

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY

JULY 27, 2022

+ + + + +

The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened via Video Teleconference, pursuant to notice at 9:47 a.m. EDT, 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 MEMBERS PRESENT:

ANTHONY HOOD	Chairperson
ROBERT MILLER	Vice Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS
MAXINE BROWN-ROBERTS
MATT JESICK
JONATHAN KIRSCHENBAUM

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from
the Regular Public Meeting held on July 27, 2022.

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

(9:47 a.m.)

BZA CHAIR HILL: Good morning, ladies and gentlemen, the Board of Zoning Adjustment. Today's date is 7-27-2022, will please come to order.

My name is Fred Hill, Chairperson of the District of Columbia, Board of Zoning Adjustment. Joining me today is Lorna John, Vice Chair, Board Members Carl Blake, Chrishaun Smith, and Zoning Commissioners Rob Miller and Anthony Hood.

Today's meeting and hearing agenda are available on the Office of Zoning's website. Please be advised this proceeding is being recorded by a court reporter and is also webcast live via Webex and YouTube Live.

The video of the webcast will be available on the Office of Zoning's website after today's hearing. Accordingly, everyone who is listening or via telephone will be muted during the hearing. Only people -- please be advised that we do not take any public testimony at our decision meeting sessions.

If you're experiencing difficulty accessing Webex or with your telephone call, please call our OZ hotline number at 202-727-5471. Once again, 2020-727-5471. It's listed on the screen as well.

At the conclusion of each decision meeting, I

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

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

18 All persons planning to testify either in favor
19 or in opposition should've signed up in advance. They'll be
20 called by name to testify. If this is an appeal, only
21 parties are allowed to testify by signing up to testify. All
22 participants will complete the oath affirmation as required
23 by Subtitle Y 408.

24 Request to enter evidence at the time of an online
25 virtual hearing, such as written testimony or additional

1 supporting documents, other than live video which may not be
2 presented as part of the testimony, may be allowed, pursuant
3 to Subtitle Y 103.13, provided that the person making the
4 request to enter an exhibit explain, (a), how the proposed
5 exhibit is relevant, (b) the good cause that justifies
6 allowing the exhibit into the record, including an
7 explanation of why the requester did not file the exhibit
8 prior to the hearing pursuant to Subtitle Y 206, and (c), how
9 the proposed exhibit would not unreasonably prejudice any
10 parties.

11 The order of procedures for special exceptions and
12 variances are in Subtitle Y 409. At the conclusion of each
13 case, an individual who is unable to testify because of
14 technical issues may file a request for leave to file a
15 written version of the planned testimony to the record within
16 24 hours following the conclusion of public testimony in the
17 hearing. If additional written testimony is accepted, then
18 parties will be allowed a reasonable time to respond as
19 determined by the Board.

20 The Board will then make its decision at its next
21 meeting session, but no earlier than 48 hours after the
22 hearing. Moreover, the Board may request specific
23 information to complete the record. The Board and staff will
24 specify at the end of the hearing exactly what is expected
25 and the date when persons must submit the evidence to the

1 Office of Zoning. No other information shall be accepted by
2 the Board.

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

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

15 MR. MOY: First of all, good morning, Mr. Chairman
16 and Members of the Board. I do have a quick announcement now
17 that I have the microphone, so to speak, regarding today's
18 docket. There are two case applications that have been
19 granted continuance to future scheduled dates.

20 First, Application No. 20713 of Jeffery and Jill
21 Miller has been rescheduled to November 30th, 2022. And
22 Application No. 20766 of Konah Duche, D-U-C-H-E rescheduled
23 to December 14th, 2022. Finally, Mr. Chairman, staff will
24 be asking for a roll call vote on your impending motion for
25 closed meeting dates from September 2022 through January

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1 2023. And you can do that anytime today, sir.

2 BZA CHAIR HILL: Okay. Let's go ahead and do that
3 first. Let me see if I can find that, Mr. Moy.

4 MR. MOY: I sent that to you yesterday, sir.

5 BZA CHAIR HILL: Got it. I see it. Great. Let's
6 see. As Chairman of the Board of Zoning Adjustment of
7 District of Columbia and in accordance with Section 405(c)
8 of the Open Meetings Act, I move that the Board of Zoning
9 Adjustment hold closed meetings by video conference at 2:00
10 p.m. on the following dates: Monday, September 12th,
11 September 19th, September 26th; Monday, October 3rd, October
12 17th, October 24th, October 31st; Monday, November 7th,
13 November 14th, November 29th; Monday, December 5th, December
14 12th, December 19th, Monday, January 9th, January 17th,
15 January 23rd, January 30th.

16 The purpose of the closed meeting will be to
17 receive legal advice from the Board's counsel and to
18 deliberate but not vote on the contested cases per Section
19 405(b)(4) and (13) of the act, D.C. Official Code Section 2-
20 575(b)(4) and (13) scheduled for the Board's public and/or
21 meeting and or hearing the following Wednesday. Pursuant to
22 D.C. Official Code Section 1-207.42(a), no resolution, rule,
23 act, regulation, or other official action shall take place
24 except at an open public meeting. The closed meeting will
25 be electronically recorded pursuant to D.C. Official Code

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1 Section 2-578(a). Is there a second, Ms. John?

2 MEMBER JOHN: Second.

3 BZA CHAIR HILL: Thank you. Mr. Secretary, could
4 you please take a roll call?

5 MR. MOY: Yes, sir. When I call your name, if
6 you'll please respond. Let's see. Zoning Commissioner Rob
7 Miller?

8 ZC VICE CHAIR MILLER: Yes.

9 MR. MOY: Mr. Smith? Mr. Blake?

10 MEMBER BLAKE: Yes.

11 MR. MOY: Vice Chair John? Chairman Hill?

12 BZA CHAIR HILL: Yes.

13 MR. MOY: Staff would record the vote as 5 to 0
14 to 0 on the motion made by Chairman Hill, second by Vice
15 Chair John to accept the dates for closed meetings from
16 September 2022 through January 2023. The motion carries,
17 sir.

18 BZA CHAIR HILL: Great. All right, everybody.
19 Thank you. Thanks for everybody making it. Sorry that there
20 was some technical issues for a variety of people and that --
21 okay, got it. All right. Let's see. Mr. Moy, you can call
22 our first decision case when you get a chance.

23 MR. MOY: Oops. All right. So in the Board's
24 decision-making session, the first application for a decision
25 is Application No. 20763 of MR H Street Capital, LLC. Mr.

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1 Chairman, this is a self-certified application for area
2 variance pursuant to Subtitle X, Section 1002 from the rear
3 yard requirement, Subtitle I, Section 205.1.

4 Property located in the D-5-R zone at 613-617 H
5 Street, Northwest, Square 453, Lots 847 and 848. This was
6 last heard by the Board at its hearing on July 13, 2022.
7 Participating on the vote is Zoning Commission Chair Mr.
8 Anthony Hood, then of course Chairman Hill, Vice Chair John,
9 Mr. Blake, and Mr. Smith.

10 BZA CHAIR HILL: Okay, great. Thank you,
11 everyone. Okay. I'm sure you all remember this from last
12 week. I thought it was a very interesting project. And I
13 know the area there because it's actually in my SMD.

14 And I thought that the applicant did a good job
15 explaining why they meet the criteria for us to grant the
16 relief request. I didn't have really any issues with this.
17 I know that some Board Members wanted to see a little bit
18 more detail as to some of the exhibits that are in the
19 record. And I'll let those members to speak to those items
20 if they wish.

21 I also am glad that we were able to at least help
22 facilitate some discussion with the immediate neighbor. And
23 I can see that that did take place. I know that again all
24 those parties there have been there in that neighborhood for
25 a very long time, and I'm glad that they were able to get

1 together and have some discussions.

2 Outside of that, I would also agree with the
3 analysis that the Office of Planning has provided as to how
4 they're meeting the criteria. And also I will note that the
5 ANC was also in support as well as DDOT. And so I will be
6 voting in favor of this application. I'm going to go around
7 the table and see what others have to say. May I start with
8 you, Mr. Smith?

9 MEMBER SMITH: So I also agree with the staff's
10 analysis. First off with the variance, I agree with the
11 analysis of the variance. I believe the Applicant has not
12 demonstrated an exceptional conditional difficulty in this
13 particular case. The tax lot is not an extraordinary
14 condition of the property and the lot is currently improved
15 with an existing single family dwelling and it can continue.

16 Now the creation of a new standard lot would not
17 be consistent with the purpose and intent of zoning
18 regulations. As the zoning regulations is an attempt to
19 encourage the creation of conforming lots and for non-
20 conformities to gradually go away. So the request --
21 granted, I know that the applicant essentially has dropped
22 that request, they just haven't formally withdrawn it.

23 I think they probably saw the writing on the wall
24 with that one. But it didn't meet all of the prongs for the
25 variance. So I wouldn't support the request for the

1 variance. The creation of the theoretical lot, special
2 exception, I do agree with OP's analysis.

3 MEMBER JOHN: Mr. Smith?

4 MEMBER SMITH: Oh, sorry. I'm at the wrong one.
5 Sorry.

6 BZA CHAIR HILL: I was all good for a second, and
7 then I got lost.

8 MEMBER JOHN: Mr. Smith, I was so worried about
9 myself. But thank you. You're on mute.

10 MEMBER SMITH: I'm sorry. I forgot we changed the
11 order with this. This is the property on H Street.

12 MEMBER JOHN: Yes.

13 MEMBER SMITH: So yeah, I'm not going to belabor
14 this one. So I agree with your analysis, Chairman Hill. I
15 didn't have any particular issues beyond some additional
16 architectural details of the rear of the units to make a
17 determination.

18 But I'm fairly comfortable with what was
19 submitted. And I believe they meet the standards for us to
20 be able grant the area variance for them to be able to
21 construct the property. Given that they have to meet a
22 certain set of criteria that was specified to preserve the
23 existing building along H Street, I think that fundamentally
24 has created some issues for them with being able to construct
25 a reasonably sized building. So I do believe they met the

1 standards for the variance and support the application.

2 BZA CHAIR HILL: Thank you, Mr. Smith. Mr. Blake?

3 MEMBER BLAKE: I will be voting in favor of the
4 requested relief as well. I've reviewed the record,
5 supplemental filings, and the testimony from the hearing.
6 And I do think the applicant has met the burden of proof for
7 the requested relief.

8 A confluence of factors have contributed to it,
9 including a small land area, the narrow width mid-block
10 location, interior court, the presence of the existing
11 building, all of which puts substantial restrictions on the
12 proposed buildings internal layout. Whacking off six and a
13 half feet in the rear results in a practical difficulty,
14 significantly smaller units, significant fewer units within
15 the building. And I think that was well illustrated in the
16 applicant's supplemental filings.

17 So there is an exceptional situation and a
18 practical difficulty test that's been met. So I think the
19 granting relief will be in harmony with the zoning
20 regulations. The requested relief will essentially maintain
21 the status quo along the alley and should result in minimal
22 impact to the surrounding buildings.

23 I would also note the comments you made earlier
24 about the neighbor. I'd also note that the Board has
25 previously granted the exact same type of relief in this

1 location in BZA Case 19448. I give great weight to the
2 Office of Planning's recommendation for approve. I'll note
3 that DDOT has no objection, and ANC 2C is in support stating
4 the project will not create any impact.

5 BZA CHAIR HILL: Thank you. Chairman Hood?

6 ZC CHAIR HOOD: I don't have anything to add. I
7 think it was important -- while the I think that the
8 applicant meets the necessary relief requested, I think it's
9 very important also to communicate. To me, that's another
10 part of existing in a city environment, I think, in that area
11 to help facilitate that. And I want to applaud the applicant
12 because the way they laid out what the issues were the Changs
13 and Tony Chang and others and to the door of Ms. Chang. The
14 way they laid out the issues was very helpful.

15 And it looks like from what I read in the record
16 that they understand it and accept it. And I think
17 communication is key. So I think this definitely warrants
18 our approval. I think that the mitigations and what's been
19 required meets the -- they've satisfied the relief required
20 and requested. So I would be voting in favor. Thank you.

21 BZA CHAIR HILL: Thank you. Vice Chair John?

22 MEMBER JOHN: I don't have a lot to add. I
23 appreciate the applicant submission of the supplemental
24 information which helped me to understand more clearly what
25 the exceptional condition and the practical difficulty issues

1 were. And so I will be voting in favor of the application
2 as well.

3 And I would also like to applaud the applicant for
4 meeting with the Changs and trying to resolve some of their
5 concerns. Although as I've said in the hearing, the Board
6 cannot enforce construction management agreements. But as
7 Chairman Hood said -- Commissioner Hood said, it is really
8 very important for community relationships. And we tend to
9 recommend that applicants consider meeting with neighbors to
10 address their concern during construction. So I am in
11 support as well, as I said.

12 BZA CHAIR HILL: Okay, great. Thank you,
13 everyone. Thank you, and thank you for your help with your
14 deliberation. I'm going to go ahead and make a motion to
15 approve Application No. 20763 as captioned and read by the
16 Secretary and ask for a second. Ms. John?

17 MEMBER JOHN: Second.

18 BZA CHAIR HILL: Motion and made and second, Mr.
19 Moy. If you could do a roll call, please.

20 MR. MOY: Thank you, sir. When I call your name,
21 if you'll please respond with your vote. Zoning Commission
22 Chair Mr. Anthony Hood?

23 ZC CHAIR HOOD: Yes.

24 MR. MOY: Mr. Smith? Mr. Blake?

25 MEMBER BLAKE: Yes.

1 MR. MOY: Vice Chair John?

2 MEMBER JOHN: Yes.

3 MR. MOY: Chairman Hill?

4 BZA CHAIR HILL: Yes.

5 MR. MOY: Then staff would record the vote as 5
6 to 0 to 0. And this is on the motion made by Chairman Hill
7 to approve the application for the relief requested. The
8 motion was second by Vice Chair John. Also in support of the
9 motion to approve is Zoning Commission Chair Hood, Mr. Smith,
10 Mr. Blake, and of course Vice Chair John and Chairman Hill.
11 Motion carries, sir, on the vote 5 to 0 to 0.

12 BZA CHAIR HILL: Okay, great. Thanks, Mr. Moy.
13 All right. When you get a chance, Mr. Moy, you can call our
14 next decision case.

15 MR. MOY: The next decision case for the Board is
16 Application No. 20594 of Nezahat and Paul Harrison. This is,
17 as amended, a self-certified application for special
18 exception pursuant to Subtitle X, Section 901.2, Subtitle C,
19 Section 305.1 for a theoretical subdivision to allow multiple
20 buildings within a single lot or an area variance from the
21 minimum lot dimension, Subtitle D, Section 502.1 pursuant to
22 Subtitle X, Section 1002. What should I say about this?

23 So apparently here, unless you correct me, Mr.
24 Chairman, there was -- the submission was two options. One
25 was a special exception relief for the theoretical lots or

1 in the alternative, an area variance relief from the lot
2 width requirements permit subdivision of the property. But
3 I believe that --

4 BZA CHAIR HILL: We got you, Mr. Moy.

5 MR. MOY: Okay, okay, okay. I'll leave it at
6 that. Property is in the R-8 zone at 3007 Albemarle Street,
7 Northwest, Square 2041, Lot 818. And that's it for me, Mr.
8 Chairman.

9 BZA CHAIR HILL: Okay. All right. So I'm going
10 to ask for you all's help a little bit more, not that I don't
11 normally get help, but a little bit more because I left an
12 hour and a half early. I do go back and watch the rest of
13 the hearing. And I saw what happened.

14 And I do want to again thank Vice Chair John for
15 filling in for me while I had to leave. I thought as you
16 know, or as we know, it was pretty contentious in that there
17 was several members who had party status who did not agree
18 with the argument that the applicant had made as to why
19 they're meeting the criteria in the regulations. I thought
20 it was kind of -- I guess what I find interesting about the
21 project is that it could be -- it's a very large lot in which
22 this property -- this project could be built as a matter of
23 right.

24 The reason that it's not is that they're not
25 connecting properties. I think that in terms -- I mean, I'm

1 not in favor of arguing about the area variance. I mean,
2 we're really talking about the special exception pursuant to
3 Subtitle Y, 901.2 under Subtitle C305.1 for the subdivision.

4 After looking through the record, and I'm going
5 to let my other Board Members kind of speak up and reviewing
6 the record again and taking a look at the Office of
7 Planning's recommendation as well as that of the ANC and well
8 as the closing arguments of all the different applicants --
9 I'm sorry, the applicants as well as those of the party
10 status people. I mean, it is disappointing that again the
11 immediate neighbors are concerned about that additional home.
12 And I can understand why inters of there being change.

13 But I think that it does meet the criteria. It
14 does meet the regulations for us to have to grant it really.
15 And I do think that the applicant has done what they can to
16 make that second property visually less obtrusive.

17 And so although I would have preferred that all
18 of the neighbors were in support of the application, I mean,
19 our job again as the Board is if we think that it meets the
20 criteria, we have to grant the -- well, not have to but try
21 to do our best to mitigate different adverse impacts as they
22 also apply to, again, the regulations. I think that the
23 Office of Planning's recommendation is pretty concise. And
24 unless my fellow Board members convince me otherwise, I will
25 be voting in favor of this application. May I start with

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1 you, Mr. Smith?

2 MEMBER SMITH: So I'll stand on what you were
3 saying about the variance. I think they're pretty much --
4 I think they've done everything but withdraw it. But I will
5 state again that I am also not in support of the variance.
6 I agree with OP's analysis on that particular case.

7 On the case of the special exception, I do agree
8 with OP's analysis on this particular case. I do believe
9 that the applicant has met the standards of C305.8 of the
10 numerical subheadings there. And I will particularly point
11 to two of the -- which is the ones that were brought up, A-6
12 which had to do with the design.

13 The design of the home from what I could tell also
14 just doing just an analysis of other homes within Forest
15 Hills, the character of the home is in the character of
16 Forest Hills. It's a mixture of housing design standards.
17 So I believe it meets that particular standard.

18 And also, the theoretical lot, and when I say
19 we're going to impact on neighboring properties, the
20 theoretical lot does meet the standards of the R-8 zone. R-8
21 zone, I've seen that that meets those particular standards.
22 One of the -- some of the questions that were raised in
23 testimony was about how a front yard is commonly used versus
24 a rear yard which is irrelevant honestly from a standpoint
25 out how something is passively used.

1 Zoning only articulates how something -- a
2 particular structure may be constructed within a front yard
3 or a rear yard versus a side yard. How some of this is
4 passively used is irrelevant. It is -- I agree with Chairman
5 Hill that I would have liked to see additional -- for the
6 neighborhood to come together a little bit more on this
7 particular case.

8 But I do believe it had met the standards. I do
9 wish -- I would recommend that the applicant put in some
10 additional screening, some landscape screening along what
11 would be the front yard of the proposed building, the rear
12 yard of the houses that front on the -- I guess that would
13 be which street? Albemarle.

14 I would high recommend that. They're proposing
15 some evergreen screening for their own house abutting those
16 properties to screen their pool. But I would also recommend
17 that they carry forward that evergreen screen along both of
18 those properties for the full shared property line and
19 parking space and up the street. So I would just make that
20 as a recommendation.

21 If you want to memorialize that in a condition,
22 I'd welcome hearing additional feedback from Board Members.
23 That would be the only recommendation I would make. But
24 beyond that, I am in support of the application.

25 ZC CHAIR HOOD: Okay. Thanks, Mr. Smith. And

1 yeah, we can talk about that. I appreciate your comments.
2 I neglected that there were some outstanding motions that
3 were made about this case.

4 One of the motions was from Giordano and
5 Hernandez, which was made orally at the start of the hearing
6 to dismiss the application because the property is not
7 presently a record lot as required by theoretical lots
8 subdivision C305.1. So we have in the past reviewed
9 applications where the tax lot with an underlying record lot
10 that meets the exact same dimensions of the tax lot and the
11 Board as we've deliberated and it's allowed the application
12 to go forward. Here I guess the boundaries are not exactly
13 the same.

14 But I believe and understand that this tax lot
15 issue or the boundary issue can be something that can be done
16 administratively. So I would not be in favor of dismissing
17 this application because again I think that we have the
18 ability to move forward with this application the way it is
19 based upon what I just said. So I'm going to -- unless
20 people start to have a different opinion as to what I'm going
21 to say, I'm going to make a motion for both of these. But
22 we'll see what you all think. The other was that --

23 ZC CHAIR HOOD: Mr. Chairman?

24 BZA CHAIR HILL: Yes?

25 ZC CHAIR HOOD: So we'll need the two motions

1 because I do want to comment on one of the motions, the
2 motion that you just mentioned about the -- because the
3 property is not presently a record lot. I do want to comment
4 on that at an appropriate time. I didn't know whether you
5 want to do the motions first or just deliberate first.

6 BZA CHAIR HILL: That's fine. Let's go ahead and
7 do that now.

8 ZC CHAIR HOOD: So what I do want to say, I
9 appreciate Ms. Giordano bringing that motion to us. But I
10 was thinking about this. And I know oftentimes and I think
11 that the applicant committed to coming into compliance. But
12 I was thinking about this because a lot of times on the
13 Zoning Commission, people come for some relief and don't even
14 own the property.

15 So I think when I look at that, it's up to them
16 for those other requirements. It that's kind of where you
17 were going. It's up to them to get those other requirements
18 straight to continue to move on other processes.

19 So I don't have a reason to -- I don't really need
20 to dismiss this for that motion. I'm just talking about
21 Motion No. 1. And that's just what I want to say because I
22 think about all the times people come in front of us. And
23 Ms. Giordano may not think it's an apples to apples
24 comparison, but I do.

25 They come in front of zoning on the land and we

1 rezone it contingent on other things that come down on it.
2 So I just wanted to say that, Mr. Chairman. Thank you.

3 BZA CHAIR HILL: Okay. Then I'm going to make a
4 motion on these individually. Does anybody have anything
5 else to add on this issue? And I'm going to make a motion
6 to deny the motion to dismiss the application because the
7 property is not presently a record lot as required by
8 theoretical lot subdivision under C305.1 and ask for a
9 second, Ms. John.

10 MEMBER JOHN: Second.

11 BZA CHAIR HILL: Motion made and second, Mr. Moy.
12 If you'll take a roll call.

13 MR. MOY: When I call your name, if you'll please
14 respond to the chairman's motion to deny. And I'm not going
15 to restate that. Zoning Commission Chair Anthony Hood? Mr.
16 Smith?

17 MEMBER SMITH: Yes.

18 MR. MOY: Mr. Blake? Vice Chair John?

19 MEMBER JOHN: Yes.

20 MR. MOY: Chairman Hill? Staff would record the
21 vote as 5 to 0 to 0. And that's on the motion made by
22 Chairman Hill to deny. The motion was second by Vice Chair
23 John. Also in support of the motion to deny, Zoning
24 Commission Chair Anthony Hood, Mr. Smith, Mr. Blake, Vice
25 Chair John, and Chairman Hill. Motion carries, sir.

1 BZA CHAIR HILL: Okay. Thank you, Mr. Moy. The
2 next issue was to dismiss the application as incomplete
3 because other areas of relief were also needed, one of which
4 was the ingress/egress with a variance for a driveway issue
5 and then the theoretical lots subdivisions special exception
6 lot with variance for the eastern lot. As I recall when we
7 talked about this, we were talking about how this is a self-
8 certified application and this is something that would be --
9 these two issues are issues that would be clarified during
10 the permitting process with the zoning administrator.

11 And we as a Board when this situation has arisen
12 before has gone through the process of the application and
13 then had the zoning administrator, if there were any issues,
14 that were additional relief that the applicant was not
15 requesting that actually were needed. They would get kicked
16 back to us again. And so in this case, I'm going to again
17 oppose the motion to dismiss the applications for these
18 reasons. And so I'm going to oppose the motion to dismiss
19 these applications for these reasons such that the zoning
20 administrator will determine if there's additional relief
21 requested and which the applicant would get kicked back to
22 us again and ask for a second, Ms. John.

23 MEMBER JOHN: And before I second, I would just
24 note that the standard for dismissal if I recall it correctly
25 said there's to be no possible way that the board could find

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1 that it could grant relief. So I would also second the
2 motion on that basis as well.

3 BZA CHAIR HILL: And I apologize, Ms. John. Does
4 anybody have anything else to add about this, because I get
5 kind of sometimes out of order or I get a little disjointed
6 when I'm doing the preliminary matters ahead of time. So are
7 there things that people might like to add about this motion?
8 And if so, please raise your hand. Mr. Blake, were you
9 raising your hand, no?

10 MEMBER BLAKE: Yeah, I'll just make a quick
11 comment. As you mentioned, this is a self-certified
12 application. And I believe there's a plausible basis to
13 conclude that the relief requested is sufficient and would
14 be comfortable allowing the ZA to carry out his function of
15 interpretation. If the ZA, as you point out, determines that
16 the requested relief is insufficient, then the applicant can
17 return to us for further relief. So I'm comfortable with
18 your motion to dismiss.

19 BZA CHAIR HILL: Okay. Thank you, Mr. Blake. And
20 thanks, you all, for helping me because these issues are
21 actually quite complicated at times. And so I appreciate
22 having other people weigh in. So I made a motion. It's been
23 seconded. Mr. Moy, could you make a roll call, please?

24 MR. MOY: Yes. When I call your name, if you'll
25 please respond to the chair's motion to oppose or deny the

1 motion to dismiss. Zoning Commission Chair Anthony Hood?
2 Mr. Smith? Mr. Blake?

3 MEMBER BLAKE: Yes.

4 MR. MOY: Vice Chair John?

5 MEMBER JOHN: Yes.

6 MR. MOY: Chairman Hill?

7 BZA CHAIR HILL: Yes.

8 MR. MOY: Then staff would record the vote as 5
9 to 0 to 0. And this is on the motion made by Chairman Hill
10 to deny the motion to dismiss. This was second by Vice Chair
11 John. Also in support of this motion is Zoning Commission
12 Chair Anthony Hood, Mr. Smith, Mr. Blake, Vice Chair John,
13 and Chairman Hill. Motion carries on a vote of 5 to 0 to 0.

14 BZA CHAIR HILL: Okay. Thank you. All right.
15 So now we're back to talking the issues or the case. And
16 basically I think we're talking about again the special
17 exception criteria. I don't think that -- if anybody wants
18 to argue the area variance, they're welcome to. But I don't
19 think that's what anyone is going to probably do.

20 Mr. Smith had mentioned and I do appreciate the
21 additional trees or the similar matching pine trees that were
22 -- and you can think about it, whether we need to bring them
23 back and take a look at anything or wherever we end up with
24 this or if we can write this in the order in a way that it's
25 conditioned that makes it clear. I don't know. I don't know

1 where we're going to get with this yet. But that's one of
2 the things that were on the table. I'm going to keep going
3 around the table, and I'm going to go with you, Mr. Blake,
4 next if I could.

5 MEMBER BLAKE: First of all, I would be voting
6 against the applicant's request for an area variance. I
7 believe the applicant has not demonstrated an exceptional
8 condition leading to a practical difficulty, the first prong
9 on the variance test. I also agree with the Office of
10 Planning's opinion that the applicant can accomplish a
11 desired outcome, that is to construct two detached principal
12 dwelling units through a theoretical subdivision under
13 Subtitle C305.1 and pursuant to the general standards of
14 901.2.

15 I agree that the Office of Planning's analysis of
16 how the applicant has met the conditions and for that matter
17 the general standards. I believe that granting relief is in
18 harmony with the zoning regulations and map as proposed. The
19 proposed development meets the development standards of the
20 zone, both buildings, and the criteria for Subtitle C305.1.

21 I gave great weight to the report of the ANC 3F
22 which provided a detailed narrative of the exhaustive review
23 process, a deep dive into the issues and concerns that were
24 raised by the community that were largely addressed by the
25 applicant in my opinion. Those specific concerns include

1 traffic safety, landscaping, privacy screening, and
2 stormwater management. I think the applicant provided a copy
3 of the stormwater management plan that would be required to
4 meet and possibly exceed the District standards.

5 That will likely actually improve the longstanding
6 storm and groundwater problems. They also proposed an
7 integrated landscaping plan that provides I believe ample
8 privacy screening. However, I would be supportive of Board
9 Member Smith's interest in adding additional screening to the
10 front property but note there may be an encroachment on the
11 property to the east which would cause that to be a little
12 bit problematic to do just that.

13 But I would think it would be nice to add some
14 additional screening to the front through the evergreen trees
15 if that is feasible. And I would support that. Based on
16 these mitigations, I believe the neighboring properties will
17 not experience undo impact on the Board's action.

18 And again, they may actually benefit from the
19 storm and groundwater management plans because we saw how it
20 puddled all over that path, the pipe stem. And it also iced
21 in the street in the wintertime on Albemarle. So all of this
22 actually will end up being more of a net positive than not.

23 Also, DDOT has no objection to the project and
24 supported the curb cut at Appleton. They recommended
25 reducing the curb cut on Albemarle to be more of a driveway

1 size as opposed to its intermediate size. But also the D.C.
2 Fire and Emergency Services indicated they didn't object to
3 the project but noted that all the fire access and service
4 and things would be accessible. So all that said, I would
5 be voting in favor of the special exception request.

6 BZA CHAIR HILL: Thank you, Mr. Blake. Chairman
7 Hood?

8 ZC CHAIR HOOD: Chairman, I just want to make
9 sure, though. The area variances I thought was taken off the
10 table. Is that correct? Because I believe it can be
11 achieved through these special exceptions. So that's taken
12 off the table, correct? Okay. All right.

13 So I don't have anything else to add. And I would
14 also agree if it'll make the project better what Board Member
15 Smith has recommended of the screening, I would also agree.
16 I think I would be voting in favor of this project.

17 The motions, I think this is a prime time for us
18 to go ahead and approve. And I think the mitigations and the
19 relief requested can be mitigated and be accomplished by the
20 regulation. So that's where I am. Thank you, Mr. Chairman.

21 BZA CHAIR HILL: Thank you, Chairman Hood. Vice
22 Chair John?

23 MEMBER JOHN: Thank you, Mr. Chairman. So I'll
24 just read a couple thoughts to be clear in my comments. So
25 in general, the parties in oppositions and the neighbors,

1 many neighbors object to the project primarily on the basis
2 that there is no existing lot and that House 2 on the eastern
3 lot will have an adverse impact on neighboring properties,
4 mainly because of noise, light and hair, privacy, traffic,
5 and inadequate stormwater management.

6 And there were numerous letters for and against
7 the project. As this is a request for special exception and
8 not a variance because we have already said and I agree with
9 my colleagues that the variance is off the table because
10 there's no exceptional condition. The variance is a much
11 higher legal standard.

12 And for a special exception, the Board must
13 ordinarily grant the application if it meets the criteria and
14 the regulations. And so that is what our concern is. So at
15 the outset, the parties in opposition have tried to file
16 motions to have the application dismissed on the basis that
17 there is no record lot.

18 I believe that that's a red herring. The
19 regulations do not specifically require that the record lot
20 must exist at the time of the applications, as my colleagues
21 have said and as Commissioner just mentioned. And in this
22 case, the applicant asserts that there's an underlying record
23 lot that can be revived and serve as a basis for the creation
24 of the theoretical lots.

25 The inability to meet the variance test does not

1 mean that the applicant cannot request their theoretical
2 approval. There's no such prerequisite. There is a letter
3 dated July 19th, 2022 explains the criteria for theoretical
4 lots under Subsection 3202.1 as modified by the waiver
5 provided in C305.

6 And it does not require a variance for lot width
7 or lot frontage which was one of the conditions that -- one
8 of the motions mentioned. The Office of Planning has adopted
9 a similar interpretation. And in my view, the plain language
10 of C302.1 read with C305 requires this result.

11 While there are numerous letters that oppose this,
12 it's difficult to understand how there could be privacy
13 concerns for two houses on 18,000 square feet and 12,000
14 square foot lots, respectively, where the lot coverage for
15 the homes is less than 13 percent of the 30 percent matter
16 or right standard as described in the applicant's revised
17 burden of proof and architectural drawings. This was borne
18 out by the testimony of both ANC representatives who
19 indicated that the size of the proposed lots is consistent
20 with the character homes in Forest Hills and I would also add
21 that particular square.

22 Additionally, although residents will lose some
23 views because of House 2, loss of view is not protected by
24 the zoning regulations. Mr. Banger's ADU is built on his
25 property line which is his choice and it's separated from

1 House 2 by a side yard which complies with the zoning
2 regulations and development standards. DDOT requires ---

3 (Audio interference.)

4 BZA CHAIR HILL: Hey, Ms. John, Ms. John.

5 MEMBER JOHN: Yes.

6 BZA CHAIR HILL: I want to hear what you have to
7 say, and you're kind of breaking up there. You started to
8 talk about -- I heard about the ADU being built on the side.
9 And that was --

10 MEMBER JOHN: Right, yeah.

11 (Simultaneous speaking.)

12 BZA CHAIR HILL: Then you started to break up.

13 MEMBER JOHN: I was having technical difficulties
14 this morning, so let me try again. So the last thing I said
15 was that the 16-foot driveway is an existing nonconformity
16 and does not require variance relief. Section C305 requires
17 plans for stormwater management. And the applicants plans
18 show extensive landscaping and stormwater management
19 protection which as Mr. Smith has said is way above what is
20 required by the regulations.

21 And I believe as Mr. Blake said, it will be a net
22 positive for the neighborhood. And so based on the full
23 record, I'm in support of the application. And I give great
24 weight to OP's analysis, testimony, and recommendations.

25 And as noted earlier, the ANC is in support and

1 has no issues or concerns. And DDOT may have public space
2 issues. But those have to be resolved with DDOT. And I
3 would just note that they exist.

4 And then finally, if the underlying record lot
5 cannot be ---

6 (Audio interference.)

7 MEMBER JOHN: -- have to return to the BZA for
8 additional relief. And we've talked about the variance which
9 I would also deny. And the argument that the application
10 must fail is without merit because a theoretical lot does not
11 rely -- because they're two different reliefs.

12 Because the variance relief is not met doesn't
13 mean that the applicant cannot apply for a theoretical lot
14 division. That's the very purpose of the theoretical lot
15 regulations. So I'm going to support the application, Mr.
16 Chairman.

17 BZA CHAIR HILL: Okay, great. Thanks, Ms. John.
18 Okay, Vice Chair John. Thank you all very much for all of
19 your well thought out -- yeah, Mr. Smith?

20 MEMBER SMITH: Before we vote and consider my
21 conditions, in light of what Ms. John stated about the lot
22 coverage, that is a very good point. The way they're landing
23 on this lot coverage, they're nowhere close to filling the
24 envelope. Looking back at the landscape plans, I think
25 they're fairly thorough enough where I don't -- I would

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1 withdraw my consideration of a landscape screen along
2 Albemarle Street.

3 BZA CHAIR HILL: Okay. So you're comfortable with
4 the landscaping plans the way they are.

5 MEMBER SMITH: Yes.

6 BZA CHAIR HILL: Okay. All right. Well, okay,
7 then we don't have to discuss that issue. Then what I'm
8 going to do is go ahead and make a motion. And --

9 MEMBER JOHN: Mr. Blake has his hand up.

10 BZA CHAIR HILL: Oh, sure. Sorry. Go ahead, Mr.
11 Blake.

12 MEMBER BLAKE: Chairman, would we make a motion
13 to deny the variance and close that out? Or --

14 BZA CHAIR HILL: No, I wasn't going to unless
15 counsel says I have to do so. I don't know. It says one or
16 the other. I would just go ahead and make a motion for the
17 one. But I guess, I mean, we're not making a motion. It
18 says one or the other, unless somebody wanted to make a
19 motion.

20 I'm just trying to think. So the landscaping plan
21 is there. So I'm going to make a motion to approve
22 Application No. 20594 as amended for a self-certified
23 application for a special exception pursuant to Subtitle
24 X901.2 under Subtitle C305.1 for a theoretical subdivision
25 to allow multiple buildings on a single lot with the plans

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1 and landscaping plans the way they are in the record and ask
2 for a second, Ms. John.

3 MEMBER JOHN: Second.

4 BZA CHAIR HILL: Motion made and second. Mr. Moy,
5 if you'll take a roll call.

6 MR. MOY: When I call your name, if you'll please
7 respond with your answer to the motion made by Chairman Hill
8 to approve the application for the requested special
9 exception relief. Zoning Commission Chair Anthony Hood? Mr.
10 Smith? Mr. Blake?

11 MEMBER BLAKE: Yes.

12 MR. MOY: Vice Chair John?

13 MEMBER JOHN: Yes.

14 MR. MOY: Chairman Hill?

15 BZA CHAIR HILL: Yes.

16 MR. MOY: The staff would record the vote as 5 to
17 0 to 0. And this is on the motion made by Chairman Hill to
18 grant the request for the special exception relief. The
19 motion to approve was second by Vice Chair John. Also in
20 support of the motion is Zoning Commission Chair Anthony
21 Hood, Mr. Smith, Mr. Blake, Vice Chair John, and Chairman
22 Hill. Motion carries, sir, in a vote of 5 to 0 to 0.

23 BZA CHAIR HILL: Okay, great. All right. Thanks,
24 Mr. Moy. Okay. So we're going to hold off. We have one
25 more decision case, and we're going to hold off on that one

1 because we have another Commissioner joining us.

2 (Whereupon, the above-entitled matter went off the
3 record at 10:38 a.m. and resumed at 1:30 p.m.)

4 BZA CHAIR HILL: I hope you guys got your stuff
5 together because I'm tired. So somebody else can start and
6 help me out with this next one. Okay. I've got everybody
7 and that means I'm going to do a raise the hand, whoever
8 wants to help first or I can also drive. But Mr. Moy, you
9 can go ahead and let everybody get a chance to pull up the
10 record which I'm doing as well. And you can call our next
11 one, a decision.

12 MR. MOY: So after a very brief recess, the Board
13 has returned, actually dipping back to the meeting session
14 for the last decision case. And the time is now at or about
15 1:31 p.m. So this would be Application No. 20538 of TG
16 Management, LLC. This is zoning relief for special exception
17 under Subtitle U, Section 203.1(e), pursuant to Subtitle X,
18 Section 901.2 to allow a community-based institutional
19 facility.

20 The property is located at 1614 Olive Street,
21 Northeast, Square 5167, Lot 9 in the R-2 zone district. And
22 this was last heard by the Board at its meeting session in
23 fact of June 22nd. And you delayed or wanted to continue
24 with that discussion on your decision-making to today, July
25 27th. And I think that's all I have for you, Mr. Chairman.

1 BZA CHAIR HILL: Okay. All right. I mean, as you
2 guys know, this particular case was pretty intense and had
3 a lot of testimony from a lot of different people and a lot
4 of concerns from property owners as well as community
5 members. And also then the applicant I think knowing we'd
6 deny -- or I shouldn't say knowing we'd deny. It is somebody
7 that is needed within the city that people would like to see
8 happen.

9 It's whether or not they meet the regulations for
10 it to happen here, this use. I would welcome anybody
11 starting this because -- oh, Mr. Smith. You are
12 volunteering.

13 MEMBER SMITH: Sure, I'll volunteer. We have a
14 very full record on this particular case. And there has been
15 a lot of passion on each side for this community-based
16 institution facility, on May 18th and June 22nd. And both
17 times, we have requested that the applicant go back and talk
18 with the neighborhood, with the ANC, and the Deanwood
19 Citizens Association about their project and try to alleviate
20 some of their concerns.

21 And by the very nature of this particular special
22 exception, the CBIF, the reintroduction of formerly
23 incarcerated individuals back into society, wherever this
24 would be located within the District. And history has beared
25 out with other cases that this Board and predecessors have

1 heard it is a very controversial proposal. But nonetheless,
2 and I've stated this at the May 18th and June 22nd hearing,
3 these types of developments are worthwhile projects and
4 necessary projects that reintegrate these individuals back
5 into society.

6 And what we should be looking at is within a
7 project or this particular case, can any adverse impacts be
8 mitigated? And we have an extensive list of conditions that
9 were proposed both by the applicant and also by the ANCs, the
10 departments in opposition in essence. Given what has been
11 presented, I do believe that with the proper conditions that
12 this particular CBIF, we can mitigate the adverse impacts of
13 this project on the surrounding neighborhoods with the
14 correct conditions.

15 And I can go through the list of conditions that
16 I have that I think would be appropriate. I don't know. Did
17 you want to go through that now, Chairman Hill?

18 BZA CHAIR HILL: No, that's great. I sincerely
19 appreciate that willingness to start that list. And I guess
20 --

21 MEMBER SMITH: Do you want to hear from other
22 Board members?

23 BZA CHAIR HILL: Since you're on a roll, why don't
24 you go ahead. And then I'll be able to see what other people
25 think of your thoughts.

1 MEMBER SMITH: Okay. So the number of residents,
2 I think the parties in opposition recommended to reduce it
3 down to six clients.

4 BZA CHAIR HILL: May I ask you, Mr. Smith, are you
5 on a particular exhibit or no?

6 MEMBER SMITH: No.

7 BZA CHAIR HILL: Okay, okay. You're just going --
8 okay. All right. So number 1?

9 MEMBER SMITH: Number 1, well, that's one of the
10 conditions that was raised by the party in opposition,
11 reducing it down to six. I don't see how reducing the number
12 of residents within a development would have a rational
13 impact on adverse impacts that may occur on the property.
14 The concerns would be more of the actions of those residents,
15 and I think they can be mitigated through other conditions
16 that are proposed by the applicant and the parties in
17 opposition.

18 So I recommend that we keep OP's proposed
19 condition of no more than 12 residents but remove any
20 reference to one full-time program manager and a house
21 manager. I don't think we need to restrict or tie down the
22 number of employees that may be located at this facility.
23 So just a condition that says the house shall have no more
24 than 12 residents.

25 We had proposed previously and we put out there

1 a sunset for the special exception. The parties of
2 opposition wanted two years. We have proposed five years
3 which is fairly standard that we had proposed on certain
4 special use permits to allow them time to become operational
5 and for us to analyze the impact. So I proposed to keep that
6 five-year sunset. Mr. Miller?

7 ZC VICE CHAIR MILLER: Yeah, I just wanted to make
8 a suggestion which you can take or leave, Mr. Chairman and
9 Mr. Smith. I appreciate the direction that you're going.
10 I think we should go through each of the conditions. But I
11 think maybe we should --

12 MEMBER SMITH: I agree. It should be more --

13 ZC VICE CHAIR MILLER: I'll talk about each
14 condition and make a decision on each condition as we go
15 along so we don't have to go back over. So if you can go
16 back to your -- I'll let Mr. Chairman make --

17 (Simultaneous speaking.)

18 BZA CHAIR HILL: I got you. I got you. Then let
19 me do this, Mr. Smith. And I appreciate, Mr. -- let me go
20 around the table and see where we are and if we're going to
21 get to conditions. Okay? So that being the case, Chairman
22 Miller -- I mean, Vice Chair Miller, since you just spoke up,
23 do you have an opinion on the case itself and if we get the
24 conditions as Mr. Smith is alluding to?

25 ZC VICE CHAIR MILLER: Yes, I concur with Mr.

1 Smith's comments about the case. And I'm prepared to support
2 it with mitigating conditions. And we'll go through each of
3 those conditions. And if the majority of us -- if there's
4 one more who wants to do it that way, then we can decide each
5 of the conditions separately.

6 BZA CHAIR HILL: I'm on board with what is
7 currently being proposed. Mr. Blake? Okay. All right. So
8 the first condition was no more than 12 residents. But
9 getting -- I'm sorry, sticking with OP's original comments
10 but removing the whole employee issue. Like, there could be
11 more employees than one person. It's just the residents, 12.
12 Mr. Miller?

13 ZC VICE CHAIR MILLER: Yeah, I support the OP
14 condition of no more than 12. I think in this zone, I think
15 it was actually allowed up to 15. But that's what the
16 applicant said they were only going to have 12. And so I
17 support the 12 residents -- no more than 12 residents
18 condition.

19 Regarding the program manager and house manager,
20 I want to make sure that they're allowed if we took the
21 condition out. And I just want to make sure that there is
22 permission for there to be a program manager and a house
23 manager or as many as need to be there. But I think we need
24 to probably have a reference to it so that we're specifying
25 the use that's permitted.

1 BZA CHAIR HILL: I appreciate that. And actually,
2 Mr. Smith, you can clarify because I'm going to pull up the
3 OP report. Did they say was there a program manager and a
4 house manager that was going to be full time there? Okay.
5 So in the condition, it would include a program manager and
6 a full-time house manager?

7 MEMBER SMITH: Yes, it would. But it seems to me
8 the way that it's conditioned is tying it down to just those
9 two for me.

10 BZA CHAIR HILL: Or more. So I have to look at
11 the OP -- I just want to -- can you read to me the way you
12 think the condition is in your mind?

13 MEMBER SMITH: There's just those two employees.

14 BZA CHAIR HILL: So no more than 12 residents
15 permitted. I'm sorry. No more than 12 residents including
16 a program manager -- this is what I can't remember. Is the
17 program manager and the house manager full time there?

18 MEMBER SMITH: Yes.

19 BZA CHAIR HILL: Are there two people full time
20 there? I can't recall.

21 MEMBER SMITH: Yes.

22 BZA CHAIR HILL: I got one no.

23 MEMBER SMITH: They're two different types.

24 (Simultaneous speaking.)

25 MEMBER SMITH: -- and another one is split shift.

1 BZA CHAIR HILL: So there's one person there all
2 the time. That's what I'm trying to understand.

3 ZC VICE CHAIR MILLER: Yes.

4 BZA CHAIR HILL: And that's the house manager?

5 MEMBER SMITH: The program manager.

6 BZA CHAIR HILL: Program manager, 24/7.

7 MEMBER SMITH: Well, I don't know about 24/7. It
8 just says full time. But there's one house manager that
9 stays overnight with 24-hour monitoring.

10 BZA CHAIR HILL: Right. So 24/7, there's someone
11 there is what I'm trying to get across. Whatever they call
12 it is whatever they call it, right? You guys can keep going.
13 I'll look at OP's report and make sure I kind of understand.
14 So the number 2 on the table is the 5-year -- I mean, Mr.
15 Blake, are you --

16 MEMBER BLAKE: Can I --

17 BZA CHAIR HILL: Yeah, go ahead, Mr. Blake.

18 MEMBER BLAKE: -- say something? Thank you. With
19 regard to that particular one, if you look at U203.1(e)(1),
20 it says, you shall have no more than 15 persons not including
21 resident supervisor or staff and their families. So there
22 is no stipulation as to the staffing. And what I would be
23 concerned about in this is that in order for them to increase
24 the staff which they may need to do, they would need to come
25 back for a modification of consequence which it's a lot of

1 work.

2 It doesn't give them the flexibility to manage
3 their workers as they need by. And again, the statute
4 doesn't really limit the staff -- supervisor or staff. So
5 I would be inclined to agree with Mr. Smith on removing that
6 part of it.

7 BZA CHAIR HILL: Okay. And I'm just unclear as
8 to the -- does somebody want to read me the condition the way
9 they think they're trying to say it?

10 MEMBER SMITH: You mean a redrafted condition?

11 BZA CHAIR HILL: Just read it. I'm going to write
12 it down.

13 MEMBER SMITH: It would just be the number of
14 residents that's there. So the house shall have no more than
15 12 residents. That's it.

16 BZA CHAIR HILL: Right. However, isn't it that
17 we did want a 24/7 program and house manager as part of the
18 condition?

19 MEMBER SMITH: We can put that in there if we
20 want, yeah.

21 (Simultaneous speaking.)

22 BZA CHAIR HILL: That's what I would want.

23 MEMBER SMITH: Put 24-hour supervision.

24 MEMBER BLAKE: Can we just say at least at a
25 minimum having those two, because I just want to make sure

1 they have the flexibility to up staff if they need to have
2 more managers or more supervisors on site.

3 ZC VICE CHAIR MILLER: I think that would be a
4 useful way to go.

5 BZA CHAIR HILL: But what I'm unclear about and
6 this is why I have to go back into the record. The record
7 is very -- there's a lot of stuff in the record. So I'm
8 trying to find it.

9 Are we, the Board, comfortable with one full-time
10 24/7 person? That's what I'm trying to understand. Yes, I
11 got one thumbs up. And then however they want to staff it
12 on top of that, they can do program manager, house manager.
13 But somebody is going to be there 24/7, correct?

14 MEMBER SMITH: Correct.

15 BZA CHAIR HILL: Correct. Okay. All right. I
16 think I understand. Okay. Now we got the five-year sunset
17 that Mr. Smith has proposed. Mr. Miller, you started to talk
18 about that one?

19 ZC VICE CHAIR MILLER: Mr. Smith is in favor of
20 the five-year? Okay. I can go with that. I realize the
21 party in opposition wanted a two-year shorter period of time
22 to see how it works. I think that's too short. I'd be
23 willing to do something between the two and the five. But
24 I think it's -- I'm okay with the five if you've got a third
25 vote for that.

1 BZA CHAIR HILL: Yeah. I mean, Mr. Blake?

2 (Simultaneous speaking.)

3 MEMBER BLAKE: It's okay. Go ahead. I'm okay --

4 BZA CHAIR HILL: I was going to say the five years
5 to me also it takes a while to get up and running. Like, I
6 mean, three years, you don't know. Maybe you could do four.
7 But I mean, I think five is kind of you at least know whether
8 or not -- I don't know. What do you think, Mr. Blake?

9 MEMBER BLAKE: I think five years is fine. I
10 think that he's absolutely right. We talked about this in
11 past cases with regard to sunsets and the time it takes to
12 get up and running and the time it takes to prove it.

13 In that regard, I do think that two years of the
14 effective is not long enough. But there's some other
15 provisions here which I think will help with that. Five
16 years is adequate given the fact that there's not a lot of
17 incremental investment involved in this project.

18 In the past, we're wondering about trying to
19 recoup investment if we make a decision to provide a lot of
20 uncertainty over a time period. In this case, it's a rental
21 lease opportunity. And so five years is a very good term to
22 allow them to go through and work through the kinks
23 considering the fact that there's some other issues like
24 liaisons and things like that in the proposal. So I'm very
25 comfortable with five years.

1 BZA CHAIR HILL: Okay. Actually, I'm on Exhibit
2 212. Is that it? No, why don't these things line up? I'm
3 on Exhibit 168. If you all would go to 168 if this would be
4 fair.

5 I don't know if this is what you had, Mr. Smith,
6 because you started to do it. I'm just skipping number 1.
7 Oh, yeah, no, I don't know. Do you want to go -- Mr. Smith,
8 would it be fair to go through this? Or how would you -- you
9 have your own list. That's what I'm trying to --

10 MEMBER SMITH: I'm trying to get to Exhibit 168.

11 BZA CHAIR HILL: Sure, thanks.

12 ZC VICE CHAIR MILLER: We have a list that our
13 council provided to us which was in a chart form. We can go
14 through this any way you want to.

15 BZA CHAIR HILL: No, no. That's more helpful.

16 MEMBER SMITH: Let's go through that.

17 ZC VICE CHAIR MILLER: That's what we were
18 starting to do.

19 BZA CHAIR HILL: Got it. I made a mistake. Give
20 me a minute.

21 ZC VICE CHAIR MILLER: Which summarized the OP's
22 proposed condition, the applicant's response, and then
23 comments.

24 BZA CHAIR HILL: Okay. All right, great. Okay.
25 Mr. Smith, go ahead and continue, please.

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1 MEMBER SMITH: Okay. So the next one is on that
2 list that Mr. Miller was referencing. There's a condition
3 about -- the applicant opposed a condition about requiring
4 resident zoning and the facility. I support that particular
5 condition.

6 BZA CHAIR HILL: I'm good with that condition.
7 We got thumbs up? I got two thumbs up. Okay. I got
8 everybody thumbs up. The next condition, Mr. --

9 MEMBER SMITH: The next is quiet hours which I had
10 brought up as a matter a fact. I think we reviewed it on the
11 14th, and the applicant has incorporated the condition. So
12 they would institute quiet hours from 10:00 p.m. to 6:00 a.m.
13 Sunday through Thursday and 11:30 p.m to 7:00 a.m. on Friday
14 and Saturday. And I'm in support of that condition. It
15 seems to me that would cut down on some of the bordering
16 concerns that the parties in oppositions they may have with
17 residents at the facility, noise and loitering.

18 BZA CHAIR HILL: That works with me. I think that
19 makes sense. Okay. I got two thumbs up, everybody. Okay.
20 The next one, Mr. Smith.

21 MEMBER SMITH: The next one, the parties in
22 opposition wanted to have the condition that stated that
23 residents are not allowed to loiter and litter or use drugs
24 and marijuana outside of the house in the streets in front
25 of neighboring yards. That particular condition and the way

1 that it's crafted maybe seen as discriminatory in a sense.
2 You wouldn't impose that on any other development that has
3 12 residents.

4 And it seems to be that they may be pressing that
5 type of condition because of the residents that may be living
6 there. I want to tread with caution on that particular type
7 of condition. I would recommend not incorporating that
8 particular condition that was proposed by parties in
9 opposition.

10 BZA CHAIR HILL: Did we have -- and I'm just
11 looking whether there was a liaison, right? There's a
12 community liaison. Okay. So the community liaison, if there
13 were a community liaison that would help with that condition,
14 meaning hoping that -- well, the -- and I'm going to let
15 everybody speak also.

16 The CBIF residents will be provided a how-to
17 neighbor guide. And the neighbor guide will be reviewed and
18 approved by neighbors and the advisory board, a how-to
19 neighbor guide. I don't know if that seems reasonable in
20 terms of, like, how one is hoping to live within the
21 community. No? I'm just trying to see if the how-to
22 neighbor guide is something -- you guys are off the how-to
23 neighbor guide. That's what I'm trying to understand.

24 MEMBER BLAKE: It seems like it's a code of
25 conduct statement, but it's somewhat ambiguous. But I do

1 think that something like that needs to be crafted. And both
2 the applicant read on different elements of it.

3 But something does need to be crafted to say, this
4 is the code of conduct that we expect of you. But we have
5 to provide them -- we can't be so specific because we can't
6 really tell them how to conduct that behavior. And it's
7 really something they have to do within the house rules that
8 they have.

9 And that might be, don't loiter outside. But
10 that's their house rules. So I think that something has to
11 be published, and they should put together something that
12 they share with the community liaison or maybe craft it
13 together. But I don't think we can specify what that is.
14 But I think the intent is just to have a set rules and
15 behavioral rules in the neighborhood.

16 MEMBER SMITH: I support that as well. So like
17 the condition states that it shall provide a code of conduct
18 to all residents at the facility that may be provided to the
19 ANC upon request. And that would give them the opportunity
20 engage with the ANC about any issues that may come about
21 between when they're communicating with the liaison to the
22 ANC. And as a result of that communication, they may
23 incorporate something new in the code of conduct. So it
24 would just be a living, like a breathing document, living,
25 breathing document.

1 BZA CHAIR HILL: Let me just grab something off
2 the printer. Okay. And I got to go at 2:00 o'clock. So
3 we'll see if this happens by 2:00 o'clock. Okay. I
4 understand that one. All right. Then, okay, the front
5 fence.

6 MEMBER BLAKE: I'm just going to start with that,
7 Chrishaun, or Member Smith. The front fence was they had
8 actually -- the party opposition wanted them to permanently
9 put in a front and back fence. The Office of Planning had
10 actually asked that a six-foot high fence be removed and the
11 applicant had agreed to do kind of either one, install a
12 fence and go along with what the neighbors wanted.

13 In this case, I believe when the Office of
14 Planning initially looked at the fence, it was a six-foot
15 high fence. But I do not believe based on the pictures we
16 saw recently that that is, in fact, a six-foot fence. It
17 seems somewhat lower than that.

18 It is of wood construction, and it actually
19 doesn't look that bad. Since the applicant is proposing to
20 keep a fence, I would be comfortable with keeping the
21 existing front fence and agreeing that the entire property
22 be fenced at some level for privacy sake. Also, I believe
23 the garbage cans are kept in the front yard. So it's
24 especially good to have the privacy fence as opposed to a
25 black chain link fence which was opposed by the parties in

1 opposition.

2 BZA CHAIR HILL: All right. Does everybody agree
3 with Mr. Blake?

4 ZC VICE CHAIR MILLER: Well, I agree that a wooden
5 fence is more attractive than a black chain link fence. But
6 the parties in opposition said that the black chain link
7 fence is what's in that neighborhood -- other parties in the
8 neighborhood. And this would be more -- that would be more
9 compatible with the neighborhood, the black chain link more
10 than the wood fence. Also part of, I think, OP's initial
11 rationale for asking for removal of the fence, they didn't
12 want this property to, like, stand out or stand apart but
13 look like it's not part of the community because it had a
14 different type of fencing. So I guess I would be more
15 supportive of the black chain link, but I'm not going to make
16 a big issue about it if the majority thinks that is the way
17 to go.

18 BZA CHAIR HILL: All right. Sorry. So the black
19 chain link fence or something to match the community.

20 MEMBER BLAKE: Mr. Chairman and Commissioner
21 Miller, my concern with the black chain fence and I'm sure
22 others may agree is that if we -- a condition you have to
23 have a black chain fence, the fence they have now is fairly
24 modern looking. If we condition that they'll always have to
25 have a black chain link fence which is not necessarily going

1 to be what they would want down the road. And the other
2 neighbors may change as well. I think to have a fence there,
3 a privacy fence of some sort makes sense. But to say it has
4 to be chain link -- okay.

5 BZA CHAIR HILL: Okay. All right. A fence,
6 right? Was it six-foot high?

7 (Simultaneous speaking.)

8 MEMBER SMITH: No -- with the zoning regulations.

9 BZA CHAIR HILL: What?

10 MEMBER SMITH: It just needs to be developed in
11 accordance with the zoning regulations. A six-foot fence and
12 probably the reason why OP wants to remove it, it is illegal
13 to probably have a six-foot solid fence.

14 BZA CHAIR HILL: Okay.

15 MEMBER SMITH: I also creates security issues for
16 the police or anyone that's trying to access the property.

17 BZA CHAIR HILL: Okay. And I jumped around
18 because my printer came up finally. So there was the
19 security plan?

20 MEMBER SMITH: Yes, and that was proposed by the
21 parties in opposition. And the applicant has agreed to that.

22 BZA CHAIR HILL: So the security plan, parking.
23 Two parking spaces should be shown on the plans at the rear
24 of the building. The applicant has not submitted new plans
25 but stated there are four off-street parking spaces. Are we

1 comfortable with the four off-street parking spaces on the
2 transcript? Or do we want to see two parking spaces in the
3 rear?

4 MEMBER SMITH: I'm comfortable with it as shown.

5 BZA CHAIR HILL: Okay, fine. So we'll get rid of
6 the parking thing or we'll just mention what the applicant
7 says. They'll have parking. So parking has not submitted
8 any plans but say there are four off-street -- okay. So
9 we'll mention parking and the four off-street parking spaces.
10 Okay? Okay. The front fence, did that. Well, now that I
11 got the list, Mr. Smith, I'll also try to help out here.
12 Sorry. So the applicant -- now I'm lost.

13 (Simultaneous speaking.)

14 BZA CHAIR HILL: I don't think 1612 has anything
15 to do with this.

16 MEMBER SMITH: Agreed.

17 BZA CHAIR HILL: Okay. So that's done.

18 MEMBER SMITH: If they want to replace it, it'll
19 just be simple matter for them to.

20 BZA CHAIR HILL: So that's theirs. The depth
21 issue, the applicant did not agree to the homeowners
22 conditions but is purported discussing an alternate with the
23 adjacent neighbors. The property must dismantle -- I'm not
24 in favor of removing the deck. Are you guys? Okay. Go
25 ahead, Mr. Blake.

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1 MEMBER BLAKE: They have some proposals. One was
2 to remove it. The applicant came back and said they would
3 be willing to put up some type of fence screening or plant
4 some fast grow trees as part of the compromise.

5 I think that if they're going to put up screening,
6 we should see at least what the screening is or have an
7 indication of what that screening. And if they're going to
8 grow trees, then we should have an indication of where
9 they're going to plant the trees, some kind of schematic that
10 reflects what they're going to do specifically. So in that
11 case, I'm comfortable with the screening more than the trees
12 necessarily because there's a huge expense with planting
13 trees. But the screening is something they probably could
14 do fairly decently.

15 BZA CHAIR HILL: Okay. I tell you what. I hate
16 to do this to you, Mr. Smith. I think we haven't gotten to
17 the deliberation part really of the merits of the -- we're
18 just going through this.

19 If you, Mr. Smith, would be willing to since you
20 started, take over from me from frosted windows. Okay. And
21 when I come back because I have to go at 2:00 o'clock, I'll
22 come back and we can go over the conditions again. There's
23 a lot of conditions. And I can go through up until the deck
24 conditions. And then you, Mr. Smith, can take it from there.

25 MEMBER SMITH: Okay.

1 BZA CHAIR HILL: Okay. I'll see you guys in about
2 15 minutes. Thanks.

3 ZC VICE CHAIR MILLER: Mr. Blake, on the screening
4 for the deck, I'm okay with using that kind of language,
5 privacy screening for the deck. And I would be okay
6 personally with leaving it to them to figure out what kind
7 of screening it should be. And I don't need to see this case
8 again.

9 MEMBER BLAKE: Okay. Sounds good to me.

10 MEMBER SMITH: So are we switching to a discussion
11 about the merits of the case? Or are we still continuing to
12 go through the conditions?

13 MEMBER BLAKE: We're going to continue looking at
14 the provisions and get a cut at it for Mr. Chair to review.

15 ZC VICE CHAIR MILLER: Right. And I think you're
16 leading us with the frosted windows issue.

17 MEMBER SMITH: So the parties in opposition
18 requested that the applicant install frosted windows on all
19 windows except for those on the front that face Olive Street.
20 And applicant has accepted the homeowners conditions. I
21 believe, Mr. Blake, you had recommended this when we last
22 heard this particular case.

23 I do believe that including some of the frosted
24 windows gets at some of the security and privacy issues that
25 the residents of the neighborhood may have because of the

1 number of residents that would be living here. And this is
2 a condition that we had based on other units that have this
3 many residents. And I would be willing to support the
4 inclusion of frosted windows.

5 The next one is this community agreement. The
6 parties in opposition have requested that an agreement
7 between Thrive DC and Community Family Life Services that the
8 Deanwood Citizens Association would be negotiated in place
9 by the end of the first year of operation. And the applicant
10 has accepted this condition.

11 My position is that the condition is very vague.
12 To me, a community agreement -- as we have stated with other
13 projects where ANCs had requested a community agreement that
14 that is a civil matter between the civic association or in
15 this case Deanwood Citizens Association and the applicant.
16 So I would recommend to leave that as a civil matter between
17 the ANC, the Greenwood Citizens Association, and Thrive DC.
18 So I would not recommend to add that as a condition.

19 ZC VICE CHAIR MILLER: I agree with not adding it
20 as a condition but like a construction management or other
21 agreements that are in BZA that are referenced in BZA orders.
22 I think we can leave it to our counsel in drafting the order
23 to have a reference that the applicant has agreed to
24 negotiate and seek this type of agreement between the
25 parties. It's not a condition of the order specifically, but

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1 it's a reference that that's a representation the applicant
2 has made in good faith to try to respond to the community --
3 the parties in opposition.

4 MEMBER SMITH: Mr. Black, do you have any --

5 MEMBER BLAKE: No, I agree. I agree.

6 MEMBER SMITH: Okay. So we'll leave that to our
7 counsel to add that into the --

8 ZC VICE CHAIR MILLER: We're leaving a lot to our
9 counsel to tweak all these. Just to be clear that we know
10 that the counsel needs that flexibility.

11 MEMBER SMITH: The next condition is to provide
12 a hotline. The applicant has proposed to establish a hotline
13 that would be available to the surrounding community to
14 provide feedback in identifying the issues or concerns with
15 the proposed use. I'm comfortable with adding that in as a
16 condition along with -- that will probably coincide with the
17 inclusion of the liaison to the ANC.

18 MEMBER BLAKE: I agree.

19 MEMBER SMITH: The next one is the quarterly
20 meeting. The applicant shall create a standing quarterly
21 meeting where neighbors, the ANC, and BZA are invited. The
22 applicant has accepted this condition. I see no reason not
23 to accept this particular condition as drafted.

24 MEMBER BLAKE: I agree.

25 ZC VICE CHAIR MILLER: I agree.

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1 MEMBER SMITH: The next one is the liaison member
2 which we had requested at a previous hearing probably in May.
3 The applicant proposes a condition to identify a liaison
4 member to obtain the ANC to develop an understanding of
5 community issues and to facilitate communication with
6 community members and ANC 7B Commissioners. So as I did and
7 all of us did in May, we recommend to keep that and approve
8 that condition.

9 MEMBER BLAKE: I agree.

10 ZC VICE CHAIR MILLER: I concur.

11 MEMBER SMITH: The next condition, the applicant
12 would adopt the block on Olive Street. And as part of the
13 program requirements, they would be responsible for ensuring
14 that the street is kept clean and free of trash and hosting
15 at least four cleanup days of the year. And that was
16 accepted by the applicant.

17 Being that this would occur within the right-of-
18 way, I don't see how this would alleviate -- it's within the
19 purview of the Board to alleviate zoning concerns. I would
20 not recommend adding this condition. We can memorialize it
21 in the record if you're amenable to that. But I wouldn't
22 recommend adding those conditions.

23 ZC VICE CHAIR MILLER: And I would support not
24 adding it as a condition for the reasons you stated. But I
25 personally would prefer to see a reference to it in the order

1 that the applicant has agreed to do that.

2 MEMBER BLAKE: I would concur with that.

3 MEMBER SMITH: The next condition that was
4 recommended by the applicant would be the applicant would use
5 its relationships with D.C. Council and the funding community
6 to try to highlight the needs of the community in partnership
7 with the community to address some of the concerns. Just as
8 I stated about the Adopt-A-Block, I think that's probably
9 beyond the scope of the BZA and zoning concerns to mitigate
10 any potential adverse impacts. And I would recommend not
11 including this condition and also not memorializing it.

12 MEMBER BLAKE: I would agree with that and also
13 question enforceability of such a provision.

14 MEMBER SMITH: Agreed.

15 ZC VICE CHAIR MILLER: I concur with both of your
16 comments.

17 MEMBER SMITH: Okay. And that's the conditions
18 within the sheet. Do any of you gentlemen have any
19 recommendations for additional conditions?

20 MEMBER BLAKE: In the context of the monitoring,
21 I do believe it'd be helpful to have security cameras
22 positioned fore and aft if that is something you guys would
23 be comfortable with from a security perspective and being
24 able to monitor the grounds.

25 ZC VICE CHAIR MILLER: We could add that to the

1 security condition that we agreed to. Yeah, we could add
2 that to that condition. It already references staff, their
3 schedules, and that type of thing. But we could add the
4 cameras as well if that's what you're suggesting, Mr. Blake.

5 MEMBER BLAKE: Yes, Commissioner, yes.

6 (Simultaneous speaking.)

7 MEMBER SMITH: -- add lighting with the security
8 cameras to the front and rear of the building.

9 MEMBER BLAKE: Yes, given some concerns that the
10 neighborhoods have mentioned with regard to safety, traffic,
11 et cetera, I think that would be helpful.

12 ZC VICE CHAIR MILLER: Yes, and I would just --
13 I don't know if we have to mention it. But as long as the
14 lighting is directed toward this property and not spilling
15 over and disturbing other neighbors' windows. The light come
16 through their windows or whatever, as long as the lighting
17 is directed toward the property here.

18 MEMBER SMITH: So we'll add that to the security
19 plan recommendation. To return to the deliberation of the
20 merits of the case, did any of you have any additional
21 comments that you would like to add about how this project
22 would meet special exception criteria for special exception?

23 MEMBER BLAKE: Commissioner Miller, do you want
24 me to start? Okay?

25 ZC VICE CHAIR MILLER: Yes, please.

1 MEMBER BLAKE: Okay. I was just going to talk a
2 little bit about my thoughts on the provisions, Mr. Chair.
3 When I looked at this case, I mean, I think that the -- it
4 was very -- as Board Member Smith mentioned, this is a very
5 logical, practical, and helpful product for the community and
6 it's needed. It looks to me from the outset there was an
7 issue that centered around poor communication and the lack
8 of transparency that existed between the applicant and the
9 community.

10 When we reviewed the questions, issues, and
11 concerns raised by the ANCs, both 7D and 7C, it did seem to
12 focus around issues of transparency and the way that the
13 project was introduced to the community. But we're charged
14 with giving great weight to the issues and concerns raised
15 by the ANC. Other issues that were raised by the ANC
16 centered around the suitability of this spot for the facility
17 as they felt this was a community that had high trauma
18 exposure, rampant drug use, et cetera, that really was not
19 necessarily the best environment for this type of program.

20 And we received commentary on both sides as to why
21 it was or was not suitable. That said, again, I struggle
22 with this because there are a number of issues that were
23 raised on both sides in favor and in opposition. The
24 community's concerns were again about suitability.

25 And also we talked a little bit about

1 preponderance of non-permanent housing in the area which the
2 Office of Planning did the research to determine that there
3 were no alternative facilities within 500 or 1,000 feet,
4 consistent with the requirements of the conditions for
5 approval. And also a lot of the issues talked about again
6 were outside of the purview of the Board whether it was the
7 right location. But for the most part, the building complied
8 with the development standards of the zone.

9 And the regulations permit the use in the zone by
10 special exception. So it was so long as the conditions were
11 met that under U203.1(e), and they were as best we can see.
12 So there seems to be a lot of communication issues that
13 really have started to move the needle forward in actually
14 getting communication done.

15 Unfortunately, for some reason, now that the ball
16 is rolling, it has somewhat broken down except we have now
17 from the neighboring community which I think the immediate
18 neighbors' concerns which really talked about again the
19 suitability, lack of job opportunities, the number of
20 facilities in the area. They also talked about issues of
21 zoning compliance with the structure, parking, traffic,
22 alley, privacy, and security. But it all seems that in going
23 through the conditions that we've outlined, we have addressed
24 a lot of those issues, particularly with regard to the
25 immediate neighbors.

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1 So as I looked at it, the applicant has basically
2 met the burden of proof and meeting the special criteria of
3 subsection -- Subtitle U 203.1(e) and the general standards
4 and the way with the conditions. Again, we've said I think
5 that they fit perfectly. And it's not perfect, but the
6 liaison program and the quarterly meetings will allow that
7 interaction between the community and the facility to take
8 place.

9 And I think that the flexibility we've provided
10 them for at least in the proposed conditions will allow them
11 to manage the property as they would see fit to do the job
12 that they are trying to do. And I do think that the
13 operators are experienced operators. They have the ability.

14 Theoretically, their experience says that they
15 should be able to do it. They've determined there's a need
16 for the area -- for the facility in the area. The applicant
17 believes it is a suitable location, and I guess they have the
18 expertise and the building complies with that development
19 requirement. So all that said, I am in favor of the
20 application and with the conditions that we've talked about.

21 BZA CHAIR HILL: Okay. Thank you, Mr. Blake. I'm
22 sorry I jumped in here. Did all of you give your thoughts?

23 ZC VICE CHAIR MILLER: No, I'll go give my
24 thoughts. I concur with the comments of Board Members Smith
25 and Blake, all the comments that they've made. And I want

1 to just pause and take a moment to thank both the applicant
2 and the parties in opposition for meeting through the
3 mediation session that was held.

4 The parties in opposition made clear in their
5 letter in Exhibit 169 that they still remain opposed. But
6 to be response to us as a Board, they've set forth the
7 conditions that they thought would mitigate potential adverse
8 impacts. We've gone through each of those and said which
9 parts we've wanted to do as conditions or which were
10 appropriate and which may be not appropriate and should be
11 referenced in other ways. And we added some conditions as
12 well.

13 So I just wanted to thank them for mediating
14 because -- and we recognize that the neighbors are still --
15 that their official position is in opposition. But that was
16 helpful to us to help us get to a decision to and incorporate
17 some of the -- understand their concerns better and do our
18 best within zoning within the regulations to mitigate. This
19 is an important citywide need, these community-based
20 institutional facilities.

21 And they need to be equitably distributed
22 throughout the city. And the Office of Planning has provided
23 us information, as Mr. Blake said, there is not a CBIF within
24 1,000 or 500 feet which is the criteria for this particular
25 special exception. The neighbors did maintain that there

1 were other non-single family types of uses in the
2 neighborhood. But that's not the criteria that we make our
3 decision on.

4 And with all of these types of facilities, not
5 all, but in general with facilities that are located -- that
6 are permitted to locate in residential neighborhoods that
7 aren't strictly single family facilities. And this is true
8 in almost any mixed use zoning district. The issue really
9 comes down to how well managed the facility or the use is.

10 And I think we've developed conditions here with
11 the help of the applicant and the parties in opposition to
12 mitigate potential adverse impacts. And the sunset period
13 will allow that period of time to be tested and for
14 improvements to be made. And so I'm supportive of this going
15 forward as we've discussed today. Thank you, Mr. Chairman.

16 BZA CHAIR HILL: Thank you, Vice Chair Miller.
17 I will align my comments with Mr. Blake and Mr. Miller. I
18 did not hear those. I just know that they were of a similar
19 vein.

20 In terms of, like, my thoughts on the overall
21 regulations, I mean, I would agree that -- I mean, everything
22 you guys just said about like the need and whether or not
23 this falls within the regulations for us to grant, I would
24 agree with the analysis the Office of Planning has provided
25 in terms of why they're meeting that criteria. However, if

1 not for the ANC to come forward, we wouldn't have also gotten
2 to where we are with such good feedback with conditions that
3 might mitigate issues. And the sunset period is a very big
4 stick that we use for -- they're going to have to come back
5 now in five years to justify that this program has been
6 working well.

7 And if not, then another Board would have to take
8 up -- will have to take up this analysis. And all these
9 conditions that are in place are there to help mitigate any
10 issues. So therefore, there's a reason for the applicant to
11 adhere to this, including even, like, a code of conduct.

12 There was something that was mentioned earlier and
13 some way to be a good neighbor, integrate with the community.
14 So yeah, so I was going to agree with those comments and that
15 there's not another one of these within the area. Okay. So
16 you all did work through the rest of those conditions,
17 correct?

18 And I'm going to move through -- I'm going to make
19 a motion and leave it at the condition where I was. I'm
20 going to -- there's three of you right there. I'm going to
21 agree with probably what you all said. And even if I did,
22 there's three of you all right there. So I would get
23 outvoted.

24 I'm going to go ahead and -- let's see. Oh, the
25 other thing that I did want to mention about it is that it

1 is disappointing that the communication -- there was kind of
2 a lack of communication. I mean, I did think that the people
3 that were representative of how the facility was going to be
4 run, they seemed as though they had a lot of experience with
5 it.

6 The facility itself seemed as though it was a --
7 the facility itself looked nice, meaning it didn't look as
8 though -- it looked like a brand-new facility. And to tie
9 to what Mr. Blake said, this is the envelope of the building
10 is a matter of right envelope. It's the use that we're
11 discussing.

12 It's not that they couldn't build this. They can
13 build this. They did build this. It's that the community
14 was upset that it seemed as though they were saying one thing
15 and then they did another thing.

16 And so that is something that I think caused for
17 confusion. And now the applicant will have an opportunity
18 to rectify that over these next five years. So I'm going to
19 go through these conditions after I make a motion, and I'll
20 ask Mr. Blake for a second.

21 I'm going to make a motion to approve Application
22 No. 20538 as captioned and read by the Secretary, including
23 the conditions that this facility will only have 12
24 residents, including at least one full-time 24/7 house
25 manager or program manager. And the number of management

1 staff will not be limited. It's only the number of residents
2 that will be limited.

3 There will be a sunset period of five years to
4 begin after the day that the order is issued. There will be
5 a sign-in sheet that the applicant has proposed a condition
6 that will require residents to sign in and out of the
7 facility. There will be quiet hours. The applicant proposed
8 a condition that they will institute quiet hours from 10:00
9 p.m. to 6:00 a.m. Sunday through Thursday and 11:30 p.m. to
10 7:00 a.m. on Friday and Saturday.

11 There will be a code of conduct plan for
12 residents. There will be some type of screening for the
13 deck. This is what I didn't -- I believe we will put it in
14 the conditions. So therefore, there needs to be some kind
15 of screening for the deck.

16 MEMBER BLAKE: The rear deck.

17 BZA CHAIR HILL: The rear deck. Thank you. The
18 rear deck. And then that's where I would turn over to Mr.
19 Smith.

20 MEMBER SMITH: Have we been through the fences?
21 Okay. So the front --

22 BZA CHAIR HILL: Oh, I'm sorry, right. And that
23 there will be a -- I'm sorry. There will be a fence around
24 the front yard that will be of the zoning regulations. And
25 also I think the back yard. Is that correct, Mr. Blake?

1 MEMBER BLAKE: Yes, a fence of some sort, yes.

2 BZA CHAIR HILL: Okay. The security plan, the
3 applicant shall provide a detailed security plan which
4 includes security staff members' names, their schedules, cars
5 they drive, including licensing plate numbers and that they
6 are monitoring inside only or -- sorry, and whether they are
7 monitoring inside or outside. This security plan, did that
8 get clarified? Yes?

9 MEMBER SMITH: We just added to the security plan
10 by stating that the applicant shall include security cameras
11 and lighting to the front and rear of the building.

12 BZA CHAIR HILL: Thank you. Parking, the
13 applicant has not submitted parking plans. But they state
14 that there are four off-street parking spaces.

15 MEMBER SMITH: So we had decided to keep OP's
16 condition to require parking spaces shall be incorporated.

17 BZA CHAIR HILL: So then do we need to see them?
18 We're just going to let -- they'll submit it into the record?

19 MEMBER SMITH: They'll submit it into the record.

20 MEMBER BLAKE: There's ample space on the lot.
21 If you think about it, the rear yard is 87 and a quarter --
22 87 and a half by 25 which provides ample space for parking.
23 So I mean, they can put it in the back. They have one on the
24 plat right now, a 9 by 19 space. But they have room for
25 four.

1 BZA CHAIR HILL: So we'll leave the record open
2 for them to show the two spots on the plans. Okay, Mr. Moy?
3 We're going to leave the record open for that. And Mr.
4 Smith, can I turn you over to the frosted windows part?

5 MEMBER SMITH: The applicant shall install frosted
6 windows on all windows except those facing Olive Street,
7 Northeast. The next condition, the applicant shall establish
8 a hotline that would be available to the surrounding
9 community to provide feedback and identify issues or concerns
10 with the development. The next one is related to the
11 quarterly meeting.

12 The applicant shall create a standing quarterly
13 meeting where neighbors, the ANC, and the Deanwood Citizens
14 Association are invited. The applicant will share relevant
15 updates regarding the residents' housing during these
16 meetings. The next one is related to liaison member. The
17 applicant shall identify a liaison member to attend ANC
18 meetings to develop an understanding of community issues and
19 needs and attempt to facilitate communications for community
20 members in ANC 7D.

21 The remaining considerations that we had was to
22 memorialize some of these suggested conditions. The first
23 one was to memorialize a community agreement. We didn't
24 believe that it rose to the level of a condition because we
25 typically had not conditioned community agreements,

1 especially permits. There was a recommendation to just
2 memorialize it within the record.

3 BZA CHAIR HILL: Okay, great. And then is that
4 it?

5 MEMBER SMITH: The next one to memorialize, and
6 correct me if I'm wrong, was the agreement about the D.C.
7 counsel. Actually, no, we recommended to strike that one.
8 The other one was to the Adopt-A-Block condition that they
9 had recommended.

10 We recommended to just memorialize that. We can't
11 condition it. It's within the right of way. It's beyond the
12 purview of the BZA and mitigating any adverse impacts as it
13 relates to zoning. But we just recommend to memorialize it.

14 BZA CHAIR HILL: Okay. All right. All those as
15 mentioned and ask for a second, Mr. Blake.

16 MEMBER BLAKE: Second.

17 BZA CHAIR HILL: Motion made and second. Mr. Moy,
18 could you take a roll call, please.

19 MR. MOY: If you'll please respond with your
20 answer, your vote on the motion made by Chairman Hill to
21 approve the application for the relief that's requested along
22 with the specific conditions as you just cited in the
23 Chairman's motion. Mr. Smith?

24 MEMBER SMITH: Yes.

25 MR. MOY: Mr. Blake?

1 MEMBER BLAKE: Yes.

2 MR. MOY: Zoning Commissioner Rob Miller?
3 Chairman Hill?

4 BZA CHAIR HILL: Yes.

5 MR. MOY: We have a member not participating.
6 Staff would record the vote as 4 to 0 to 1. And this is on
7 the motion made by Chairman Hill to approve the application
8 for the relief requested along with specific conditions. The
9 motion to approve was second by Mr. Blake. Also in support
10 of the motion is Mr. Smith, Zoning Commissioner Rob Miller,
11 and Chairman Hill. Again, the motion carries on a vote of
12 4 to 0 to 1.

13 BZA CHAIR HILL: Okay. Thank you all and thank
14 you guys for covering for me for those. Do we want to take
15 lunch? We'll come back at 3:00 o'clock. Okay. See you all
16 at 3:00.

17 (Whereupon, the above-entitled matter went off the
18 record at 2:30 p.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: 07-27-22

Place: telconference

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



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