is built or I guess I'm still uncertain
14 | of the actual harm. The present harm right now has not been
15 | articulated, that they're asking the Board to hold everything so
16 | they can hear the merits of the case, which I haven't heard it
17 | yet.

18 | MR. SHAPIRO: Okay. And if I can, back to Ms.
19 | Moldenhauer. What's the concern about signing the joinder?

20 | MS. MOLDENHAUER: So the issue is, in our reading of
21 | the joinder, the joinder identifies that, you know, even if we
22 | were to sign the joinder right now, the issue is L-Corps has the
23 | ability to modify the easement at any point in time, and the
24 | easement actually terminates in 75 years. The injury here is that
25 | the lack of a sufficient easement has caused Edens to lose

1 investment partners because of the inability to obtain financing.
2 The inability to have an affirmatively established perpetual
3 easement and access has threatened Edens' ability to finance and
4 develop their property. If evidence is needed on that fact, we
5 can provide it to the Board. But that is in fact the case.

6 MR. SHAPIRO: Okay. And that, -- Mr. Chair, that
7 sounds like that would be the case for a hearing that we will hear
8 at some point. So there's no -- I'm not -- well, I'll stop.
9 That's all the questions I have.

10 CHAIRPERSON HILL: Okay. Got you. After Mr. Shapiro,
11 let's go in reverse order. I guess, Mr. Smith, do you got
12 anything?

13 MR. SMITH: No. Mr. Shapiro, that was -- I had the same
14 question. So I don't have any additional questions.

15 CHAIRPERSON HILL: Okay. Ms. John, do you have any
16 questions?

17 VICE CHAIR JOHN: No additional questions. I had the
18 same question, has the service alley been constructed according to
19 condition number five. And so I -- that's the only question I
20 had.

21 CHAIRPERSON HILL: Okay. Mr. Blake, do you have any
22 questions?

23 MR. BLAKE: One quick question. I think we did say
24 that the building is currently occupied or largely occupied; is
25 that correct?

1 MR. FREEMAN: The L-Corps building, that's correct.

2 MR. BLAKE: Okay. Thank you.

3 CHAIRPERSON HILL: Okay, great. All right. Mr. Moy, I
4 have one question for you when everybody is here. Can you hear
5 me?

6 MR. MOY: Yes, sir. I hear you.

7 CHAIRPERSON HILL: So I was a little confused. Like
8 this was originally possibly scheduled for January, and we're now
9 in November. Like, did you schedule this early?

10 MR. MOY: Okay. This is the, as one person once said,
11 this is the deal. The prime factor as I know you and the rest of
12 the Board knows, is that we have, when we schedule cases we have
13 to meet the required public notice time. And that took me to
14 November 17th. And so if you wanted to schedule this appeal
15 earlier than that, then it would not meet the 51 days. If you
16 want to move it further out, in other words, a date beyond
17 November 17th, December is out of the question because we have a
18 hearing, or rather we have an appeal in every hearing date in
19 December except for one. So possibly you could put it there, but
20 we have a bunch of applications on that day.

21 CHAIRPERSON HILL: I'm just trying to understand whether
22 or not this was already scheduled early for some reason. Because
23 that's what Mr. Freeman is contending.

24 MR. MOY: I don't have anything else to add, other than
25 what I just said.

1 CHAIRPERSON HILL: Okay. All right. All right.

2 MR. MOY: I did not schedule a date earlier than
3 November 17th. So I'm not sure which date Mr. Freeman is
4 referring to.

5 CHAIRPERSON HILL: Commissioner Shapiro, you have your
6 hand up.

7 MR. SHAPIRO: I do. Thank you, Mr. Chairman. So
8 there's a motion to expedite the hearing. So the motion is to ask
9 -- is to -- is that right? So the motion would be to place this
10 even earlier than November 17th?

11 CHAIRPERSON HILL: Yes.

12 MR. SHAPIRO: Or November 17th essentially meeting in
13 advance the motion to expedite?

14 CHAIRPERSON HILL: What I understood was that they're
15 trying to get an earlier date than November 17th.

16 MR. SHAPIRO: That's what I heard from Ms. Moldenhauer.

17 CHAIRPERSON HILL: Okay. Give me a second. So that's
18 what I thought was happening. And what I was confused by, because
19 I was talking with scheduling earlier, was that I thought that
20 this was maybe scheduled for January and it already had gotten
21 scheduled for November without us actually talking about it, or
22 without me talking about it. So let me clarify that a little bit.

23 Ms. Moldenhauer, you're trying to get this scheduled
24 before November 17th, correct?

25 MS. MOLDENHAUER: We have -- we were simply told by

1 Office of Zoning about the November hearing date. We had no
2 involvement in that being an early date. We asked for an
3 expedited case, and the Board hasn't ruled on that yet. So either
4 my understanding would be the Board would either issue an earlier
5 date than November or leave the November date as already
6 scheduled.

7 CHAIRPERSON HILL: Right. Okay. So that's what I
8 thought you were talking about. And Mr. Freeman, you're saying
9 that the November -- this is where I don't want to get into too
10 much of this back and forth. I'll figure it out, believe me,
11 without your help, without any of your all's help. But like
12 November 17th, Mr. Freeman, you think is currently early?

13 MR. FREEMAN: November 17th would be an expedited date.
14 I have a hearing on November 17th on another case that we filed --
15 I can get you the exact date -- we filed an application in July.

16 CHAIRPERSON HILL: So your --

17 MR. FREEMAN: And didn't get a November hearing date.

18 CHAIRPERSON HILL: I understand. I understand.

19 MR. FREEMAN: So November 15 suggests that the Board
20 has decided to expedite this appeal.

21 CHAIRPERSON HILL: I understand. So that's what you
22 think. And Mr. Green is shaking his head. I love it.

23 MR. GREEN: Correct.

24 CHAIRPERSON HILL: So I can figure that out. And we might
25 figure that one out a little later. All right. So outside of

1 that, you've already given me the -- this building is occupied,
2 right?

3 MR. FREEMAN: The L-Corps building is occupied. Yes.

4 CHAIRPERSON HILL: Yeah. Okay. Does anybody have any
5 other questions, and if so, please raise your hand.

6 (No response.)

7 CHAIRPERSON HILL: Okay. All right, everyone. Thank
8 you so much. We're going to go ahead and deliberate and talk
9 about this. Okay. Thank you all very much for coming. Bye-bye.

10

11 Okay. I don't mind adding the C of O to the appeal,
12 because I think later one we'll kind of figure out whether it's
13 this email or if it's the C of O, or you know, which is the
14 appealable decision. So that's something that I think. I'm a
15 little confused with this motion to expedite. Like, I don't
16 really -- I kind of need to find out from Mr. Moy and that might
17 take later. I don't know. Or we can come back. Mr. Moy, I'm a
18 little confused as to, you know, Mr. Green and Mr. Freeman says
19 that this thing has already been put forward. And I don't mean to
20 -- and we can have our own little private -- I mean, not private.
21 We could have an emergency closed session meeting if we want to
22 talk about this a little bit more and get this done, otherwise I
23 can talk with you, as the presiding officer, Mr. Moy, and figure
24 out scheduling. Right. So I'm looking to you on that one.

25 In terms of the request for stay, I mean, the building

1 is occupied. And so I'm not going to kick out people. You know,
2 it doesn't seem like it, you know, it fits the criteria in terms
3 of the four items, you know, the last one being the public good,
4 you know, the public interest. I mean, kicking out people that
5 are already in the building, right. And so it sounds as though --
6 I know it's a little confusing because, like we need to deal with
7 a question. Because it sounds like if they sign what they're
8 supposed to sign, they're giving up their right for the appeal.
9 But I guess -- so they're not using the alley now, but it sounds
10 like they don't really need to use the alley now. But that's, you
11 know, my thoughts.

12 So, Mr. Shapiro, can I go around the horn and see where
13 we are, and then we'll make motions.

14 MR. SHAPIRO: Yeah. I'm in a similar place as you, Mr.
15 Chair. And I'm hearing, even though it wasn't a formal request,
16 I'm hearing that the -- what may or may not be an expedited
17 hearing is prejudicial to the property owner. And it doesn't
18 sound like there's any reason why this needs to be heard so early,
19 considering the construction has not even started on the adjoining
20 building. So I'm where you are, with a little bit more emphasis
21 on not needing to hear this in November. The C of O issue I just
22 don't -- I mean, you know, I think it's a longer conversation with
23 us to -- but I agree with you, we should take it up when we hear
24 the case. But it should abstain the C of O. Sounds like a long
25 conversation. Anyway, that's all I have, Mr. Chair. So I mostly

1 just agree with you.

2 CHAIRPERSON HILL: No. A longer conversation means you
3 wouldn't be in favor of the stay of the C of O now?

4 MR. SHAPIRO: Absolutely not. I am not in favor of the
5 stay of C of O now.

6 CHAIRPERSON HILL: Okay. Mr. Smith?

7 MR. SMITH: I agree with both of your opinions on this.
8 I'm not in favor, or was not in favor of a stay of the C of O of a
9 building that's already being occupied. And I'm not completely
10 sold that it's necessary -- it seems to me it's being offered as a
11 blunt instrument by the Appellant. So I wouldn't be in favor of
12 the stay of the C of O.

13 As far as expediting the hearing, I agree with both of
14 your opinions. I believe that based on what I'm hearing,
15 construction hasn't started. It seems to me, just based on the
16 limited information that we have now, that the Appellant's
17 argument is based around construction access and long-term
18 perpetual access to the easement. And with that, because
19 construction hasn't started, I don't see a reason to expedite it
20 to November. And I think we can proceed under normal course. So
21 I agree with both of your opinions.

22 CHAIRPERSON HILL: Ms. John?

23 VICE CHAIR JOHN: I agree with everything that's been
24 said. I agree that the appeal should be amended to add the issue
25 of the C of O.

1 And as to the stay, based on what we've heard this
2 morning and the pleadings, I don't believe that the Applicant has
3 met the burden for granting a stay, based on the four criteria.
4 Primarily because I don't think the Applicant has shown that there
5 is a likelihood of success on the merits. Just based on the
6 condition in the file, the alley has been built, and the easement
7 was recorded. It seems that this is an issue related to the terms
8 of the easement. And perhaps DCRA's position -- and I think the
9 appropriate one -- that this should be in another forum besides
10 the DCA, because there is no indication that the Appellant
11 appealed the PUD order or required the PU order to be more
12 specific as to the finer points of the easement. So that's a long
13 explanation of why I think we should not grant the stay.

14 And as to the November hearing, I believe that Mr.
15 Freeman made -- proffered that that date would be difficult for
16 him to meet, and that he's got other cases scheduled. And I'm not
17 sure if in fact we inadvertently expedited the appeal. So I would
18 agree with whatever decision you make, Mr. Chairman, in setting
19 the date of the appeal.

20 CHAIRPERSON HILL: Okay. So Mr. Moy, can you hear me?

21 MR. MOY: I'm here Mr. Chairman.

22 CHAIRPERSON HILL: So we can either -- well, it sounds
23 as though the Board is -- whether or not this was prematurely
24 scheduled or not, they seem interested in it being scheduled for a
25 later time. So, you know, I don't know how, you know, and I

1 don't want to go into that discussion right now, Mr. Moy, wherein
2 it somehow got onto the November calendar. Because, again, I
3 don't -- you know, I'm not saying that, you know, Mr. Green seemed
4 to be nodding in agreement and Mr. Freeman who was giving evidence
5 that this was now scheduled prior to other cases that he had
6 before us. But not going into that, it sounds like the Board is
7 interested in scheduling this for a later time. So if that were
8 the case, when would we schedule this?

9 MR. MOY: The next opportunity, Mr. Chairman, would be
10 January the 12th, 2022. It would be after the holidays.

11 CHAIRPERSON HILL: Okay. So I guess what I'm trying to
12 figure out -- I kind of want to talk to you, Mr. Moy, a little
13 bit, you know, what other places we might be able to fit this, and
14 kind of talk about it a little more. Right. And so I don't even
15 -- and this is where I'll let Ms. Nagelhout -- you know, I don't
16 know whether or not, you know, I can, we can make the motion on
17 all the other motions except for the date of the appeal. Can I do
18 that, or what can I do, Ms. Nagelhout?

19 MS. NAGELHOUT: You can -- well, I'm not clear on what
20 you're thinking about the expedited hearing. Certainly, you can
21 make a motion to --

22 CHAIRPERSON HILL: Okay. I'm sorry. You've clarified
23 it for me. We're denying the expedited hearing.

24 MS. NAGELHOUT: Okay.

25 CHAIRPERSON HILL: So I can just talk with Mr. Moy and I

1 can figure out how we can get them back.

2 MS. NAGELHOUT: Yes. So you can make a motion granting
3 -- from what I'm hearing, you're going to grant the motion to
4 amend the appeal to include the C of O and deny the other two
5 aspects?

6 CHAIRPERSON HILL: Yes. And then I'll get with Mr. Moy.
7 And Mr. Moy, then we'll get with the Applicant, and the DCRA, and
8 the property owner to figure out when we can get them back in.

9 MR. MOY: Mr. Chairman, we could -- for you to
10 consider, and we can speak later, the other option, other
11 opportunity would be December 22nd.

12 CHAIRPERSON HILL: Okay. Let me -- I want to talk -- I
13 want to look at the calendar and figure out where we are. Okay.
14 So at least we can make the motions. All right.

15 So can I make, Ms. Nagelhout, this motion as a group?

16 MS. NAGELHOUT: Yes, you can.

17 CHAIRPERSON HILL: Okay. So I'm going to make a motion
18 to deny the motion for a request for stay of the C of O. And I'm
19 going to make a motion to deny the motion to expedite the appeal.
20 And I'm going to make a motion to include -- I'm sorry. I'm
21 going to make a motion to grant the motion to include the C of O
22 on the appeal. And I'm going to ask for a second, Ms. John?

23 VICE CHAIR JOHN: Second.

24 CHAIRPERSON HILL: Motion has been made and seconded.
25 Mr. Moy, could take a roll call.

1 MR. MOY: When I call each of your names if you would
2 please respond with a yes, no or abstain to the motion made by the
3 chairman that goes to the amending the application to add the C of
4 O, to deny the motion for stay, and to deny the motion to
5 expedite.

6 Zoning Commissioner Peter Shapiro?

7 MR. SHAPIRO: Yes.

8 CHAIRPERSON HILL: Mr. Moy, and I might have missed.
9 And you said and to include the C of O in the appeal, right?

10 MR. MOY: Yes, sir.

11 CHAIRPERSON HILL: Okay. Great.

12 MR. MOY: Okay. Once again, Zoning Commissioner Peter
13 Shapiro?

14 MR. SHAPIRO: Yes.

15 MR. MOY: Mr. Smith?

16 MR. SMITH: Yes.

17 MR. MOY: Mr. Blake?

18 MR. BLAKE: Yes.

19 MR. MOY: Vice Chair John?

20 VICE CHAIR JOHN: Yes.

21 MR. MOY: Chairman Hill?

22 CHAIRPERSON HILL: Yes.

23 MR. MOY: Staff would record the vote as 5 to 0 to 0.
24 And this is on the motion made by Chairman Hill, as I've just
25 stated, for his motion. The motion was seconded by Vice Chair

1 John. Also in support of the motion is Zoning Commissioner Peter
2 Shapiro, Mr. Smith and Mr. Blake. The motion carries.

3 CHAIRPERSON HILL: Okay. Great. You guys, I've got to
4 take a quick break. Okay. Just five minutes. Okay. Thanks.

5 (Whereupon, at 10:18 a.m., there was a short
6 break.)

7 CHAIRPERSON HILL: Mr. Moy, can you call us back in, and
8 can you call us for our only decision meeting.

9 MR. MOY: Yes, sir. Thank you, Mr. Chairman The Board
10 is back in session after a very brief break/recess. The time is
11 at or about 10:26.

12 The next and last action item in the Board's meeting
13 session is case application number 20280 of VBS Community
14 Builders, LLC. This case application is captioned and advertised
15 as amended for, under the residential conversion requirement,
16 Subtitle U, Section 320.2, and from the rear addition requirements
17 of Subtitle E, Section 205.4. This would convert an existing
18 residential building to a four-unit apartment house in the RF-1
19 Zone. The property is located at 622 I Street, Northeast, Square
20 857, Lots 32 and 113.

21 Before the Board, as a preliminary matters, there is the
22 Applicant's motion to reopen the record to allow revised plans.
23 That's under their filing of exhibit 119 through 119 A, and also
24 ANC 6C's opposition to the Applicant's motion to reopen. And I
25 believe that's under exhibit 120.

1 Finally, Mr. Chairman, for the record, participating on
2 this decision is you, the chairman, the vice chair, Vice Chair
3 John, Mr. Smith and Zoning Commissioner Peter Shapiro, whom I
4 believe is reading into the record.

5 CHAIRPERSON HILL: okay, great. Thank you. I'm going
6 to let -- I kind of know where I am on this, but I'm going to let
7 people kind of go around the table if that's okay. And
8 Commissioner Shapiro, if you mind my starting with you. And then
9 also, if you could confirm that you have read into the record.
10 Basically, right now, first, we're talking about the motion to
11 reopen. I mean, you just might as well talk about all of it.
12 Like, tell me about motion to reopen and what you think we should
13 do, either deliberate on this and decide now, or what your kind of
14 thoughts are, Mr. Shapiro.

15 MR. SHAPIRO: Thank you, Mr. Chair. And I have reviewed
16 the extensive record, and will be participating. I mean, I'm
17 curious to see where you all are. You've been dealing with this
18 longer than I. Coming at this with fresh eyes, as far as I can
19 tell, we're looking at what is now a fifth iteration of plans for
20 this. I, you know, as I read it and as I look at the motion to
21 reopen and ANC 6E's opposition, I'm more inclined to -- as I give
22 great weight to the ANC 6E's position, I'm more inclined to see
23 where they are, which is to oppose the motion to reopen. You
24 know, this is a fifth set of building plans that have come before
25 us, or come before you, now me. And, yeah, I mean, I agree with

1 their argument. It feels like if the -- that I'd rather
2 deliberate, see where we land. You know, if we support it, so be
3 it. If we don't, and the Applicant wants to come back, then why
4 don't we come back in a year, or they can even ask us to waive
5 that requirement, or we can determine that it's such a different
6 project that it will be okay anytime to come back, if that's the
7 direction you want to go. You know, I'm also mindful that this is
8 a building, and it's a building that appears to be in pretty
9 significant disrepair. And that is an inactive (indiscernible) as
10 well. And so that's a little bit of argument from me for wanting
11 to move this as quickly as possible. Mostly where I land is, you
12 know, we should just deliberate and see where we go. But I'll
13 leave it at that, Mr. Chair.

14 CHAIRPERSON HILL: Okay. Mr. Smith?

15 MR. SMITH: Based on what was submitted by the
16 Applicant, what his particular -- the Applicant's particular
17 request is, I'm more inclined, given the change and the scope and
18 size of this particular project, it seems based on the last time
19 we heard this back in August, that the Applicant has listened to
20 our concerns and the ANC's concerns about the size and mass of the
21 building. And I think it's attempting to move towards, to address
22 some of those concerns. So I'm more inclined to grant the
23 Applicant's request to reopen the record, to include this. But in
24 the opening of the record I do believe that the Applicant should
25 go back to the ANC to discuss this revised project more fully and

1 we'll hear this at a later date for decision at that particular
2 point.

3 CHAIRPERSON HILL: Vice Chair John?

4 VICE CHAIR JOHN: Thank you, Mr. Chairman. I -- this is
5 a difficult decision. And I read the ANC's opposition last night.
6 And I noted the sense of frustration from that letter, because the
7 ANC has reviewed so many versions of this application. But on the
8 other hand, OP approved the project in its original form. So --
9 in the last iteration that the Board reviewed at the hearing. So
10 I'm inclined to agree with Mr. Smith that the Applicant has tried
11 to reduce the massing of the structures at the rear. And so I
12 think I'm leaning towards granting the motion to reopen, and
13 requesting that the Applicant provide, you know, the ANC with
14 another opportunity to comment. And essentially we're starting
15 over. The only thing that would be different is that we would not
16 require, I mean, noticing or the other formal process.

17 CHAIRPERSON HILL: Okay. Yeah. I mean, I was -- it's
18 interesting to have Commissioner Shapiro with us because he has,
19 you know, fresh eyes in terms of the thing. I did also read the
20 opposition from the ANC and also can sense their frustration, and
21 can appreciate and understand why they're frustrated. I kind of
22 fall in line with, you know, the property is currently, you know,
23 fallow. And whether we get this in a year again, if they -- the
24 Applicant wanted to come back again with this design and then
25 request a waiver for the one year, I think that the design is

1 different enough that I would probably be able to get behind the
2 waiver. But I don't know where this necessarily is going to land
3 in terms of, -- you know, I mean, the Office of Planning, again,
4 to your point, Ms. John, had gone through the standard and thought
5 they met the criteria for the current design, which is kind of how
6 I think the Applicant also kind of got to us. Where the Board
7 then disagreed with the analysis as to how they're meeting the
8 standard and it seemed as though was going to deny the
9 application.

10 So rather than -- you know, I'm in agreement with Ms.
11 John and Mr. Smith, basically, which is that, you know, -- and I
12 am in kind of agreement with you, Mr. Shapiro, which is that we
13 could decide it. It could possibly get kicked down, and then they
14 could be back with us again and we have to decide whether or not,
15 you know, we want to approve a waiver for inside the year. So
16 basically, I'm in approval of accepting the Applicant's motion to
17 reopen the record. However, they're basically starting again.
18 Right. I mean, they have to go back -- I want them to go back to
19 the ANC. They've got to go back to OP. They've got to go back to
20 DDOT. You know, the only thing we're doing is we're just not
21 kicking them all the way back to the beginning of the beginning.
22 Right.

23 And so I guess that being the case, I would go ahead and
24 make a motion to approve the Applicant's motion to reopen the
25 record, and accept the information that was submitted, and deny

1 ANC 6 motion in opposition to the Applicant's motion to open the
2 record, and ask for a second, Ms. John

3 VICE CHAIR JOHN: Second.

4 CHAIRPERSON HILL: The motion has been made and second.
5 Mr. Moy, could you take a roll call, please.

6 MR. SHAPIRO: Mr. Chair, any discussion?

7 CHAIRPERSON HILL: Sure. Of course.

8 MR. SHAPIRO: Thank you. Just when you say that we're
9 going to reopen the record, it says -- I just want to be clear
10 about what we're reopening the record for. To make sure that we
11 have all the information that we need to make the decision. So
12 there's revised architectural drawings, but what else is going to
13 be useful? Is there a shadow study? Is there -- I mean, what --
14 you know, because the record is voluminous, right. And so, you
15 know, I guess I just want to make sure we're clear with them what
16 we want.

17 CHAIRPERSON HILL: Well, I guess this brings us into
18 another -- I mean, this is now falling in line with -- we're going
19 to have a long discussion with all this. This is falling in line,
20 Mr. Shapiro, which is that, you know, maybe we go ahead and have
21 the discussion, and then they just start again. Right. I mean,
22 because what we would need to happen -- and I'm looking at Mr.
23 Smith and Ms. John -- is that, you know, they're requesting to
24 reopen the record to submit the revised architectural plans,
25 exhibit 119B(1), 119B(2). Right. So those are just those plans.

1 Then what they would -- then what I would suspect is they would go
2 back -- and Ms. Cain and Mr. Moy, you can give me your opinion on
3 all this. Because I'm just trying to think through this as well,
4 which is that they would then go back to the ANC and also the
5 Office of Planning with this revised design. And then I guess we
6 would have a limited scope hearing on this revised design. Now, I
7 guess at that time we would be opening the record for, you know,
8 anything they wanted, meaning the Applicant. I mean, this is what
9 I'm also trying to figure out, to Mr. Shapiro's point. You know,
10 we would want to hear an argument here, right, as to how this now,
11 being the shadow studies, whatever the presentation is. I mean,
12 we're basically having a hearing on this new design. And -- or I
13 should say revised design. Revised design, right. And, you know,
14 if it weren't for the fact that this is a, a property that's
15 currently just not occupied, you know, it's just, you know, an
16 aban -- you know, nobody is in there, they need to do something
17 with it. I mean, you know, I don't want to perpetuate that.
18 Otherwise, you know, we could have a discussion. And, again, to
19 Mr. Shapiro's point, and I don't mean to get kind of, you know,
20 unclear in my thought process, but to Mr. Shapiro's point, you
21 know, the Applicant could come back and ask for a waiver. And,
22 again, I thought, Ms. Cain, if the design were different enough --
23 or I'm sorry. They would have to be asking for different relief
24 in order for it not to be within the one-year penalty or whatever
25 it is.

1 MS. CAIN: So what the regulations say is that an
2 Applicant, since the application is being denied or disapproved,
3 shall not institute a new application on the same facts within one
4 year. So that could be a change in relief. That could also be if
5 there has been a significant change to the plans. The regs are
6 not, you know, specific as to whether it has to be the relief for
7 the plans. The other is up to the Board's interpretation as to
8 whether you think it's the same facts being presented. And like I
9 said, you do also have the ability to waive that one-year limit as
10 well.

11 CHAIRPERSON HILL: Okay. I just want to get to the
12 point where we figure out what's going to happen here one way or
13 the other. And so that's why I'm just opposed to, you know, I
14 just -- I mean, so Ms. Cain, to your point, if -- it seems as
15 though at least three of the members might be leaning toward
16 allowing the revised design and then having a limited scope
17 hearing on the revised design. How would we leave the record open
18 for all the information we need for that limited scope hearing?

19 MS. CAIN: So if that's the way the Board wanted to
20 proceed, I think you would start by granting the Applicant's
21 motion to reopen to allow in the revised plans. You would then
22 move to reopen the record to allow in any additional filings that
23 you want from the ANC, from the Office of Planning, DDOT, and
24 schedule this for a limited scope hearing.

25 CHAIRPERSON HILL: So is that what the Board wants to

1 do? Or does the Board want to have a deliberation with Mr.
2 Shapiro? And I'm just asking. And I'll give you 30 seconds, or
3 if you have an answer. Mr. Smith?

4 MR. SMITH: I would go with the first option.

5 CHAIRPERSON HILL: What was the first option?

6 MR. SMITH: To reopen it, and also to, you know, --

7 CHAIRPERSON HILL: Okay. Ms. John?

8 VICE CHAIR JOHN: I would grant the motion to reopen
9 and schedule this for a limited scope hearing. And I'm not so
10 sure we would need information from DDOT. But definitely the ANC
11 and OP, and new shadow studies.

12 CHAIRPERSON HILL: Okay.

13 MS. CAIN: Just to -- the Applicant did include revised
14 shadow studies with this latest submission of plans. So those are
15 already proposed to be added to the record.

16 VICE CHAIR JOHN: I looked at those shadow studies, and
17 I would want to see -- it was a little confusing in the discussion
18 about what was a matter of right, if I have the right case. So I
19 would really want something a little bit clearer than that.

20 CHAIRPERSON HILL: Okay. So -- and I also, -- and Mr.
21 Moy, if you can let the ANC -- I mean, I kind of want to know
22 what the ANC would want to see here, if this isn't what they're --
23 if this does not think -- if don't think this meets the standard,
24 what do they think meets the standard here. Right. So, in other
25 words, I can take that with testimony, because that would be

1 something I'd be curious on. Right. So then -- okay. So where
2 we seem to be is we'll go ahead and reopen the record. We'll
3 allow the plans that were submitted. We're also going to have a
4 limited scope hearing at a later date. And that would mean then
5 that they will have to go back and present again in front of the
6 ANC with the new design. We'll have to then wait for a new report
7 from the Office of Planning. We don't need anything from DDOT, it
8 sounds like. And then -- and then I'd like -- I mean, this is the
9 thing. I mean, I'd like to see the presentation. I mean, like I
10 don't want to necessarily limit, you know, whatever it is that the
11 ANC gets presented, I would like to see. Right. So that's where,
12 you know, I guess I'm kind of leaving the record open for the
13 items for a limited scope hearing from both the Applicant, and the
14 ANC, and the Office of Planning, you know, the parties basically.
15 If that sounds reasonable. Unless anyone has an objection to
16 these, please say something. Yes, Mr. Shapiro?

17 MR. SHAPIRO: I'm with you. And I think perhaps a
18 limited scope public hearing is what's throwing me off. Because
19 I'm not sure we're limiting the scope. We're reopening the record
20 to allow in new architectural plans. But essentially everything
21 that has come before us before is still fair game. Right?
22 That's still what we're going to use to consider to make a
23 decision.

24 CHAIRPERSON HILL: Ms. Cain, do you have a thought on the
25 language that Mr. Shapiro is speaking to?

1 MS. CAIN: I mean, you can certainly consider, you
2 know, the testimony that you've heard. I think referring to a
3 limited scope hearing means that you are now considering the
4 project is currently proposed with this set of plans, and how this
5 set of plans meets or doesn't meet the special exception standards
6 for what's being requested. So you're not considering the earlier
7 iteration of the plans. You really just focusing on these new
8 submissions that are coming in.

9 MR. SHAPIRO: Yeah. And I know it's just semantics.
10 But I'm not sure that's a limited scope of a hearing. I think
11 that's just -- it feels more like a continuation of a public
12 hearing, even though I'm not sure it is a continuation.

13 CHAIRPERSON HILL: We can say continued hearing. I'm
14 fine with continued hearing. Right. Okay. All right. So then
15 we'll have a continued hearing. Okay.

16 So I'm going to make a motion to approve the Applicant's
17 motion to reopen the record to include exhibits 119 through 119A,
18 and 119B(1) through 119B(2). Yeah. I'm going to make a motion to
19 reopen the record to include the Applicant's new drawings. I'm
20 going to deny the motion of ANC 6C in terms of their opposition to
21 the Applicant's motion. And ask for a second, Ms. John?

22 VICE CHAIR JOHN: Second.

23 CHAIRPERSON HILL: The motion has been made and seconded.
24 Mr. Moy, could you take a roll call, please. MR. MOY:
25 All right. When I call each of your names if you would please

1 respond with a yes, no or abstain to the motion made by Chairman
2 Hill as to the motion he has just cited. The motion was seconded
3 by Vice Chair John.

4 Zoning Commissioner Peter Shapiro?

5 MR. SHAPIRO: Yes.

6 MR. MOY: Mr. Smith?

7 MR. SMITH: Yes.

8 MR. MOY: Vice Chair John?

9 VICE CHAIR JOHN: Yes.

10 MR. MOY: Chairman Hill?

11 CHAIRPERSON HILL: Yes.

12 MR. MOY: Staff would record the vote as 4 to 0 to 1.

13 And this is on the motion made by Chairman Hill, seconded by and
14 in support Vice Chair John. Also in support of the motion is
15 Zoning Commissioner Peter Shapiro, Mr. Smith. We have one Board
16 member not participating. Again, the motion carries on a vote of
17 4 to 0 to 1.

18 Before we leave, Mr. Chairman, I can give you a proposed
19 reschedule date if we went to do that now.

20 CHAIRPERSON HILL: What do you have, Mr. Moy?

21 MR. MOY: I think it would be convenient, unless he
22 tells me otherwise, for Peter Shapiro to come back with this on
23 November the 3rd.

24 CHAIRPERSON HILL: I don't think that's enough time, Mr.
25 Moy. They've got to go to the ANC. They've got to go -- like,

1 we're already -- I don't know whether -- you know, I don't want to
2 -- why don't we do this, Mr. Moy. I mean, do we have to decide
3 right now?

4 MR. MOY: No. I can do that, and then I'll put a OZ
5 memo in the record.

6 CHAIRPERSON HILL: Okay. So unless the Board -- I mean,
7 what do you all think?

8 MR. SHAPIRO: They do -- everything is prepared. It's
9 just a question of the getting before the ANC.

10 MR. MOY: The ANC meets the second Wednesday of the
11 month. So their next meeting would be October 13th, Mr. Chairman.

12 CHAIRPERSON HILL: Yeah. SO this is where I missed out.
13 So to your point, Mr. Shapiro, I mean, the ANC has heard this
14 now many, many times. I mean, all I'm trying to figure out is,
15 like, now we're pressuring the ANC to have at their next meeting.
16 Right. Versus if we had denied this, we'd be back onto whenever.
17 Right. So I just don't know -- I mean, I'm not trying to be
18 extremely amenable but, you know, we're slammed. All right.
19 Like, we have -- so anyway, so let's -- let me talk with Mr.
20 Shapiro. I mean, let me talk to Mr. Moy and figure out how we
21 might be able to get there. I mean, Ms. Cain, is that
22 appropriate, or do I have to decide now?

23 MS. CAIN: You can resolve it later with the secretary.

24 CHAIRPERSON HILL: Okay. All right. So let's go ahead
25 and do that. All right. So we've addressed this, correct? And I

1 know we just took a break, but is it all right if we come back at
2 11? Okay. All right. We'll see you guys at 11, and then we'll
3 do our hearing cases.

4 (Whereupon, the above-entitled matter went off the
5 record at 9:58 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DCBZA

Date: 09-15-21

Place: Teleconference

was duly recorded and accurately transcribed under my
direction; further, that said transcript is a true and
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