

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY  
FEBRUARY 2, 2022

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LORNA JOHN, Vice Chairperson  
CARL BLAKE, Board Member  
CHRISHAUN SMITH, Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD, Chairman, Zoning Commission  
JOSEPH IMAMURA, Commissioner, Zoning Commission

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from the Regular Public Meeting held on February 2, 2022.

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

(9:36 a.m.)

1  
2  
3 VICE CHAIR JOHN: Good morning, ladies and gentlemen.  
4 The Board of Zoning Adjustment's February 2nd, 2022, public  
5 hearing will please come to order. My name is Lorna John.  
6 I'm the vice chairperson of the District of Columbia Board  
7 of Zoning Adjustment. Joining me today are Board members  
8 Carl Blake and Chrishaun Smith, and Zoning Commissioner Dr.  
9 Joe Imamura, Zoning Commissioner Anthony Hood, who is  
10 attending for two decision-making cases.

11 Today's meeting and hearing agendas are available on  
12 the Office of Zoning's website. Please be advised that this  
13 proceeding is being recorded by a court reporter, and is also  
14 webcast live via Webex and YouTube Live. The video of the  
15 webcast will be available on the Office of Zoning's website  
16 after today's hearing.

17 Accordingly, everyone who is listening on Webex or by  
18 telephone will be muted during the hearing. Also, please be  
19 advised that we do not take any public testimony at our  
20 decision meeting sessions. If you experience difficulty  
21 accessing Webex, or with your telephone call-in, then please  
22 call our OZ hotline number at 202-727-5471 to receive Webex  
23 login or call-in instructions.

24 At the conclusion of the decision meeting, I shall, in  
25 consultation with the Office of Zoning, determine whether a

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1 full or summary order may issue. A full order is required  
2 when the decision it contains is adverse to a party,  
3 including an affected ANC. A full order may also be needed  
4 if the Board's decision differs from the Office of Planning's  
5 recommendation. Although the Board favors the use of summary  
6 orders whenever possible, an applicant may not request the  
7 Board to issue such an order.

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

17 Once again, if you experience difficulty accessing  
18 Webex or with your telephone call-in, or if you have  
19 forgotten to sign up 24 hours prior to this hearing, then  
20 please call our OZ hotline number at 202-727-5471 to sign up  
21 to testify and to receive Webex login or call-in  
22 instructions.

23 All persons planning to testify either in favor of or  
24 in opposition should have signed up in advance. They will  
25 be called by name to testify. If this is an appeal, only

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1 parties are allowed to testify. By signing up to testify,  
2 all parties completed the oath or affirmation, as required  
3 by Subtitle Y, Section 408.7.

4           Requests to enter evidence at the time of an online  
5 virtual hearing, such as written testimony or additional  
6 supporting documents, other than live video, which may not  
7 be presented as part of the testimony, may be allowed,  
8 pursuant to Subtitle Y 103.13, provided that the person  
9 making the request to enter an exhibit explains how the  
10 proposed exhibit is relevant, the good cause that justifies  
11 allowing the exhibit into the record, including an  
12 explanation of why the requester did not file the exhibit  
13 prior to the hearing, pursuant to Subtitle Y 206, and how the  
14 proposed exhibit would not unreasonably prejudice any party.

15           The order of procedure for special exceptions and  
16 variances, pursuant to Subtitle Y, Section 409, will be as  
17 follows. Preliminary procedural matters, statement of the  
18 applicant and the applicant's witnesses, report and  
19 recommendation from the Office of Planning, from the D.C.  
20 Office of Planning, reports and recommendations from other  
21 public agencies, reports and recommendations from the  
22 affected ANC, Advisory Neighborhood Commission, and the ANC's  
23 witnesses, if any, for the area within which the property is  
24 located, parties in opposition to the applications,  
25 individuals and organization representatives in support of

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1 the applications, parties in opposition to the application,  
2 individuals and organizations representatives in opposition  
3 to the application, individuals and organization  
4 representatives who are undeclared with respect to the  
5 application, rebuttal and closing statement by the applicant.

6 Pursuant to Subtitle Y, Sections 408.2 and 408.3 --  
7 excuse me -- the following time constraints shall be  
8 maintained. The applicant, appellant, and all the parties,  
9 except an affected ANC in support, including witnesses,  
10 exclusive of cross-examination, maximum of 60 minutes,  
11 collectively.

12 The appellee, persons and parties, except an affected  
13 ANC in opposition, including witnesses, collectively have an  
14 amount of time equal to that of the applicant and parties in  
15 support. But in no case, more than 60 minutes, collectively.  
16 Individuals, maximum of three minutes. Organization  
17 representatives, maximum of five minutes. These time  
18 constraints do not include cross-examination and/or questions  
19 from the Board.

20 Cross-examination of witnesses by the applicant or  
21 parties, including the ANC, is permitted. The ANC within  
22 which the property is located is automatically a party in a  
23 special exceptional variance case. Nothing prohibits the  
24 Board from placing reasonable restrictions on cross-  
25 examination, including time limits and limitations on the

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1 scope of cross-examination, pursuant to Subtitle Y, Section  
2 408.5.

3 At the conclusion of each case, an individual who  
4 wasn't able to testify because of technical issues may file  
5 a request for leave to file a written version of the planned  
6 testimony to the record, within 24 hours following the  
7 conclusion of public testimony in the hearing.

8 If additional written testimony is accepted, then  
9 parties will be allowed a reasonable time to respond, as  
10 determined by the Board. The Board will then make its  
11 decision at its next meeting session, but no earlier than 48  
12 hours after the hearing.

13 Moreover, the Board may request additional specific  
14 information to complete the record. The Board and the staff  
15 will specify at the end of the hearing exactly what is  
16 expected, and the date when persons must submit the evidence  
17 to the Office of Zoning. No other information shall be  
18 accepted by the Board.

19 Once again, after the Board adjourns the hearing, the  
20 Office of Zoning, in consultation with me, will determine  
21 whether a full or summary order may issue. A full order is  
22 required when the decision it contains is adverse to a party,  
23 including an affected ANC. A full order may also be needed  
24 if the Board's decision differs from the Office of Planning's  
25 recommendation. Although the Board favors the use of summary

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1 orders whenever possible, an applicant may not request the  
2 Board to issue such an order.

3           Finally, the District of Columbia Administrative  
4 Procedure Act requires that the public hearing on each case  
5 be held in the open, before the public. However, pursuant  
6 to Sections 405(b) and 406 of that act, the Board may,  
7 consistent with its rules of procedure in the act, enter into  
8 a closed meeting on a case for purposes of seeking legal  
9 counsel on a case, pursuant to D.C. Counsel -- pursuant to  
10 D.C. Official Code Section 2575(b)(4), and/or deliberating  
11 on a case, pursuant to D.C. Official Code Section  
12 2575(b)(13), but only after providing the necessary public  
13 notice and, in the case of an emergency closed meeting, after  
14 taking a roll call vote. Mr. Secretary, do we have any  
15 preliminary matters?

16           MR. MOY: Good morning, Madam Vice Chair. We do.  
17 Number one, as has been customary, I think it's more  
18 efficient to address the preliminary matters when I call a  
19 case. Other than that, for the cases that were originally  
20 scheduled on today's docket, I'd like to present or state the  
21 status of those cases.

22           We have two cases that have been withdrawn by the  
23 applicant. These two cases are 20625, this is the  
24 application of Wasima Rahman and Marc Garret, withdrawn by  
25 applicant. And the second withdrawn case is 20610. This is

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1 the application of Dickinson Miller and Katie Zieglar.

2 Finally, we have two cases that were granted  
3 continuances and rescheduled. These two are 20606,  
4 application of Christopher Brown, rescheduled to March 30th,  
5 2022. And finally, 20602, the application of Azeb Gabriel  
6 and Aimaz -- I think, A-I-M-A-Z -- Gabriel, granted  
7 continuance until April 27th, 2022. And that's it for my  
8 statement this morning, Madam Vice Chair.

9 VICE CHAIR JOHN: Okay. Thank you, Mr. Moy. So let's  
10 proceed with the meeting agenda.

11 MR. MOY: Okay. In the Board's decision-making  
12 session, there were two appeals and one expedited review  
13 case.

14 So the first before the Board is, pursuant to Subtitle  
15 X, Section 1100, the appeal from the decisions made on June  
16 11th, 2021, by the Zoning Administrator, Department of  
17 Consumer and Regulatory Affairs, concerning requisite  
18 conditions of a Planned Unit Development, approved by Zoning  
19 Commission Case Number 16-05, in the MU-9 zone. And the  
20 property's located at 500 through 530 Morse Street,  
21 Northeast, Square 3591, Lots 2, 7, 1, 29/105. And this is  
22 Appeal Number 20580 of NL 1271 5th Street, LLC.

23 And as the Board will recall, you last heard this  
24 appeal testimony and closed the record on January 26th, 2022.  
25 Participating is Vice Chair John, Mr. Blake, Mr. Smith, and

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1 Zoning Commission Chair Anthony Hood.

2 VICE CHAIR JOHN: Thank you. So are we ready to  
3 deliberate? I guess we are. So I will just start for a  
4 couple minutes, and ask everyone to add their thoughts.

5 This was a very lengthy hearing, and I believe the  
6 record is full. So I just have a couple observations that,  
7 essentially, the appellant wanted the Board to interpret the  
8 PUD Condition 5(a), and basically, claimed that the Zoning  
9 Administrator -- the Zoning Administrator's actions was  
10 erroneous, because it essentially did not change the PUD  
11 order.

12 And so I agree with the applicant that -- the  
13 appellant that the Administrator -- I'm sorry. I agree with  
14 the property owner that the Administrator did not improperly  
15 interpret the Condition 5(a). And I believe the property  
16 owner had a very good slide that responded to the appellant's  
17 arguments.

18 And, essentially, the appellant did not like the  
19 conditions of the PUD order, and so would require the ZA to  
20 approve the terms of the easement, or that it would -- or  
21 that the ZA would determine that the easement satisfied the  
22 intent of the PUD. That was a big contention, that the  
23 Administrator did not properly look at the intent of the PUD,  
24 or did not provide specific terms that should be included in  
25 the easement.

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1           And the other contention was that the ZA should've  
2 given consideration to whether or not the property owners in  
3 the block approved the terms of the easement, or that the PUD  
4 did not properly identify who was the owner, that the  
5 property owner should've consulted with DDOT, in terms -- to  
6 approve the terms of the easement, and several other issues  
7 which really were not relevant, and did not specifically  
8 affect Condition 5(a).

9           But the most important thing is that the PUD, by its  
10 terms, did not authorize the ZA to interpret the condition.  
11 The ZA simply had to look at the conditions described in  
12 Condition 5(a), and decide whether those conditions had been  
13 satisfied, and then issue the certificate of occupancy, which  
14 is what the Zoning Administrator did. So I did not see any  
15 error on the part of the Administrator, and I would like to  
16 hear what other Board members think.

17           (No response.)

18           VICE CHAIR JOHN: Hello? Hello?

19           MEMBER BLAKE: Yes, Madam Vice Chair.

20           VICE CHAIR JOHN: Can you hear me?

21           ZC CHAIR HOOD: Yes, we can hear you.

22           MEMBER BLAKE: Yes, Madam Vice Chair. I can say  
23 something. Please excuse my voice. I'm a little bit under  
24 the weather.

25           You know, in meeting the burden of proof, the

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1 applicant must show that the decision of the Zoning  
2 Administrator was clearly erroneous or inconsistent with the  
3 zoning regulations. And in reviewing this case, I don't  
4 think the appellant has identified any particular provisions  
5 of the PUD order which these easements violated.

6 The easements, from what we saw, and the way the order  
7 reviewed it, complied with the conditions of (a)(5) on the  
8 plain language. That is not interpreting it, the meaning of  
9 that, or the entire order, but actually the conditions in  
10 plain language of the conditions of (a)(5).

11 For that reason, as we're looking at the language  
12 versus the intent, as I see it, the appellant made an  
13 argument that the ZA's interpretation of the plain language  
14 of the conditions in the order, detailed in (a)(5), versus  
15 the interpretation of the intent, while the arguments that  
16 the appellant made regarding customary standard practice, as  
17 it relates to these terms, are not unreasonable, and DDOT's  
18 commentary was noted of the appellant, and the terms that  
19 were proposed by the appellant are not mandated by the ZC's  
20 order in 16-05 or required by the zoning regulations.

21 The appellant did not identify any particular  
22 provisions, again, of the PUD order which these easements  
23 have violated, and the appellant has not demonstrated that  
24 the easements failed to comply with any conditions of the PUD  
25 order. For these reasons, I believe the appellant has not

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1 demonstrated that the ZA's decision was clearly erroneous or  
2 inconsistent with the zoning regulations. And I believe the  
3 appeal should be denied.

4 VICE CHAIR JOHN: Thank you, Board Member Blake.  
5 Commissioner Hood?

6 ZC CHAIR HOOD: Madam Chair, if you don't mind, I  
7 would let Board Member Smith -- I would always like to go --

8 VICE CHAIR JOHN: Okay. Thank you. Board Member  
9 Smith?

10 MEMBER SMITH: I agree with the opinions stated by  
11 you, Chair John, and Mr. Blake. You know, like you said,  
12 this is a full record. And based on the information that's  
13 in the record, and the testimony that was provided at the  
14 hearing last week, I do believe that the appellant hasn't  
15 made a strong argument for us to be able to support this  
16 particular appeal.

17 The Zoning Administrator was not, in my interpretation  
18 and my reading of it, and based on the testimony, the Zoning  
19 Administrator was not required to study and ascertain the  
20 intent of the condition, based on good and sound real estate  
21 principles that we heard from the appellant. His purpose is  
22 to ascertain and interpret the plain language of the  
23 condition.

24 The condition as written does not provide explicit  
25 details and require width, details outlining costs, length

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1 of term, and require the Zoning Administrator to have a  
2 discussion with each member, each property owner, adjacent  
3 to this private alley.

4           The plain language is clear. It says that it requires  
5 L Corp to construct an alley that may be shared by the  
6 adjacent property owners, which L Corp did. It constructed  
7 an alley under the terms of Condition 5(a), and the Zoning  
8 Administrator acted in an appropriate manner to accept the  
9 recorded easement.

10           So there was also a question that arose about who  
11 would validate if the intent of the condition was met. And  
12 again, unless it was explicitly stated within the plain  
13 language of the condition, the Zoning Administrator is solely  
14 vested with this determination, not DDOT. DDOT was not  
15 vested with that determination, as written in Condition 5(a).

16           We can make an argument that this type of condition,  
17 being that this private alley arrangement was requested by --  
18 that was requested by DDOT, that it should be reviewed by  
19 DDOT. But again, that is not within the plain language of  
20 the condition, and the Zoning Administrator is fully vested  
21 in that.

22           So I do not believe that the Zoning Administrator  
23 erred in their decision to accept the easement and release  
24 the certificate of occupancy. And I support the position of  
25 the property owner to deny this request.

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1 VICE CHAIR JOHN: Thank you, Board Member Smith. So  
2 that leaves you, Commissioner Hood.

3 ZC CHAIR HOOD: Thank you, Madam Chair. And I always  
4 like for the Board to go first, especially in this situation.  
5 Consider myself contaminated, to a point, because I have  
6 dealt with this previously, and had -- what I had -- so I  
7 have some personal views to get along -- a distinction. And  
8 I think the ZA's interpretation, I think, should --

9 MR. YOUNG: Commissioner Hood? Your sound is pretty  
10 low.

11 ZC CHAIR HOOD: Okay. Hold on one second. Let me see  
12 if I can fix it. Thanks. See if I can -- oh, what about  
13 now?

14 MR. YOUNG: Perfect.

15 ZC CHAIR HOOD: I am tech-savvy.

16 MR. YOUNG: Yes, you are.

17 ZC CHAIR HOOD: Do I need to start all over? I guess  
18 I do. Again, Madam Chair, as I was stating, I usually like  
19 to go last, because in this case, I believe I am  
20 contaminated, to a point.

21 Even though I look at the letter of the law, I would  
22 agree with my colleagues. I think that the Zoning  
23 Administrator did his due diligence. As I stated in the  
24 proceedings, he has a tough job. When I went back and looked  
25 at Subtitle A 302.2, Compliance with Conditions and Orders,

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1 I think, (a)(5), I think he executed the best.

2 But I also am a firm believer that the property owners  
3 all knew what they were getting into, as far as easements,  
4 and I think L Corp and others who were involved made it work.  
5 It would be nice if they could get along, but I think in some  
6 other form.

7 They were making -- for the zoning process, I think  
8 that the Zoning Administrator followed to a tee (a)(5). I  
9 don't know how more explicit the PUD order and condition  
10 could've been enforced. I think he did his due diligence,  
11 he did his job. It's just unfortunate that it might not be  
12 particularly likeable to some of the other parties.

13 And I also believe that this is more of a business  
14 decision, and it's not within the zoning regulations for the  
15 ZA to interpret business decisions. That's where I fall.  
16 I would still -- I still convey, as I did even in another  
17 hearing proceeding, that the organizations work together to  
18 make it work for -- because it's a win-win for not just them,  
19 but for the community. So that's all I have, Madam Chair,  
20 and thank you.

21 VICE CHAIR JOHN: Thank you, Commissioner Hood. And  
22 so based on this discussion, I will make a motion to deny  
23 Appeal Number 20580, as read and captioned by the secretary,  
24 and ask for a roll call. Oh, Mr. Board Member Smith, would  
25 you second the motion, please?

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1 MEMBER SMITH: Second.

2 VICE CHAIR JOHN: And Mr. Moy, would you take a roll  
3 call?

4 MR. MOY: When I call each of your names, if you would  
5 please respond with a yes, no, or abstain, to the motion made  
6 by Vice Chair John to deny the appeal, Appeal Number 20580?  
7 A motion to deny was granted -- or rather, seconded by Mr.  
8 Smith. Mr. Blake?

9 MEMBER BLAKE: Yes.

10 MR. MOY: Mr. Smith?

11 MEMBER BLAKE: Yes.

12 MR. MOY: Vice Chair John?

13 VICE CHAIR JOHN: Yes.

14 MR. MOY: Zoning Commission Chair Anthony Hood?

15 ZC CHAIR HOOD: Yes.

16 MR. MOY: And we have no other Board members  
17 participating today, Madam Vice Chair. Staff would record  
18 the vote as four to zero to one. And this is on the motion  
19 made by Vice Chair John to deny, second by Mr. Smith. Also  
20 in support of the motion to deny is Mr. Blake and Zoning  
21 Commission Chair Anthony Hood. Again, the motion passes on  
22 a vote of four to zero to one.

23 VICE CHAIR JOHN: Thank you, Mr. Moy. Can you call  
24 the next case, please?

25 MR. MOY: The next case for decision-making is Appeal

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1 Number 20572, of St. Vincent's Home School. This is a  
2 request for appeal, of St. Vincent's Home School, regarding  
3 the Zoning Administrator's determination dated June 24th,  
4 2021, regarding off-street parking requirements of Zoning  
5 Commission Order Number 66 through -- or rather, 66-68, and  
6 BZA Order Number 10035 for the Edgewood Commons campus,  
7 including the Edgewood IV -- Roman Numeral IV -- Building at  
8 Square 3630, Lots 2, 5, 803, 805, 807, and 810 through 813,  
9 with street addresses of 401 through 425, 601, 611, 615, and  
10 635 Edgewood Street, Northeast -- excuse me -- in the RA-4  
11 zone.

12 The merits were heard by the Board at its last hearing  
13 on January 26th, 2022. And the Board had closed the record.  
14 Participating is Vice Chair John, Mr. Blake, Mr. Smith, and  
15 Zoning Commission Chair Anthony Hood.

16 VICE CHAIR JOHN: Thank you, Mr. Moy. So at the  
17 hearing on this appeal, the Board heard testimony on two  
18 motions to dismiss, filed by DCRA and the property owner.  
19 The Board did not decide on the motions at that time, but  
20 deferred a decision until after the full hearing. And the  
21 facts of the two motions are interrelated and involved. Lack  
22 of jurisdiction, standing, and timeliness.

23 So with respect to jurisdiction, I believe that the  
24 Board has jurisdiction, because the June 4 letter is an  
25 appealable final decision. And the ZA stated that it was a

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1 final decision, and in that letter, confirmed that the  
2 parking requirement was established in the PUD, and that the  
3 ZA had no authority to change that requirement. So because  
4 the June 4th letter was a final decision, then the appeal was  
5 timely, because it was filed within the required time period.

6 And the issue of standing was a bit contentious.  
7 However, I believe that the appellant has standing, because  
8 he was aggrieved by the Zoning Administrator's decision to  
9 confirm the PUD requirement. And so I would like to hear  
10 from other Board members, and I propose that we decide the  
11 motions and then continue to a decision on the appeal itself.  
12 So Board Member Smith, would you like to continue?

13 MEMBER SMITH: I would like to not go first on this  
14 particular one.

15 VICE CHAIR JOHN: All right. Board Member Blake?

16 MEMBER BLAKE: Sure. Please excuse my voice again.  
17 I would agree with you, Madam Vice Chair, with regard to the  
18 issues you discussed, in terms of dismissing the case. I do  
19 not believe it should be dismissed, because I do believe that  
20 the zoning appeal meets the following requirements of Y 302.

21 As you pointed out, the appellant is aggrieved by the  
22 ZA's decision, in that it sets the PUD at 423, which is a  
23 number which they wanted, they said, at 132. So it's clearly  
24 a statement that impacts them. The decision also had -- the  
25 letter also did not have a disclaimer that said it was not

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1 a final decision, and it said, close the matter. So for that  
2 reason, I do believe the June 4th letter is appropriate.

3 It was the first writing to, actually, the appellant,  
4 in response. Typically, the applicant who is doing the  
5 project is the one asks for the appeal. In this case, there  
6 was -- the appellant puts in for a letter of determination.

7 In this case, there was this party, who has a space  
8 well-applied, that requested the information from the ZA, and  
9 the ZA did respond in this first writing. It did reference  
10 the other writings, but this was the first writing. So  
11 therefore, it can be, as you pointed out also, very timely.  
12 So in that case, I would not support dismissal.

13 VICE CHAIR JOHN: Thank you. Thank you, Board Member  
14 Blake. Okay. So who is next? Commissioner Hood or --

15 MEMBER SMITH: I'll return back.

16 VICE CHAIR JOHN: Okay. Thank you.

17 MEMBER SMITH: Back to my notes. Sorry, the system I  
18 was using was messing up. So I agree with both you and Mr.  
19 Blake. I do believe that the request, perforce, wasn't  
20 timely. I recognize that the second letter, the June 4th  
21 letter, does reference back to the March letter, but I do  
22 believe that the June 4th letter is the first writing from  
23 the Zoning Administrator to the appellant, on this particular  
24 matter, about required parking spaces.

25 The Zoning Administrator, as Board Member Blake

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1 stated, did state back to the appellant that they would be  
2 required -- that the property owner would be required -- the  
3 enterprise, in this case, would be required to maintain 423  
4 parking spaces, as specified within the Zoning Commission's  
5 Order 66-68(a). So I do believe that the request was timely.  
6 So I do support the motion to dismiss that argument.

7 VICE CHAIR JOHN: Okay. Thank you. Commissioner  
8 Hood?

9 ZC CHAIR HOOD: Yes, Your Honor, Madam Chair. I don't  
10 have any additional -- I'm not sure everybody can hear me --  
11 comments on that particular -- letter's relevant. And I  
12 think we're ready -- I would be supportive of going ahead and  
13 proceeding on the merits of this appeal.

14 VICE CHAIR JOHN: Okay. So I'd just like to make a  
15 motion, then, to dismiss -- no, deny the motions to dismiss,  
16 filed by DCRA and the property owner, and ask for a second.  
17 Board Member Blake?

18 MEMBER BLAKE: Second.

19 VICE CHAIR JOHN: Mr. Moy, would you please take a  
20 roll call? Mr. Moy?

21 MR. MOY: Thank you, Madam Vice Chair. When I call  
22 each of your names, if you would please respond with a yes,  
23 no, or abstain, to the motion made by Vice Chair John to deny  
24 the two motions to dismiss? The motion to deny was seconded  
25 by Mr. Blake. Mr. Smith?

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1 MEMBER SMITH: Yes.

2 MR. MOY: Mr. Blake?

3 MEMBER BLAKE: Yes.

4 MR. MOY: Vice Chair John?

5 VICE CHAIR JOHN: Yes.

6 MR. MOY: Zoning Commission Chair Anthony Hood?

7 ZC CHAIR HOOD: Yes.

8 MR. MOY: And we have a Board member not participating  
9 today, Madam Vice Chair. Staff would record the vote as four  
10 to zero to one, and this is on the motion made by Vice Chair  
11 John to deny the motions to dismiss -- both the motions to  
12 dismiss. This motion to dismiss -- or deny was second by Mr.  
13 Blake. Also in support of the motion to deny is Mr. Smith  
14 and Zoning Commission Chair Anthony Hood. Motion carries on  
15 a vote of four to zero to one.

16 VICE CHAIR JOHN: Thank you. So if we can proceed  
17 with the case itself, the appeal itself? So I'll give a few  
18 thoughts, and then ask for everyone to chime in.

19 So the main issue here is whether the ZA erred in  
20 something that the ZA said in that June 4 letter, which is  
21 the appealable decision. And even though the June 4th letter  
22 referred to the March 29th letter, basically, the ZA said the  
23 requirement in the PUD remains in effect.

24 In other words, the Zoning Commission has the  
25 authority to state what the parking requirement is. And the

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1 second PUD did not change that requirement, and therefore,  
2 the parking requirement was unchanged. So I don't believe  
3 that there was any error by the ZA. It's not a very  
4 complicated issue, even though it took quite a while to get  
5 through the hearing.

6 And basically, the ZA cannot alter the terms of the  
7 PUD, unless the Commission provided authority in the PUD for  
8 the ZA to make some change. And there was no such authority.  
9 The PUD controls what the parking requirement is. So I would  
10 like to hear what others think, before we take the roll call.  
11 Board Member Blake, would you like to start?

12 MEMBER BLAKE: Sure, Madam Chair. I would agree that,  
13 first of all, the Zoning Administrator, as I believe, did not  
14 commit an error in his interpretation of the June 4th letter,  
15 but more or less reflected the requirements that were  
16 stipulated by -- answered, in fact -- most of the questions  
17 that were asked in that letter from the appellant -- from the  
18 appellant's attorney to the Zoning Administrator were  
19 answered by simply stating, refer to the Zoning Commission's  
20 report and number, to answer those questions.

21 Some of those questions that were asked there did  
22 essentially ask the Zoning Administrator to establish certain  
23 numbers, and to confirm the parking establishment under the  
24 current zoning regulations. As we know, the zoning  
25 regulations can only be established in this particular LSPD,

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1 or can only be established by the Zoning Commission, and  
2 therefore, the Zoning Administrator doesn't have the ability  
3 to do that, regardless of what the regulations were at the  
4 time, whether ZR-58, or under ZR-16, having changed.

5 It may in fact require less parking today, but it has  
6 to -- it will not require less parking until the Zoning  
7 Commission says so. And the Zoning Commissioner does not --  
8 the Zoning Administrator certainly doesn't have the authority  
9 to do that.

10 So the other thing that he did indicate was that there  
11 was a requirement for a certain number of spaces established  
12 in the PUD, and that part of that was, the easement was part  
13 of that requirement, and that until the parking requirement  
14 is changed by the Zoning Commission, it would still be  
15 required to maintain whatever number of spaces it is.

16 And we certainly acknowledge that the number of spaces  
17 initially designed for the LSPD, PUD, was certainly more than  
18 what we have. It was 554. But it also was expecting to be  
19 a greater number of units built -- I think 1,153 -- and also  
20 some other ancillary projects that may not have actually been  
21 done. We do know how many were actually done, which were,  
22 you know, 792 units, and there were 423 spaces. So with  
23 that, I believe that the Zoning Administrator did not err in  
24 anything, and would be positioned to deny the appeal request.

25 VICE CHAIR JOHN: Okay. Thank you, Board Member

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1 Blake. Who would like to go next? Board Member Smith?

2 MEMBER SMITH: Sure, I'll go next. I really don't  
3 have too much more to add on this. I agree with both of you.  
4 The predominant issue for us is if the Zoning Administrator  
5 erred in his decision in his June 4th letter, which, again,  
6 referred to the March letter, which -- I don't believe that  
7 the Zoning Administrator erred in his interpretation.

8 He merely was stating the parking requirements exist,  
9 or that the parking requirements that were stipulated in the  
10 original LSPD order remain in effect, because the Zoning  
11 Commission did not modify -- or the applicant did request --  
12 the Zoning Commission did not modify that with Enterprise's  
13 request for a modification of significance to that original  
14 order.

15 That modification of significance only related to the  
16 construction of an additional building. There was no request  
17 to modify their parking down to a lesser number than what the  
18 original order required, which, as Mr. Blake stated, was 554.  
19 And that, again, was based on a larger unit count at the  
20 site, that didn't occur in the past, you know, 50, almost 60  
21 years, in this case. So with that, I do not believe that the  
22 Zoning Administrator erred, and I wouldn't support the  
23 position of the property owner, Enterprise.

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

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1           ZC CHAIR HOOD: Thank you, Madam Chair. First, let me  
2 just say, I agree with everything I heard. And I can always  
3 go first, but I like to hear from the Board members. You all  
4 are here every week, you do this all the time. But I can  
5 always go first, but I want to be respectful of everyone, to  
6 make sure -- any time you want me to go first, I will, now.  
7 No problem.

8           But I do want to say -- I do want to say this. I  
9 appreciate the way you, Madam Chair, Board Member Blake, and  
10 Board Member Smith framed it, because you all are exactly  
11 right. The Zoning Commission -- when we did a modification,  
12 or any modification in the Commission, it does not -- if  
13 that's not included in the modification, it's not considered.  
14 So whatever stands prior to that is still in -- is still in  
15 effect. So I think the ZA did not err.

16           And for me, there's -- if you have a problem with the  
17 process -- and they know this. I think the appellant knows  
18 there's another process you can do, to get this resolved.  
19 So in this situation, I will uphold what the ZA has done.  
20 I think the ZA has done exactly what the Zoning Commission  
21 has always looked to him to do. And I think there's no short  
22 of what his job is.

23           I know he has a tough job. I say that all the time.  
24 I'm critical, sometimes, of him. But I think in this  
25 particular case, the appellant knows exactly what they need

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1 to do if they have issues with the parties. So I think you  
2 all framed it right. The modification is just on what was  
3 modified. Everything else stays in effect. So thank you,  
4 Madam Chair.

5 VICE CHAIR JOHN: Thank you, Commissioner Hood. So  
6 based on this discussion, I will make a motion to deny Appeal  
7 Number 20572, as captioned and read by the secretary, and ask  
8 for a second. Mr. Blake?

9 MEMBER BLAKE: Second.

10 VICE CHAIR JOHN: Thank you. Mr. Moy, would you  
11 please take the roll call?

12 MR. MOY: Yes. When I call each of your names, if you  
13 would please respond with a yes, no, or abstain, to the  
14 motion made by Vice Chair John to deny Appeal Number 20572?  
15 The motion was second by Mr. Blake. Mr. Smith?

16 MEMBER SMITH: Yes, to deny.

17 MR. MOY: Mr. Blake?

18 MEMBER BLAKE: Yes.

19 MR. MOY: Vice Chair John?

20 VICE CHAIR JOHN: Yes.

21 MR. MOY: Zoning Commission Chair Anthony Hood?

22 ZC CHAIR HOOD: Yes.

23 MR. MOY: We have a Board member not participating,  
24 not present. Staff would record the vote as four to zero to  
25 one. And this is on the motion made by Vice Chair John to

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1 deny. It was second by Mr. Blake. Also in support of the  
2 motion to deny is Mr. Smith and Zoning Commission Chair  
3 Anthony Hood. Motion carries, Madam Vice Chair, on a vote  
4 of four to zero to one.

5 VICE CHAIR JOHN: Thank you, Mr. Moy.

6 ZC CHAIR HOOD: Madam Chair, I think that's it for me.  
7 You all enjoy your day. Treat Commissioner Imamura nice so  
8 he'll come back. And Board Member Blake, I hope you feel  
9 better. You all take care.

10 VICE CHAIR JOHN: Thank you, Commissioner Hood.

11 MEMBER BLAKE: Thank you, sir.

12 VICE CHAIR JOHN: Thank you. Okay. So Mr. Moy,  
13 please call the next case when you're ready.

14 MR. MOY: All right. This is the last case before the  
15 Board in its decision-making session. And it is an expedited  
16 review case. Application Number 20621, of Ben Hamlin.

17 This is a request for special exception from the rear  
18 addition requirements, Subtitle E, Section 205.4, pursuant  
19 to Subtitle E, Section 205.5, Subtitle E, Section 5201, and  
20 Subtitle X, Section 902.1. This would construct a two-story  
21 rear addition to an existing attached two-story with cellar  
22 principal dwelling unit, RF-1 zone, property located at 43  
23 V Street, Northwest, Square 3118, Lot 84.

24 VICE CHAIR JOHN: Thank you, Mr. Moy. So this is a  
25 fairly straightforward case, and I didn't have a lot of

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1 issues or concerns about it. The applicant is seeking to add  
2 17 feet on the first floor of the building, which is seven  
3 feet more than what is allowed as a matter of right. On the  
4 second floor, the addition would extend 14 feet. And apart  
5 from this request, the application meets all other  
6 development standards.

7 OP noted that there is some shadow on the neighbor at  
8 45 V Street, and noted that that owner is in support. In  
9 looking at the rear yard, I would note that it is 70 feet,  
10 which is more than what is allowed -- what is required under  
11 the regulation, and in my view, allows, you know, enough  
12 light and air to the neighboring properties. So I would be  
13 in support of this application, and would ask to hear from  
14 others. Board Member Blake, would you like to go ahead?

15 MEMBER BLAKE: Sure, Madam Vice Chair. I would agree  
16 that this is a fairly straightforward case, and based on the  
17 evidence presented in the record, I believe the applicant has  
18 met the burden of proof, and should be granted relief.

19 As it relates to the specific standards of Conditions  
20 E 5201, I don't see a detrimental -- or, I should say, an  
21 unduly affected impact on light and air. The privacy and  
22 enjoyment should also not be unduly compromised, as this is  
23 a fairly large rear yard, and there are no windows facing the  
24 adjacent properties from the rear.

25 In addition to that, there should not be substantial

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1 visual intrusion upon the character and scale of the house,  
2 because the proposed height, scale, and design, when viewed  
3 from the street, are consistent with the prevailing character  
4 of the rear, and should be separated by a large public alley  
5 with the 74-foot rear yard. Also, in the general standards,  
6 I think, also, having met these conditions, is permitted use.

7           The only area of concern I have, in looking at this,  
8 is that we did not get, I believe, a letter from the ANC.  
9 In that regard, I do notice that the BZA did provide a notice  
10 of referrals. There is an affidavit of maintenance posted,  
11 and there are letters of support from the neighbors, and  
12 there's no opposition. So in that regard, I would be  
13 comfortable supporting this, even without the ANC's input.

14           VICE CHAIR JOHN: Thank you, Board Member Blake.  
15 Board Member Smith?

16           MEMBER SMITH: Sure. I agree with the position of  
17 both of you that this is a fairly straightforward case. And  
18 I believe that the applicant has met the burden of proof for  
19 us to be able to grant special exception from Subtitle E  
20 5201.

21           And looking at standards under 5201.4, just as Mr.  
22 Blake stated, I do believe that the proposed addition would  
23 not significantly impair the light and air available to  
24 neighboring properties, based on the size and scale of the  
25 proposed addition. The privacy and use and enjoyment of

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1 neighboring property should not be unduly compromised, based  
2 on, again, size and scale of the addition, as presented  
3 within the record.

4 I do believe that, you know, just -- I'm going to sum  
5 it up here. The proposed addition, I believe, is in  
6 character with the adjacent -- with the prevailing character  
7 that we see along that block, in looking at images along the  
8 street. And I do believe that the applicant would meet the  
9 general special exception standards. It would be in harmony  
10 with the general purpose and intent of the zoning regulations  
11 and zoning maps, and would not tend to adversely affect the  
12 adjacent property owners, because the size and scale of this  
13 addition is very comparable to what we typically see here.

14 So with that, yeah, like Mr. Blake stated, while we  
15 didn't get a letter from the ANC, we did get letters in  
16 support from the adjacent property owners, so they're fairly  
17 comfortable with this proposed addition by their neighbors.  
18 So with that, I'll support the special exception.

19 VICE CHAIR JOHN: Thank you, Board Member Smith. And  
20 Dr. Imamura?

21 COMMISSIONER IMAMURA: Thank you, Madam Vice Chair.  
22 It's nice to follow behind my esteemed colleagues, Board  
23 Member Blake and Board Member Smith, as they so eloquently  
24 and thoroughly described the merits of this case. So I don't  
25 think I have anything additional to add.

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1 I did note that the applicant provided a shadow study,  
2 though didn't provide it for each season. But as both Board  
3 Member Smith and Board Member Blake both stated, that the  
4 proposed addition wouldn't unduly compromise the privacy and  
5 enjoyment of the neighboring properties. And again, as they  
6 stated, that the Board Members in the record -- for support  
7 of this.

8 I did note that it is four feet beyond the furthest  
9 point on 41 V Street. So it is the only addition along that  
10 block that protrudes the furthest into the property. But  
11 otherwise, I think that I'm in support of it.

12 VICE CHAIR JOHN: Thank you. Thank you, Dr. Imamura.  
13 Am I pronouncing your name correctly?

14 COMMISSIONER IMAMURA: Yes, Madam Vice Chair. You're  
15 doing a great job.

16 VICE CHAIR JOHN: Okay. Thank you. Didn't want to  
17 butcher it.

18 COMMISSIONER IMAMURA: Not at all.

19 VICE CHAIR JOHN: So based on this discussion, I will  
20 ask for a motion to -- I will make a motion to approve  
21 Application Number 20621, as captioned and read by the  
22 secretary, and ask for a second. Mr. Blake?

23 MEMBER BLAKE: Second.

24 VICE CHAIR JOHN: Mr. Moy?

25 MR. MOY: Yes. When I call each of your names, if you

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1 would please respond with a yes, no, or abstain, to the  
2 motion made by Vice Chair John to approve the application for  
3 the relief requested? This motion to approve was second by  
4 Mr. Blake. Mr. Smith?

5 MEMBER SMITH: Yes.

6 MR. MOY: Mr. Blake?

7 MEMBER BLAKE: Yes.

8 MR. MOY: Vice Chair John?

9 VICE CHAIR JOHN: Yes.

10 MR. MOY: Dr. Imamura?

11 COMMISSIONER IMAMURA: Yes.

12 MR. MOY: And we have a Board member not present.  
13 Staff would record the vote as four to zero to one. And this  
14 is on the motion made by Vice Chair John to approve, second  
15 by Mr. Blake. Also in support of the motion to approve is  
16 Mr. Smith and Dr. Imamura, Zoning Commission Member. And the  
17 motion carries, Madam Vice Chair, on a vote of four to zero  
18 to one.

19 VICE CHAIR JOHN: Thank you, Mr. Moy. And so it's  
20 10:29, and the Board will take a five-minute break. We have  
21 a Board member who is leaving at, I believe, 11:00. So he  
22 will read into the record, in case he misses anything of  
23 substance. He will read into the record, period. Thank you.

24 (Whereupon, the above-entitled matter went off the  
25 record at 10:29 a.m.)

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In the matter of: Public Meeting

Before: DC BZA

Date: 02-02-22

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