

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY

FEBRUARY 16, 2022

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice at 9:30 a.m. EST, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

- ROBERT MILLER, Zoning Commissioner
- JOSEPH IMAMURA, Architect of the Capitol Designee

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary
- PAUL YOUNG, Audio Visual Specialist

## OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS  
STEPHEN COCHRAN  
BRANDICE ELLIOTT  
ANNE FOTHERGILL  
MATT JESICK  
JONATHAN KIRSCHENBAUM  
STEPHEN MORDFIN  
KAREN THOMAS  
ELISA VITALE

## D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from  
the Regular Public Meeting held on February 16, 2022.

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

9:34 a.m.

CHAIRPERSON HILL: Good morning, ladies and gentlemen, Board of Zoning Adjustment. Today's date is 2/16/2022. Public hearing will please come to order.

My name is Fred Hill. I'm the Chairperson of the District of Columbia Board of Zoning Adjustment. Joining me today is Lorna John, Vice Chair; and Board Members Carl Blake and Chrishaun Smith; Zoning Commissioner Rob Miller; and Dr. Imamura, who is attending one of the decision making session.

Today's meeting and hearing agendas are available to you on the Office of Zoning website.

Please be advised that this proceeding is being recorded by a court reporter and is also webcast live via Webex and You Tube Live. A video of the webcast will be available on the Office of Zoning's website after today's hearing. Accordingly, everyone who's listed on Webex or by telephone will be muted during the hearing.

Also please be advised that we do not take any public testimony in our decision meeting sessions. If you're experiencing difficulty accessing Webex or with your telephone call-in, please call our OZ hotline number (202) 727-5471 to receive Webex log-in or call-in instructions.

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

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

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

17 Once again, if you're experiencing difficulty,  
18 please call our hotline number at (202) 727-5471. It's also  
19 listed on your screen.

20 All persons planning to testify either in favor  
21 or in opposition should have signed up in advance. They will  
22 be called by name to testify. If this is an appeal, only  
23 parties are allowed to testify. By signing up to testify all  
24 participants completed the oath or affirmation as required  
25 by Subtitle Y § 408.7.

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1           Requests to enter evidence at the time of an  
2 online virtual hearing such as written testimony, additional  
3 supporting documents other than a live video, which may not  
4 be presented as part of the testimony, may be allowed  
5 pursuant to Subtitle Y § 103.13 provided that the persons  
6 making the request enter an exhibit except -- accept --  
7 explain: (A) how the proposed exhibit is relevant; (B) the  
8 good cause justifies allowing the exhibit into the record  
9 including an explanation of why the requester did not file  
10 the exhibit prior to the hearing pursuant to Y § 206 and how  
11 the proposed exhibit would not unreasonably prejudice any  
12 parties.

13           The order of procedures for special exceptions,  
14 variances -- I'm sorry, special exceptions and variances are  
15 listed in Y § 409. The order of appeals is listed in Y §  
16 507.

17           At the conclusion of each case an individual who  
18 is unable to testify because of technical issues may file a  
19 request for leave to file a written version of the planned  
20 testimony to the record within 24 hours following the  
21 conclusion of public testimony in the hearing. If additional  
22 written testimony is accepted, the parties will be allowed  
23 a reasonable time to respond as determined by the Board.

24           The Board will then makes it decision at its next  
25 meeting session, but no earlier than 48 hours after the

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1 hearing. Moreover, the Board may request additional  
2 information, specific information to complete the record.  
3 The Board and staff will specify at the end of each hearing  
4 exactly what's expected and the date when persons must submit  
5 the evidence to the Office of Zoning. No other information  
6 shall be accepted by the Board.

7 Finally, the District of Columbia Administrative  
8 Procedures Act requires that a public hearing on each case  
9 be held in the open before the public, however pursuant to  
10 § 405(b) and 406 of the act, the Board may, consistent with  
11 its rules of procedures and the act, enter into closed  
12 meetings on a case for purposes of seeking legal counsel  
13 pursuant to D.C. Official Code § 2-575(b)(4) and/or  
14 deliberate on a case pursuant to D.C. Official Code § 2-  
15 575(b)(13), but only after providing the necessary public  
16 notice in the case of an emergency closed meeting after  
17 taking a roll call vote.

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

19 SECRETARY MOY: Good morning, Mr. Chairman,  
20 Members of the Board. Yes, we do have a few preliminary  
21 matters, but the majority are more efficient if I call those  
22 matters when I call the case for efficiency for the Board  
23 proceedings. Other than that, I do want to announce for the  
24 record, for the transcript case applications that have been  
25 rescheduled to a future date.

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1           We have four cases that have been rescheduled to  
2 March 2nd, 2022 as follows: Application No. 20410 of Mama  
3 Lucia Chevy Chase, LLC; Application No. 20492 of 5116 PSRV,  
4 LLC; Application 20555 of Odessa Ford; and Application No.  
5 20630 of New Macedonia Baptist Church. These four cases  
6 rescheduled to March 2nd, 2022.

7           Finally, Case Application No. 20380 of Polygon  
8 Holdings, LLC was granted the request to continue and that  
9 date has been set for May 11th, 2022. And that's it from me,  
10 Mr. Chairman.

11           CHAIRPERSON HILL: Okay. Great.

12           All right. I'm actually not on our first decision  
13 case, which is 18701-E as in Edward, so I'm going to jump off  
14 and then come back after that one. And I'll turn over to  
15 Vice Chair John. Thank you.

16           VICE CHAIRPERSON JOHN: Thanks. Thank you,  
17 Chairman Hill. Good morning.

18           Mr. Moy?

19           SECRETARY MOY: Should I call the case?

20           VICE CHAIRPERSON JOHN: Yes, please.

21           SECRETARY MOY: All right. As the Chairman just  
22 said, this is before the Board in its -- the first case in  
23 its decision making session is Application No. 18701-E as in  
24 echo of 1247 ESE, LLC. This is a request for Modification  
25 of Significance from the use provisions to operate a

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1 restaurant on the first floor and cellar, of BZA Order No.  
2 18701-A, effective date was March 9th, 2014, pursuant to  
3 Subtitle Y § 704. And this is also a request for a time  
4 extension to extend BZA Order Nos. 18701 and 18701-A for an  
5 additional two years pursuant to Subtitle Y § 705.

6 This project includes general retail, service, and  
7 office uses in addition to the restaurant use within an  
8 existing semi-detached two-story with cellar, apartment house  
9 in the RF-1 zone. The property is at 1247 E Street, S.E.,  
10 Square 1019, Lot 0043. And this was last heard by the Board  
11 at its hearing on February 2nd, 2022.

12 Participating is Vice Chair John, Mr. Blake, Mr.  
13 Smith, and Zoning Commissioner, Dr. Joe Imamura.

14 VICE CHAIRPERSON JOHN: Thank you, Mr. Moy.

15 Are we ready to deliberate?

16 (No audible response.)

17 VICE CHAIRPERSON JOHN: I guess that's a yes. So  
18 I'll start. So as Mr. Moy mentioned, this is an application  
19 for Modification of Significance of a use variance approved  
20 by -- approved in BZA Orders 18701 and 18701-A to allow  
21 general retail, service, and office uses in addition to the  
22 restaurant use previously approved.

23 At the hearing the case was continued to allow the  
24 applicant to clarify that the applicant also seeks a two-year  
25 extension and confirmed that the approved variance for

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1 restaurant use applies to both the first floor and a portion  
2 of the cellar of the existing building.

3           The applicant also agreed to consult with the ANC  
4 on the new conditions for the basement area. And they  
5 reached an agreement and the conditions are in Exhibit 27.  
6 These conditions apply to retail and general service uses as  
7 specified in Subtitle U § 512(1)(k) and (l), office use under  
8 Subtitle U § 510(1) -- (1)(r), and the conditions for  
9 restaurant use approved in BZA Order 18701 would continue to  
10 apply.

11           The modification to allow service and retail and  
12 office use is term-limited to 12 years to allow the applicant  
13 enough time for a 10-year lease with 2 years to acquire  
14 tenants and build out the space.

15           I'm in support of the application and agree with  
16 OP's analysis of how the application meets the criteria for  
17 relief. I give great weight to ANC's report, or ANC's issues  
18 and concerns, and in particular its supplemental  
19 recommendation.

20           So I believe there's good cause for approving the  
21 Modification of Significance and the applicant has shown how  
22 the ongoing pandemic and adverse economic conditions have  
23 affected its ability to lease the existing restaurant space.

24           So I'd ask the Board to add any additional  
25 comments. And perhaps Mr. Blake would like to start?

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1 MEMBER BLAKE: Sure. Thank you, Vice Chair John.  
2 I agree with your analysis completely. I believe the  
3 applicant has provided reasonable justification to be granted  
4 the Modification of Significance, so I would be in support  
5 of that and the 12-year and the 2-year extension.

6 VICE CHAIRPERSON JOHN: Thank you.

7 And, Board Member Smith?

8 MEMBER SMITH: So I wasn't on this case, but I did  
9 read into it. I've been thoroughly briefed so I believe that  
10 I'm up to speed to be able to make a decision on this case.

11 I do agree with your analysis, Ms. John and Board  
12 Member Blake. I do believe that the applicant has met the  
13 burden of proof for us to be able to grant the special  
14 exception, so I give great weight to OP's staff report and  
15 I am in favor of the 12 -- the extensions mentioned by Board  
16 Member Blake.

17 VICE CHAIRPERSON JOHN: Thank you, Board Member  
18 Smith.

19 Dr. Imamura?

20 DR. IMAMURA: Thank you, Madam Vice Chair. I  
21 don't have anything further to add and am in agreement with  
22 your comments, Board Member Blake's, as well as Board Member  
23 Smith's. So I just want to make a comment that I appreciate  
24 how the applicant worked with the ANC. So I'm prepared to  
25 vote in favor.

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1 VICE CHAIRPERSON JOHN: Thank you.

2 So based on that discussion, I will make a motion  
3 to approve Application No. 18701-E as captioned and read by  
4 the Secretary and ask for a second.

5 Mr. Blake?

6 MEMBER BLAKE: Second.

7 VICE CHAIRPERSON JOHN: Thank you.

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

9 SECRETARY MOY: Yes. When I call each of your  
10 names, if you would please respond with a yes, no, or abstain  
11 to the motion made by Vice Chair John to approve the  
12 application for the relief requested. The motion to approve  
13 was seconded by Mr. Blake.

14 Zoning Commission Dr. Imamura?

15 DR. IMAMURA: Yes.

16 SECRETARY MOY: Mr. Smith?

17 MEMBER SMITH: Yes.

18 SECRETARY MOY: Mr. Blake?

19 MEMBER BLAKE: Yes.

20 SECRETARY MOY: Vice Chair John?

21 VICE CHAIRPERSON JOHN: Yes.

22 SECRETARY MOY: Before I give the final, Madam  
23 Chair, I don't mean to blindside you, but I believe the  
24 applicant had agreed to the conditions that were submitted  
25 by ANC 6B, so are you including that in the motion or am

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1 I --

2 VICE CHAIRPERSON JOHN: Yes. Yes.

3 SECRETARY MOY: -- second guessing you?

4 CHAIRPERSON HILL: Yes, Mr. Moy, they are included  
5 in the motion and you have not blindsided me. I skipped over  
6 that. So that conditions are contained in Exhibit 27.

7 SECRETARY MOY: Thank you, Madam Vice Chair.

8 CHAIRPERSON HILL: The motion will be modified  
9 then to include the conditions as well as the original  
10 conditions that existed in the previous order. And so I  
11 would ask unanimous consent to modify the motion as restated.

12 SECRETARY MOY: Thank you, Madam Vice Chair. Well  
13 said.

14 CHAIRPERSON HILL: Thank you, Mr. Moy. And --

15 SECRETARY MOY: So with that, there's no other  
16 Board Member participating on this vote.

17 CHAIRPERSON HILL: That's right.

18 SECRETARY MOY: So staff would record the vote as  
19 4 to 0 to 1. And again, this is on the motion made by Vice  
20 Chair John to grant. Mr. Blake seconded to motion to grant.  
21 Also in support of the motion to grant is Zoning Commissioner  
22 Dr. Joe Imamura, Mr. Smith, of course Mr. Blake and Vice  
23 Chair John. The motion carries on a vote of 4 to 0 to 1.

24 VICE CHAIRPERSON JOHN: Thank you.

25 And, Chairman Hill, I'll turn the hearing back

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1 over to you.

2 (No audible response.)

3 VICE CHAIRPERSON JOHN: Chairman Hill?

4 CHAIRPERSON HILL: Can you guys hear me?

5 VICE CHAIRPERSON JOHN: Yes.

6 CHAIRPERSON HILL: I don't have a video. I don't  
7 know what happened.

8 DR. IMAMURA: Mr. Chairman?

9 CHAIRPERSON HILL: Oh, there we go.

10 DR. IMAMURA: There you go.

11 All right. That concludes it for me, Mr.  
12 Chairman. And Vice Chair, thank you. I leave you in the  
13 capable hands of Vice Chair Miller.

14 VICE CHAIRPERSON JOHN: Thank you. Thank you, Dr.  
15 Imamura.

16 CHAIRPERSON HILL: Okay. We are going to lose I  
17 think Commissioner Miller at some point this afternoon around  
18 like 2:00, 2:30. So we'll try to do our best to get as many  
19 of them that we can in while he's with us and otherwise we'll  
20 just muddle on through as best we can. And if we need the  
21 Commissioner at some point, we can circle back around.

22 Mr. Moy, for decision if you could please call  
23 20589?

24 SECRETARY MOY: Yes, sir. Thank you, Mr.  
25 Chairman. With pleasure.

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1           So this is the last case for decision making in  
2 the Board's meeting session today. This is Case Application  
3 No. 20589 of John Best. And this is captioned and advertised  
4 as a request for relief from the Use Variance from the  
5 nonconforming use requirements of Subtitle C § 204.1 pursuant  
6 to Subtitle X § 1002. This would allow the conversion of an  
7 area used as a church in an existing nonconforming apartment  
8 house to create an additional apartment unit in the R-1-B  
9 zone. Property located at 1801 Otis Street, No, 2, N.E.,  
10 Square 4202, Lot 204.

11           The Board last heard this at its hearing on  
12 February the 9th, 2022. Thank you.

13           CHAIRPERSON HILL: Okay. Thank you, all.

14           All right. Thank you, Mr. Moy. Just pulling up  
15 something here.

16           (Pause.)

17           CHAIRPERSON HILL: Okay. So I can start the  
18 deliberation if we're all ready to talk about it. There was  
19 a bunch of different things we requested at the -- during the  
20 hearing last week and we got some of that information. I  
21 think it was -- one of the things that was requested was the  
22 plans for the second floor I think to make sure that there  
23 was the correct number of units that was being proposed.

24           After going back and reviewing the record I was  
25 comfortable with the argument that the property owner had

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1 made about how they're meeting in the criteria for the  
2 variance. I know that it's a Use Variance, so it's something  
3 that we really have to take a harder look at, however I would  
4 agree with again the analysis that the Office of Planning had  
5 provided as to how they're meeting that variance as well as  
6 that of the ANC.

7 I mean again it was the -- there was a 100-seat  
8 church that I guess they're unable to lease or it's unable  
9 to kind of be used. And then I didn't think that to -- it's  
10 already a grandfather apartment house building. I didn't  
11 think that any of the other potential uses -- I thought that  
12 the applicant made a good argument as to how those would not  
13 be workable and that they're meeting the three prongs of the  
14 variance test.

15 So I'm going to be voting to approve. I know that  
16 there might have been some discussion about this further from  
17 Board Members, and so I'm going to if I can go around the  
18 table. And I'll start with you, Mr. Smith, if that's all  
19 right.

20 MEMBER SMITH: Okay. So I'll give my analysis  
21 based on the three prongs so -- since it's a Use Variance.  
22 Extraordinary or exceptional -- the first prong is the  
23 extraordinary or exceptional situation prong. So the request  
24 before us would be to convert the only space in the building  
25 that does have a permitted use in accordance with the use

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1 provisions of the R-1-B zone and expand the existing  
2 nonconforming use of an apartment use to this particular  
3 space. I take seriously consideration of the Use Variance  
4 especially considering that this would expand an existing  
5 nonconforming apartment building.

6           Based on the information I believe that having a  
7 permitted church use, which looking at the statements  
8 provided by the applicant, does not present an exceptional  
9 situation to use the property and other uses that are a  
10 matter of right or by special exception could be considered.

11           Undue hardship on the owner. I'm failing to see  
12 that the applicant has demonstrated that he has an undue  
13 hardship to use this property for other uses.

14           The applicant stated that it was a financial  
15 hardship to have a church located within the space, but it  
16 would have been helpful for the applicant to provide that  
17 analysis a little bit more than he did on how these -- how  
18 having a church within this space does not work out  
19 financially for him. I think we've seen in some other cases  
20 where that higher level of analysis was presented, so I think  
21 that would have been helpful for us to conduct this analysis.

22           The analysis that was conducted regarding other  
23 uses that are allowed as a matter of right in the R-1-B zone  
24 or by special exception, I would like to have seen more of  
25 a thorough analysis of that, not one that was conducted

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1 within 30 minutes of us asking the question. And also by the  
2 applicant's own admission there wasn't an analysis done of  
3 those uses from a business standpoint and also by the Office  
4 of Planning. They also admitted that there wasn't an  
5 analysis, a thorough analysis done on their part on those  
6 particular cases beyond a 30-minute conversation that was had  
7 after we asked the question.

8           So I believe that there wasn't a thorough enough  
9 analysis done for us to ascertain that those -- any other  
10 matter of right uses or special exception uses is completely  
11 unworkable and therefore the Zoning Regulations of the R-1-B  
12 zone create an undue hardship on the owner. I don't think  
13 the case has been made in my mind in that regard.

14           No substantial detriment to the public good. I  
15 don't believe it would be a substantial detriment to the  
16 public good as the proposal would create -- would not create  
17 additional units and potential parking and traffic impacts  
18 in a zone that doesn't allow apartment buildings and would  
19 not result in the physical expansion of the nonconforming  
20 apartment building.

21           And the last prong, no substantial impairment to  
22 the Zoning Regulations. While the intent of the Zoning  
23 Regulations is for a nonconforming use to eventually go away,  
24 I do believe that this expansion of this nonconforming use  
25 is not a substantial impairment. I do believe it impairs,

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1 but it doesn't meet the standard of substantial.

2           So I don't believe it meets the first and second  
3 prongs, so I would not be in support of the application. But  
4 I will say this, and this brings up a point that I think Ms.  
5 John brought up, or several of us have brought up previously  
6 in cases of this nature where we're attempting to create  
7 additional units or convert a space that may have been  
8 historically used for a use that the applicant is trying to  
9 return to.

10           I do believe that this warrants looking at the  
11 Zoning Regulations to create a different mechanism for these  
12 types of conversions, whether it's special exception or  
13 administrative because we're seeing a lot more of these. And  
14 given the mayor's policies of attempting to create additional  
15 affordable housing it would be great to put that type of  
16 policy the mayor -- this policy is very worthwhile imbedding  
17 it into the Zoning Regulations because I currently think that  
18 the Zoning Regulations don't meet the intent of what we're  
19 trying to do here.

20           So I welcome this to the Zoning Commissioner and  
21 OP a -- some form of an amendment to address some of these  
22 issues, but I don't believe that in this particular case it  
23 can meet the variance test. So with that, I don't support  
24 it.

25           CHAIRPERSON HILL:       Okay.     Mr. Smith, I was

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1 curious, because I was the one who was trying to get a  
2 discussion to take place during the day as opposed to setting  
3 aside more time. And you can think about this. We'll come  
4 back around and see whether or not -- where we stand as a  
5 Board, but my question to you to think about is that do you  
6 think that if there were more time to have a financial  
7 analysis done for that space, whether that would potentially  
8 be more helpful or do you think that there really isn't going  
9 to be much in the way that those numbers might be able to  
10 support them? And so you can just think about it because  
11 again, I'm the one who did the 30-minute thing.

12 MEMBER SMITH: Okay.

13 CHAIRPERSON HILL: But so with that being the case  
14 then, I'll go to Commissioner Miller, if that's all right?

15 COMMISSIONER MILLER: Okay. Thank you, Mr.  
16 Chairman. So I guess that's why there are five of us here.

17 So I think the -- I would agree with you, Mr.  
18 Chairman, that the -- in agreeing with the analysis of the  
19 Office of Planning that the applicant in this case has met  
20 the burden of proof for the Use Variance in this case. It  
21 is a grandfathered apartment building, small apartment  
22 building and an R-1-B zone, which doesn't normally permit  
23 apartment buildings. It's single-family zoning, but the  
24 apartment building has been there forever.

25 So it had the church use, different churches uses

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1 on the -- it's either the basement or the ground floor, I  
2 forget. They had four different church uses, which a  
3 majority of them canceled their leases or didn't renew their  
4 leases because of -- citing cost according to the applicant.

5           The nonconforming use is being expanded within the  
6 building because they're taking over the church space and I  
7 think small office space on that ground floor, or basement;  
8 I can't remember now. But the footprint of the building is  
9 not changing; it's just being reconfigured. It's actually  
10 going from seven apartment units to six condominium units,  
11 which are larger units, more -- two in -- I think there's  
12 even a three-bedroom in here, I think. At least there are  
13 more two-bedroom than there were one-bedrooms previously.

14           The ANC 5B, I believe, doesn't have any concerns  
15 or issues with this Use Variance request.

16           And I agree with Board Member Smith that as in all  
17 areas where housing is being facilitated, which this  
18 application would facilitate the renovation basically of  
19 housing, and reconfiguration of apartments into condominiums,  
20 larger units, which it's also a policy of the city in a  
21 Comprehensive Plan to encourage.

22           But I agree with Board Member Smith, as I was  
23 about to say, that maybe we need to look -- the Zoning  
24 Commission does need to look at where the footprint of a  
25 nonconforming use is not being changed and where there's no

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1 substantial detriment on that third prong to the Zoning  
2 Regulations; in fact, the ANC doesn't have any concerns at  
3 all, that maybe we should look at a different standard where  
4 the nonconforming use has been there for a long time. And  
5 it's not being expanded physically outside the footprint;  
6 it's being expanded inside the footprint, but the units  
7 actually are being reduced.

8           So all in all I think that I am prepared to move  
9 forward with this application if there's majority support for  
10 it today. Thank you, Mr. Chairman.

11           CHAIRPERSON HILL: Thank you, Commissioner Miller.  
12           Vice Chair John?

13           VICE CHAIRPERSON JOHN: Thank you, Chairman Hill.

14           So I would like to associate myself with  
15 Commissioner Miller's comments because I was going to say  
16 essentially what he said, so there's no point repeating it.  
17 And in my view the standard has been met even though it's a  
18 difficult case, and I agree that the regulations need to look  
19 at these types of situations.

20           And in terms of the extraordinary condition, this  
21 really isn't a purpose-built apartment building and the  
22 church use has been there for -- since 1990. And so I do  
23 think the applicant has met that first prong.

24           So I differ with you, Board Member Smith. I  
25 understand your analysis, but it's a close case and on

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1 balance I am going to throw my hat in with Chairman Hill and  
2 Commissioner Miller.

3 Thank you, Mr. Chairman.

4 CHAIRPERSON HILL: Thank you, Vice Chair John.

5 Mr. Blake?

6 MEMBER BLAKE: You know, this is an interesting  
7 case. And I think it's been decided already, but I wanted  
8 to just say I did struggle with this a great deal because I  
9 do believe it makes sense. And as Vice Chair Miller pointed  
10 out and Vice Chair John pointed out, these are both -- this  
11 should be done in a way that makes sense because it's the  
12 kind of thing that comes up repeatedly in our cases, and it  
13 makes a lot of sense, but with the standard that we have as  
14 a variance analysis this is a very, very challenging case.

15 I think also the matter of presentation also made  
16 it especially challenging. The information was confusing.  
17 All of that added to the difficulty in reaching a very high  
18 standard for relief. I'm not convinced this, as Board Member  
19 Smith, that all the information was presented in a way that  
20 was digestible, however if you do look very closely at the  
21 facts that are presented in the case, you can make a case for  
22 variance relief, but it is not an easily digested piece of  
23 information.

24 For example, if we look at a confluence of factors  
25 as the first prong, you've got an apartment building in the

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1 R-1-B zone. That is not a permitted use as Commissioner  
2 Miller pointed out. It's unusual to have a church within an  
3 apartment building and occupying a space of this size.

4 And the configuration and unknown zoning history  
5 of the space is also a factor. For example, the church space  
6 had commercial-like features like large glass windows, doors  
7 that open to the street at the ground level, but unlike most  
8 commercial spaces due to the building restriction line, it's  
9 not built to the sidewalk. So it's not like a traditional  
10 commercial space either.

11 It is possible to make this into an -- it's  
12 impossible to make this into an attached dwelling, so in  
13 order to comply with the Zoning Regulations the space must  
14 be used for a permitted use by matter or right or a special  
15 exception.

16 So in evaluating the second prong I considered the  
17 limited utility owing to the size and configuration of the  
18 space combined with the financial burden placed on the owner  
19 of the property remaining unoccupied. At 1,200 square foot  
20 this is an odd space. There's a limited number of permitted  
21 uses that would be able to utilize this space and provide a  
22 reasonable return to the property owner as discussed in the  
23 hearing last week.

24 No, he didn't go through and try to get tenants  
25 to each of these uses, but in this marketplace it's hard to

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1 do that. At 1,200 square feet the space is too large to be  
2 used as an accessory space for a few small apartment units,  
3 and at 1,200 square feet the space represents a substantial  
4 portion of the building's square footage that if it were to  
5 remain fallow would place an undue burden on the -- financial  
6 burden on the owner. So I think to a large extent that does  
7 give me the undue hardship associated with that circumstance.

8           And as we pointed out as well, the building  
9 footprint won't change. The use of the space as an apartment  
10 would be consistent with the existing residential character  
11 of the neighborhood, and it would be adding a family-sized  
12 unit, and also would reduce the amount of traffic in the  
13 area. You know, a church has a lot of people coming and  
14 going. A day care center might have a lot of people coming  
15 and going. A residential apartment unit, family sized, is  
16 going to have one, two, three, or four people.

17           So having said all that, I don't think it would  
18 be -- I think it would be in harmony with the Zoning  
19 Regulations and maps and I would be -- so I would give great  
20 weight to the Office of Planning's recommendation for  
21 approval and the ANC's support, as stated new issues and  
22 concerns. And so I would actually be in a position to  
23 support.

24           CHAIRPERSON HILL: All right. Thank you, Mr.  
25 Blake.

1 I really would like to thank all of my fellow  
2 Board Members for their time and analysis in this case. It  
3 was actually quite difficult in terms of what we thought  
4 about and then also passing on the information that we wanted  
5 to pass onto the Zoning Commission.

6 I'm going to make a motion to approve Application  
7 No. 20589 as captioned and read by the Secretary and ask for  
8 a second.

9 Ms. John?

10 VICE CHAIRPERSON JOHN: Second.

11 CHAIRPERSON HILL: Motion made and seconded.

12 Mr. Moy, if you'd take a roll call?

13 SECRETARY MOY: When I call each of your names,  
14 if you would please respond with a yes, no, abstain to the  
15 motion made by Chairman Hill to approve the application for  
16 the relief being requested. This motion to approve was  
17 seconded by Vice Chair John.

18 Zoning Commission Rob Miller?

19 COMMISSIONER MILLER: Yes.

20 SECRETARY MOY: Mr. Blake?

21 MEMBER BLAKE: Yes.

22 SECRETARY MOY: Vice Chair John?

23 VICE CHAIRPERSON JOHN: Yes.

24 SECRETARY MOY: Chairman Hill?

25 CHAIRPERSON HILL: Yes.

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1 SECRETARY MOY: Mr. Smith?

2 MEMBER SMITH: No.

3 SECRETARY MOY: Staff would record the vote as 4  
4 to 1 to 0, and this is on the motion made by Chairman Hill  
5 to grant. The motion to grant was seconded by Vice Chair  
6 John. Also in support of the motion is Zoning Commission Rob  
7 Miller, Mr. Blake, and of course Vice Chair John, Chairman  
8 Hill. Opposed to the motion to grant is Mr. Smith. Staff  
9 would record the vote as 4 to 1 to 0. The motion carries,  
10 sir.

11 CHAIRPERSON HILL: Okay. Thanks, Mr. Moy.

12 (Whereupon, the above-entitled matter went off the  
13 record at 10:10 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: DC BZA

Date: 02-16-22

Place: teleconference

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



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