

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

SEPTEMBER 21, 2022

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The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice at 10:16 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
ROB MILLER, Vice Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
TRACEY W. ROSE, Sr. Zoning Specialist
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from
the Regular Public Hearing held on September 21, 2022.

AGENDA

ItemPage

Application No. 20764 of Sukhmohinder Mutneja

Relief: Special Exception from the rear addition requirements of Subtitle E, Section 205.4, pursuant to Subtitle E, Section 205.5, Subtitle E, Section 5201, and Subtitle X, Section 901.2

Project: To construct a third story, and three-story rear addition with cellar, and convert to a flat, an existing, attached, two-story with cellar, principal dwelling unit in the RF-1 zone.

Address: 3224 Sherman Avenue, NW, Square 2845,

Lot 809, ANC 1A06.....4

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

10:16 a.m.

BZA CHAIR HILL: Okay. Great. Good morning.
Good morning, Chairman Hood. Ms. Rose, if you want to go
ahead and call our case, our next case.

MS. ROSE: The next case is a limited scope public
hearing, Application No. 20764 of Sukhmohinder Mutneja, for
a special exception from the rear addition requirements of
Subtitle E, Section 205.4, pursuant to Subtitle E, Section
205.5, Subtitle E, Section 5201, and Subtitle X, Section
901.2 to construct a third story, and three-story rear
addition with cellar, and convert to a flat an existing,
attached, two-story with cellar, principal dwelling unit in
the RF-1 zone at premises 3224 Sherman Avenue, NW, Square
2845, Lot 809.

And as a preliminary matter, the Applicant has
filed final compiled architectural plans that need a waiver
of the 24-hour rule.

BZA CHAIR HILL: Okay. Mr. duPont, are you there?

MR. DUPONT: Yes, sir.

BZA CHAIR HILL: Okay.

MR. DUPONT: Yes, I am here.

BZA CHAIR HILL: Okay. Could you introduce
yourself for the record, please?

MR. DUPONT: My name is Stephen duPont. I'm the

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1 architect for the project at 3224 Sherman Avenue, NW.

2 BZA CHAIR HILL: Okay. Mr. duPont, are you
3 choosing not to use your camera?

4 MR. DUPONT: No, I'm just trying to figure it out.

5 BZA CHAIR HILL: Okay. We'll give you a minute.

6 MR. DUPONT: I'm in a participant. I --

7 BZA CHAIR HILL: Oh, there we go. Great.
8 Perfect.

9 MR. DUPONT: You got it?

10 BZA CHAIR HILL: Yep. You're there. Thank you.

11 MR. DUPONT: All right. Thank you.

12 BZA CHAIR HILL: All right. Let's see. So, Mr.
13 duPont, you were here with us before.

14 MR. DUPONT: Yes.

15 BZA CHAIR HILL: Obviously, this is a limited
16 scope hearing on some concerns that the Board had. Could you
17 please let us know what's happened since the last time you
18 were here?

19 (Simultaneous speaking.)

20 BZA CHAIR HILL: Give me one second. Unless the
21 Board has any issues, I'd like to see those final plans. And
22 so I would like to go ahead and allow them into the record.
23 Ms. Rose, if you could ask staff to do so.

24 MS. ROSE: Yes, thank you.

25 BZA CHAIR HILL: And then that's something maybe

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1 we can look at, everyone, while Mr. duPont is explaining to
2 us what happened since the last time he was here. Go ahead,
3 Mr. duPont.

4 MR. DUPONT: Thank you. I reviewed the code
5 sections. And then I had an idea about how to make this
6 work. I consulted with Mr. Sullivan. And he was able to
7 meet with Mr. LeGrant and show him the solution. Mr. LeGrant
8 agreed that it met the requirements of the code. But Mr.
9 Sullivan wrote me a note recording anything which has been
10 submitted to you. And I also submitted a revised set,
11 revised plan set illustrating the correction.

12 The correction is a sunroom, a common sunroom
13 between the two units that both units have access to that
14 overlooks the interior, the closed court, at the first floor
15 level. So you have a through passageway both at the first
16 floor level, as the occupants would desire, and also at the
17 cellar level.

18 BZA CHAIR HILL: Okay. I'm just trying to pull
19 up plans and we have (audio interference) below. While I do
20 so, does the Board have any questions of Mr. duPont? If so,
21 could you please raise your hand?

22 BZA VICE CHAIR JOHN: I have a question about the
23 plat. And I don't know if the plat needs to be amended to
24 show the sunroom as well. But it only shows the cellar
25 level.

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1 MR. DUPONT: I did not correct the plat. I forgot
2 that there even was a plat. And I will be happy to submit
3 a corrected plat.

4 BZA VICE CHAIR JOHN: Thank you.

5 MR. DUPONT: Since it has not been submitted to
6 DCRA, I hadn't, I didn't remember I had drawn a plat.

7 BZA VICE CHAIR JOHN: Okay. I have a couple other
8 questions, but I can wait for the Chairman.

9 BZA CHAIR HILL: Okay. Yeah, no, go ahead, Ms.
10 John, if you're ready. I'm just waiting for this. I'm just
11 waiting for these things to load up.

12 BZA VICE CHAIR JOHN: So my question is about the
13 sun study. And I looked at those. But I normally like to
14 see the matter of right option compared to what's proposed.
15 I don't know if you had any slides like that. But I didn't
16 see them. So it was --

17 MR. DUPONT: I didn't do a, I didn't know you
18 would want a matter of right option. I did do the existing
19 condition option.

20 BZA VICE CHAIR JOHN: Right. But typically in
21 terms of looking at whether or not there is any undue impact,
22 particularly on the neighbor to the north, I was not able to
23 understand (audio interference).

24 MR. DUPONT: The neighbor to the south is more
25 than ten feet past the neighbor to the north. So a matter

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1 of right would be basically the same as the existing
2 condition because the matter of right would not extend past
3 the neighbor to the south. And the neighbor to the south
4 shadow would be most of the impact that's already there. We
5 create most of the matter of right impact just as it is.

6 BZA VICE CHAIR JOHN: I see. So maybe you can
7 sort of walk me through at least the slide where you think
8 there is the most impact on the neighbor to the north.

9 MR. DUPONT: Well, obviously, it would be
10 December. And it would be in the morning hours of December.
11 So the --

12 BZA VICE CHAIR JOHN: What slide is that?

13 MR. DUPONT: I am going there now, sun studies.
14 So, if you look at -- each of the slides is a screen shot.
15 And the last number in the screen shot is the easiest way to
16 find them. So, if you look at page, a file that ends in 59,
17 that is at --

18 BZA CHAIR HILL: I think 57V as in Victor is the
19 one I think that says December, 7:30, Ms. John.

20 MR. DUPONT: In the, that's in the afternoon,
21 yeah.

22 BZA CHAIR HILL: Oh, that's --

23 MR. DUPONT: 59 is in the morning. 24 is later
24 in the morning, like 10:00. 38 is at noon. 57 is at around
25 4:00 in the afternoon. And 10 is at sunset.

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1 BZA VICE CHAIR JOHN: Okay.

2 MR. DUPONT: I would love to have been able to put
3 these into folders for the month. But I don't really have
4 any way to do that.

5 BZA VICE CHAIR JOHN: All right. Thank you.
6 That's it for me for now.

7 MR. DUPONT: Thank you.

8 MEMBER BLAKE: Could you clarify which slides
9 you're talking about? I wasn't -- I didn't follow all that.
10 Which is the slide that you --

11 (Simultaneous speaking.)

12 MR. DUPONT: The slides are all screen shots. And
13 they're all time stamped. So the last number is the easiest
14 way to find a slide you're looking for. For the month of
15 December, the slides would be 59, 24, 38, 57, and 10, in that
16 order.

17 BZA CHAIR HILL: Yeah, the timestamp, I don't see
18 the timestamp that you're speaking of. Oh, I see it. Yeah,
19 yeah.

20 MR. DUPONT: That's the name of the file. The
21 file name is -- and I don't know how they're shown on your
22 screen. In my, on my Mac, the timestamp is the file name.
23 And those numbers are the time that I made the screen shot.

24 So the earliest screen shot was at sunrise. They
25 all say p.m., but that's because, that's the time I was

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1 making the screen shots. So the sequence through the day is
2 59, 24, 38, 57, and 10. And each of the images has the date,
3 the timestamp of the day it represents. So, if you're
4 looking at number 10, it's at 4:30 in the afternoon,
5 December. The dates are sort of hidden behind --

6 BZA CHAIR HILL: So while you all are figuring it
7 out, because those shadows had either -- let me see. I think
8 Commissioner Wray here. Commissioner, can you introduce
9 yourself for the record, please?

10 MR. WRAY: Sorry, there was some confusion about
11 swearing in. Michael Wray, representing ANC 1A.

12 BZA CHAIR HILL: Thanks, Commissioner.
13 Commissioner, can you give us some feedback in terms of your
14 ANC?

15 MR. WRAY: Sure. So, we, of course, reviewed this
16 case once before, and we're in support. The Applicant was
17 asked to make some changes, talking about the meaningful
18 connection between the properties. We were able to review
19 that change at the committee level, not at the full ANC
20 level, but at the committee. And, obviously, the small
21 change made on the interior of the building we do not feel
22 would change in any way what our original vote was in support
23 because it doesn't add to the shadows.

24 So, you know, the ANC remains to be in support.
25 I do know that there are some neighbors that have now come

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1 forward with some concerns. I'm sure the Board perhaps will
2 hear from them today. And you can consider that as well.
3 But we have remained in support.

4 BZA CHAIR HILL: Okay. Let's see. Mr. duPont,
5 if you want to mute your line just, I think it's you that has
6 the background, thanks, until we get to you. Thank you.

7 Does the Board have any questions for the
8 Commissioner? Okay, okay. Go ahead, Mr. Blake.

9 MEMBER BLAKE: You said there's several people who
10 have recently expressed concerns, which I did see as well in
11 the record recently. Have you met -- you actually have met
12 with most of those people and chatted with them. Do you have
13 any idea of what kind of concerns or issues that they may
14 have? Are they consistent with ones that you initially
15 talked about?

16 MR. WRAY: Sure. So, to be full, a few of the
17 individuals that have submitted letters did come to our ANC
18 meeting and asked some questions. At that time, they did not
19 identify themselves as being in opposition at the time.

20 The issues that have been coming forward from the
21 neighbors that we're also getting via email mostly have been
22 about the addition going beyond the property, their own
23 property. So, when you're looking at the neighbor to the
24 south, we're extending I believe it's 19 feet. So their
25 concern has been about rats. And I'm just going to say

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1 these, because this is what they're saying. It has been
2 about rats. It's been about parking. And it's been about
3 alley access.

4 Now, the Applicant, at our own meetings, did
5 attempt to address the question about alley access, that
6 their property is not, their project is not impacting the
7 alley. They're not building across the alley, that that is
8 not a concern. You know, we, of course, know at the ANC that
9 when we talk about rats that those are things that they'll
10 have to deal with on the, with the DCRA. And I'm sure the
11 Applicant will probably have an exterminator come in to
12 address that before they start the construction project.

13 So that kind of leaves the question of shadows.
14 Now, the neighbor to the north, of course, is not -- I'm
15 sorry. No, neighbor to the south, who is in opposition, is
16 not affected by shadow because they're on the side of the
17 building that doesn't receive shadow. The neighbor to the
18 north, who will have the bulk of shadowing, is in support of
19 the project and has sent in a letter saying that they're in
20 support of the project.

21 So, you know, we did consider shadows as part of
22 the normal course of the ANC. But because the neighbor to
23 the, the most affected neighbor is in support, we remained
24 in support. I hope that helps.

25 MEMBER BLAKE: It does. Thank you very much. And

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1 I appreciate the effort that you guys have put in to make
2 sure you understand the community's feelings. Thank you.

3 BZA CHAIR HILL: Okay. Thank you. Let's see.
4 I guess we're having this limited scope hearing. But we have
5 people here to testify apparently, or perhaps we do. So that
6 being the case, I am going to, first, I'm going to actually
7 turn to the Office of Planning just for their summary. But
8 does anybody have any further questions of the Applicant?

9 Okay. Mr. Mordfin, can you give us a summary,
10 please, or could you introduce yourself for the record first
11 also?

12 MR. MORDFIN: Chair and members of the Board, I'm
13 Stephen Mordfin with the Office of Planning.

14 BZA CHAIR HILL: Mr. Mordfin, is there anything
15 you'd like to highlight for the Board?

16 MR. MORDFIN: Well, I was just going to say at
17 this point there is nothing new in this application that
18 would change our evaluation. The Applicant did submit all
19 of the shadow studies. They were submitted before. They
20 were in a different format. But we still found them, we, the
21 Office of Planning, found them in a format that we were able
22 to review. So, and also as the ANC Chairman did state, that
23 the applicant to the north, which is the one that is the most
24 affected when you look at the shadow studies.

25 The Office of Planning is also in support of this

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1 application and continues to be in support of the application
2 subject to our supplemental report that was -- I don't recall
3 what agenda item it is, not agenda item.

4 BZA CHAIR HILL: Okay. All right. Does anybody
5 have any questions of the Office of Planning?

6 BZA VICE CHAIR JOHN: Just one, Mr. Chairman. So,
7 Mr. Mordfin, the Board is required to evaluate whether the
8 impact is undue, the shadowing is undue. And it doesn't
9 matter if the neighbor to the north is in agreement. So what
10 is your idea of whether or not the shadowing on the neighbor
11 of the north is, creates an undue, adverse impact? And --

12 (Simultaneous speaking.)

13 MR. MORDFIN: I'm sorry.

14 BZA VICE CHAIR JOHN: I'm looking at the slide,
15 the December slide, that shows the shadowing from what exists
16 now and what is proposed according to the Applicant's
17 representation. And I wanted to know your thoughts on that.

18 MR. MORDFIN: Okay. That one does show a lot of
19 shadowing on that property to the north. And what the zoning
20 regulations say, it talks about light and air. It doesn't
21 actually say shadowing.

22 And then what is undue? And I think undue is
23 something that's personal to a lot of different people. If
24 the applicant to the north I think also doesn't find that
25 this is an issue, whereas maybe other people might want more

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1 sunlight, some people might not want any shadowing. So I
2 think it's something that's also very personal, which is why
3 we take into consideration when the applicant immediately
4 adjacent is not opposed to an applicant's proposal.

5 There are, it's not -- it's only certain times in
6 the day that it is in total shade. There are still times of
7 the day during the course of the year when there will be
8 sunlight in that rear yard. It's not going to be in total
9 shadow every day of the year all day long. So that's also
10 something else to consider when we look at it.

11 It's like how much, and how much shadowing is too
12 much. It is a difficult thing, because, I think also because
13 the zoning regulations say light and air. You're still
14 going to get light. It's not going to be dark. You're still
15 going to get air. The air circulation will still circulate
16 through the interior of that square. So these are the
17 different ways that we look at it when we try to determine
18 is this an undue situation.

19 BZA VICE CHAIR JOHN: So, even if there's
20 substantial shadowing, your position is that there would
21 still be light and air in the winter months, and that
22 condition would not exist throughout the year. So the impact
23 is not undue.

24 MR. MORDFIN: Correct.

25 BZA VICE CHAIR JOHN: Okay. All right. Thank

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1 you.

2 BZA CHAIR HILL: Thank you, Vice Chair John.
3 Anyone else for the Office of Planning? Okay. Mr. Young,
4 are there people here who wish to testify?

5 MR. YOUNG: They do not.

6 BZA CHAIR HILL: Okay. All right. Okay. Let's
7 see then. Okay. So does anybody have any final questions
8 of the Applicant --

9 BZA VICE CHAIR JOHN: Just one question. And I
10 was trying to figure out the length of the rear yard after
11 the addition. And I calculate it's about 40-something feet.
12 Is that correct?

13 MR. DUPONT: It's around 46 or 47 as I recall.
14 The lot is 120 feet deep, including the 10 foot of the I
15 guess it's an abandoned alley at that point. But since that
16 alley also serves the two neighbors to the north, we would
17 not take that over, that abandoned part of the alley.

18 BZA VICE CHAIR JOHN: Well, that's what I had
19 difficulty understanding, Mr. duPont, why the width of the
20 alley would be included in the rear yard because --

21 MR. DUPONT: I don't understand it either, but
22 that's how it is.

23 BZA VICE CHAIR JOHN: Is that how it is in the
24 plat, the existing plat?

25 MR. DUPONT: I think it is, yeah. I'll go take

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1 a look at it.

2 BZA VICE CHAIR JOHN: Okay. I just wanted --

3 MR. DUPONT: It's just the last three houses that
4 take over the alley. Now, in the plat, it's not. The alley
5 ends at our property line --

6 BZA VICE CHAIR JOHN: That's --

7 MR. DUPONT: -- according to the plat.

8 BZA VICE CHAIR JOHN: Okay. And that -- and so
9 the length of the rear yard then without the alley, is that
10 40-something feet?

11 MR. DUPONT: Without the alley, but the alley is
12 on our property. But since the other two neighbors use it,
13 we think it would be ill-advised to try to block them out.

14 BZA VICE CHAIR JOHN: Okay. Now I understand.
15 So there is sort of like an easement for the other two
16 properties --

17 MR. DUPONT: I think it's a matter of habit. And
18 it probably would be adverse possession or something like
19 that. Who knows?

20 BZA VICE CHAIR JOHN: Okay. Thank you. That
21 clears it up for me.

22 BZA CHAIR HILL: Okay. I guess, Mr. duPont, I
23 know that some of my Board members have been having kind of
24 some questions concerning your shadow studies and everything.
25 So I guess I know that you'd come before us and will come

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1 before us again I'm sure. It is a little bit, you know, a
2 struggle, a little bit of a struggle to kind of figure out
3 some of the shadow studies.

4 Maybe if there's a way you can do it in the future
5 that, what we have seen before is kind of like a red line or
6 a dashed line that shows, you know, either existing condition
7 versus matter of right versus what you're proposing. I know
8 that that kind of thing has been helpful. And so maybe if
9 you could have those type of things ahead of time for us, it
10 might make it easier for you, just to mention.

11 MR. DUPONT: I will try to do that. I find shadow
12 studies to be very subjective. So I will try to do what you
13 want.

14 BZA CHAIR HILL: Yeah, Mr. duPont, please don't
15 tell me shadow studies are subjective. Like that's what we
16 actually like rely on a lot. So, you know, I don't want to
17 go into the what the program has --

18 MR. DUPONT: I know.

19 BZA CHAIR HILL: -- and whether or not the program
20 is the right program. I mean, I almost treat it as a
21 science. So I hope it's more exact than you just said.

22 MR. DUPONT: Well, I mean, it's precise. It is
23 precise. There's no question. It's just, I just agree with
24 Mr. Mordfin. But there you go.

25 BZA CHAIR HILL: You understand what I was saying.

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1 Like if you can make it easier for the Board in the future
2 so that it doesn't --

3 MR. DUPONT: Will do.

4 BZA CHAIR HILL: As you can tell, it's probably
5 a struggle for the Board. You got like 12 exhibits that have
6 like different, you know, items on them listed in different
7 times. So, all right. Okay. Let's see. And then you will
8 submit the corrected plat, Mr. duPont?

9 MR. DUPONT: Sure, yes.

10 BZA CHAIR HILL: And how, when will you be able
11 to do that?

12 MR. DUPONT: Later today or tomorrow.

13 BZA CHAIR HILL: Okay. Because we're not going
14 to be able to do anything until we get that. Okay?

15 MR. DUPONT: Oh, okay.

16 BZA CHAIR HILL: Meaning we're not going to issue
17 anything.

18 MR. DUPONT: I understand.

19 BZA CHAIR HILL: Okay.

20 MR. DUPONT: Then it will be today, before lunch.

21 BZA CHAIR HILL: Okay. Great, great. All right.
22 Does anybody have anything else? All right. Commissioner
23 Wray, thanks for visiting with us --

24 MR. DUPONT: Thank you, Mr. Wray.

25 BZA CHAIR HILL: Thank you, everyone. Bye-bye.

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1 Okay. I will -- the Board was curious, not
2 curious, concerned about the meaningful connection. I would
3 agree with what has been put forward before us, that it is
4 a meaningful connection. I would also even submit to the
5 discussion that the Applicant had with the Zoning
6 Administrator that's in Exhibit 58, as well as the Office of
7 Planning's report as to -- well, now I'm thinking.

8 So, as to the shadow studies and everything, I am
9 also in agreement with the testimony that's been put forward
10 by the Applicant, as well as the testimony that we received
11 from the ANC in terms of undue shadowing. I mean, I would
12 agree with what Vice Chair John said, which was that, you
13 know, whether or not the neighbor agrees or doesn't agree
14 that it's undue to them is regardless of how the Board is
15 supposed to look at whether or not we think it's undue.

16 I do believe it's undue in comparison to what is
17 already happening with the building that is there to the
18 south, meaning there's already a tremendous amount of
19 shadowing that northern neighbor is getting, and then the
20 additional shadowing is not undue, right, from what the new
21 building is going to provide.

22 And now, again, what this does provide a, not a
23 problem for, is that this is just possibly going to continue
24 up the block, right, and as to what, you know, the next
25 neighbor thinks is undue, whether they think it's undue or

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1 not, you know, that is not what is the case here. It's what
2 the Board thinks, right.

3 And so really what this comes down to for me is,
4 you know, whether the additional information that's been put
5 forward makes me comfortable that they are meeting the
6 criteria with which for us to decide this application.

7 In this particular case, I will agree with them,
8 the information that's put forward, as well as I would agree
9 with the analysis that the ANC has provided. And I do thank
10 the Commissioner for joining us today, because it takes time
11 out of their day to join us for these hearings.

12 I do note that there were some people in
13 opposition. And their opposition is noted. However, I think
14 that, again, on the face of what the Board is supposed to
15 look at concerning the project, I believe I'm comfortable
16 with granting this application.

17 Now, we did have a request for a corrected plat
18 to be put forward. And I don't know whether that is
19 something that -- and we can check with also legal. I know
20 that whether we want to wait for that or whether the Board
21 thinks they need to wait for that to have their decision.
22 And if not, then we can leave the record open for that, which
23 I guess will come very soon.

24 But I understand that we're, the Board is kind of
25 analyzing how to handle things in terms of like keeping the

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1 record open for items in the future. I am going to go around
2 the table to hear what my fellow Board members have to say.
3 And I'll begin with you, Mr. Smith.

4 MEMBER SMITH: I agree with what you stated,
5 Chairman Hill, on the facts of this particular case. I do
6 note the opposition of some of the residents. But most of
7 the opposition relates to, you know, construction, from a
8 construction management standpoint. So I will point them to
9 DDOT's, well, not DDOT's, DCRA's construction management
10 manual and just, you know, hold the Applicant's feet to the
11 fire to ensure that the Applicant is meeting their
12 construction, the requirements for them to, the standards for
13 them to, for their building permit.

14 So, with that, I do agree that the Applicant has
15 met the burden of proof for us to grant the special exception
16 under Subtitle X, 901.2 for the rear addition.

17 I do agree that the shadow studies were difficult
18 to read. It would have been great, I guess -- you know, I
19 would be open to, if we are, I would be open to keeping this
20 open for us to, you know, digest those shadow studies a
21 little bit more, especially in light of if we are asking for
22 a modified plat.

23 I don't know if it's something, given that there
24 are some legal questions about whether we should keep this
25 open just for that. You know, you never know. That

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1 additional plat may materially change the nature of the case.

2 But in looking at the sun studies, as much as I
3 could look at the sun studies in this short period of time
4 and digest them, it doesn't seem to be, to me, that it's a
5 substantially undue hardship, especially in light of the
6 applicant that would be most, I mean the apartment owner that
7 would be most impacted did submit a letter in support.

8 While that is helpful, I do believe that it is
9 incumbent upon this Board to ensure that, regardless of who
10 lives there or who's the current owner, that the property
11 doesn't have any undue impacts going forward. And I do agree
12 with you, Chairman Hill, that this will probably march
13 further down the block. So we want to ensure that we're not
14 creating additional shadowing.

15 It was a concern to me that the Office of Planning
16 pretty much said it was subjective when it's a criteria that
17 they're using to determine whether it meets the special
18 exception criteria. I am very concerned with that statement
19 that was made by the Office of Planning. And I'll just go
20 on the record and say that.

21 But I do think that right now based on what I see
22 in the record and in analyzing OP staff report and all the
23 information within the record that it wouldn't be undue. But
24 I would entertain keeping this open for that plat and for us
25 to decide at a later date.

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1 BZA CHAIR HILL: Okay. Mr. Blake.

2 MEMBER BLAKE: Good points made by both members
3 on this case. I would agree that the facts of the case are
4 supportive of approval, meeting the criteria for requested
5 relief.

6 The concerns with regard to the untimely
7 information, though, it makes it difficult to digest the
8 information in a way that's meaningful, particularly if the
9 standards relative to what we expect is existing and we're
10 looking for matter of right and then the comparison to what
11 the actual is is the format that we're used to. To receive
12 the documents at the last minute in a confused format that
13 doesn't present that makes it difficult to make an
14 assessment.

15 In this case, the shadowing, as Board Member Smith
16 and Chairman Hill pointed out, it's clear of how the impact
17 is. However, digesting that information in a timely fashion
18 that allows us to really make an assessment is not that
19 clear.

20 And I would agree that it's more objective than
21 subjective. And it's not the decision of the neighbor if he
22 likes it or not, because that neighbor can sell the house
23 tomorrow, in which case the next person is going to have to
24 suffer through it without the desire to do the same project.
25 So I have some concerns with everyone dropping the ball the

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1 moment the neighbor says it's okay. That concerns me.

2 I, too, would agree with Board Member Smith that
3 I was, I disagree with the Office of Planning statement on
4 that as to the subjectivity of the measure. And I disagree
5 with the affirmation by Mr. duPont of that comment. All that
6 said, as I said, I do believe the case meets the standard.
7 And I will be voting in favor of it. Thank you.

8 BZA CHAIR HILL: Thank you. Chairman Hood.

9 ZC CHAIR HOOD: I don't have much to add. But I
10 will just opine for now on the leaving it open until you get
11 all the necessary requirements for this application as we've
12 already been noted by legal. So I think that keeps
13 everything clean and clear.

14 But I will say that I probably to thank -- when
15 you talk about construction, I know Board Member Smith
16 mentioned the construction issues. I do want to thank our
17 legal counsel, Mary Nagelhout, for explaining and giving me
18 a basic fresher. And I really appreciated the Board's
19 request, to assess the request of zoning relief related to
20 the requirement stated in the zoning regulation, as opposed
21 to what the Zoning Commission does. So I wanted to put that
22 on the record. And I don't think any of us, including the
23 Chairman, if you've had a chance to read the position paper
24 that she's given us, which is very well done, and I
25 appreciate that.

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1 So, other than that, I will wait for the plat.
2 And I would agree, I don't want to get into whether something
3 is subjective or objective. I just want to look at the
4 regulations and govern myself, make my best decision as
5 possible. I would agree, though, we need to wait until
6 everything is there from what I've heard previously. So
7 that's all I have. Thank you.

8 BZA CHAIR HILL: Okay. Vice Chair John.

9 BZA VICE CHAIR JOHN: Thank you, Mr. Chairman.
10 So I'm in two minds about the plat. On the one hand, the
11 Board has to have all of the information that it's going to
12 base its decision on in the record before the Board
13 deliberates and decides. On the other hand, the Board does
14 decide based on the plans submitted. And in this case, the
15 new plans show that the sunroom on the second floor is what
16 allows the application to meet the standard for being one
17 complete building instead of two separate buildings.

18 And so, on balance, I think that the Board should
19 wait to receive the plat just to be consistent with the
20 requirement to have the documents in the record before
21 deciding, because sometimes even though the Board asks for
22 information and decides and votes on the case, applicants
23 delay submitting the information that the Board requires.
24 So, you know, I would go along with what the rest of the
25 Board would like to see.

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1 But I think if we're going to -- I don't want to
2 say correct. I think I want to say clarify our procedure
3 going forward, which I believe is that all of the required
4 information must be in the record at the time the Board
5 decides. And if that's what I'm saying, then I think the
6 plat needs to be in the record.

7 Now, with respect to the shadow studies, I've
8 heard the discussion, and I agree with it so far. I disagree
9 that if the, I don't agree with the Applicant or with the
10 Office of Planning that we have to look at them as purely,
11 as shadow studies as purely subjective and having no merit
12 in deciding whether there is any impact on light and air.
13 And I believe imperfect as it may be, that's a tool that the
14 Board uses. And applicants need to submit them in a format
15 that is useful to the Board.

16 And I think I might ask Office of Zoning to
17 perhaps add that to their process or whatever guidance they
18 give to applicants, that shadow studies must be submitted in
19 a format where it shows the existing condition and matter of
20 right and the proposed for the time of year so that the Board
21 can quickly review the studies to see where there is
22 additional impact. So that's all I would add to that.

23 In this particular case, I was really troubled by
24 the length of the addition. But in looking at the size of
25 the lot, it's a narrow lot I believe 17 feet wide. And it's

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1 also very long. And if there is 40 feet of rear yard left
2 after the addition, I would agree that there will not be an
3 undue impact in terms of light and air in this case. So,
4 based on that, I would support the application. But I don't
5 know if we can take a vote today.

6 BZA CHAIR HILL: Okay. All right. So, I mean,
7 since this is the only case we have, we might as well talk
8 through all this stuff with the record stuff. So my thoughts
9 -- and, Ms. Nagelhout, I'm going to turn to you or Ms. John
10 in a minute.

11 So my thoughts are -- I can't say I'm a little
12 bit, I hate to use that word torn that Mr. May sometimes
13 corrects me on torn. But if the Board's trying to get things
14 that they need to see to make a decision, I think that's one
15 thing. And then obviously, if there's things that are
16 supposed to be in the record as per the regulations, that's
17 another thing as well.

18 My concern sometimes is that unfortunately just
19 the fact that the Board has so many cases, it tends to make
20 other days longer, which is completely fine. I mean, now the
21 other way that I think that we can do this, and this is where
22 I am going to ask legal, is just to refer to the
23 deliberations that we had on the previous day. Like, you
24 know, we don't have to necessarily deliberate again, right.
25 We just have to see whatever information gets submitted,

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1 whether or not that changes any of the deliberations that we
2 had and/or clarifies what we spoke about, right.

3 I mean, I don't think that, how imperfect as it
4 is, I think that at least I understand the shadow studies
5 enough to be able to compare it to the other building that's
6 casting shadow on it currently. I will agree with everything
7 my colleagues said in terms of how far back it goes and
8 people's concerns, because those are kind of the concerns
9 that we always seem to have with these type of projects.

10 And then I also would agree that -- and we can ask
11 again legal. I don't know if that gets changed in the way
12 that the Office of Zoning talks to people, that we actually
13 do get to see -- I mean, it hasn't necessarily been, it's
14 just something that the Board kind of has done and some
15 applicants have started to do, wherein you see kind of the
16 matter of right versus the proposed.

17 And I guess, and I'm going to also just, since we
18 have a couple minutes, push back a little on that one, which
19 is to say sometimes the matter of right that they show is
20 kind of not even really accurate, because you might not
21 actually build the matter of right, right. It might not be
22 financially feasible, you know. It might not actually work,
23 you know.

24 And so they show us a matter of right shadowing,
25 but I guess the Board can figure that out, too. They show

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1 us a matter of right shadowing. It's really nobody would
2 ever really build, right. Like they would build an
3 additional eight feet out or six feet out or whatever they're
4 able to, right. But then they show whatever they're
5 proposing, and anyway.

6 So that's the long story of saying I don't know
7 where I am with keeping the record open all the time. But
8 if we do, then we just -- I guess if legal can -- and we can
9 talk about this now with Ms. Nagelhout. If we can just refer
10 to previous, the previous deliberation. And I see Chairman
11 Hood raising his hand. So I'll go to Chairman Hood before
12 I go to legal, but refer back to the deliberations that we
13 had instead of having to deliberate again. Chairman Hood.

14 ZC CHAIR HOOD: Yeah, Mr. Chairman, I'm going to
15 have to be excused. Unfortunately, I don't have as much
16 leisure time as you all do. So I'm going to have to be
17 excused. I will follow the record. And if we're ready to
18 vote on something germane, I will do that in this particular
19 case. But I have to run out. So thank you all.

20 BZA CHAIR HILL: Okay. Thank you, Chairman Hood.
21 Okay. Ms. Nagelhout, do you have any thoughts on any of the
22 stuff that we just said?

23 MS. NAGELHOUT: First off is that you do not have
24 to deliberate again. If you put off the vote to a later
25 date, you know, it says if you're doing it at once, you don't

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1 have to restate everything you've already said today. The
2 second thing is if there's something you think you need to
3 incorporate into your, that's going to be a part of your
4 decision, a part of the basis for your decision, I would not
5 take a vote until you get it.

6 BZA CHAIR HILL: Okay. Now, I'm going to ask the
7 question, what if it's something we don't necessarily think
8 we need to make a decision but we want to make sure we get
9 it to have a complete record, and we know that, we don't know
10 what applicants tend to do after we've made a vote, whether
11 or not we get it or we don't get it. Do you have an opinion
12 on that?

13 MS. NAGELHOUT: Even if it's just to complete the
14 record, that is something you need. You want to have a
15 complete record. So --

16 BZA CHAIR HILL: Okay.

17 MS. NAGELHOUT: -- I would not vote until after
18 you get it.

19 BZA CHAIR HILL: Okay. All right. So then this
20 is kind of -- and this is for everybody who has to be, who
21 possibly may be watching, that, you know, we're going to make
22 sure we get everything we need before we -- no matter, I
23 should say that, you know, to make the Board feel as though
24 the record is complete, even if we are able to deliberate on
25 what we have.

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1 So, Ms. Rose, I guess if you could reach out to
2 the Applicant and make sure the Applicant submits the
3 corrected plat, and then also if the Applicant could submit
4 some kind of a diagram I guess that shows the existing versus
5 the matter of right versus the proposed shadow of the
6 project.

7 And I guess this is where I'm not clear what the
8 Board may need. Does the Board need a specific time? I
9 mean, it sounds as though the shadowing is the most severe
10 in the December morning, right. So, maybe if there was the
11 December morning, the December afternoon, and the December
12 evening, I don't know if that would suffice for the Board.
13 I'm trying to see what is the clearest direction that we can
14 give to the Applicant. And I'll, again, I don't know, Ms.
15 John, if you have a thought on that.

16 BZA VICE CHAIR JOHN: I think the format that most
17 applicants have followed is spring, summer, and winter, and
18 so showing existing matter of right and proposed. And I am
19 sure the Office of Zoning has some guidance that the Office
20 of Zoning can provide in how that's done. But it's simply
21 very difficult for me, speaking for myself, to try to look
22 between ten different, you know, exhibits to figure what's
23 the additional incremental shadowing.

24 And I think even at the Office of Planning review
25 stage that need could be reinforced instead of accepting

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1 something that's just so difficult to understand when you're
2 looking at nine cases. So, in this case, this week we just
3 had one hearing, but imagine if we had had nine or ten cases.
4 So that's my only comment.

5 BZA CHAIR HILL: Okay. So, Ms. Rose, that's
6 something to take back to the Office of Zoning also to see
7 if there is a way to advise applicants to make the shadow
8 studies a little bit more concise for the Board to be able
9 to take a look at. And then, Ms. Rose, do you understand
10 what we'd like the Office of Zoning to convey to the
11 Applicant?

12 MS. ROSE: Yes.

13 BZA CHAIR HILL: Okay. All right. Then if that's
14 the case, then what are the submission dates and everything
15 that we need to adhere to, Ms. Rose?

16 MS. ROSE: The ANC, the question I had is, do you
17 want a response from the ANC, because we know that they will
18 meet again on October 12th?

19 BZA CHAIR HILL: I don't think we need a response
20 per se on any of the information. I think we had to leave
21 the record open for them to respond to something. And this
22 is where, again, this kind of -- it just is what it is. I
23 mean, it pushes back things for the Board.

24 I mean, I don't know what, you know, even if we --
25 we could -- and this -- I think the Board is able to reset

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1 deadlines. I mean, it sounds as though, I mean, if we could
2 get this information from the Applicant by Friday and then
3 leave, I'm sorry, yeah, Friday, the 23rd and then leave the
4 record open for the ANC to respond or any parties to respond
5 by the 27th, then we could vote again on the 28th.

6 MS. ROSE: The 28th. We can go with that. We
7 don't know what the Applicant's capabilities are in terms of
8 getting those shadow studies done by Friday. But he did say
9 he would get the plat in later today. So --

10 BZA CHAIR HILL: Okay. Well, I guess the
11 Applicant knows to get back to us. But we'll leave the
12 record open until Friday close of business for the shadow
13 studies and the plat. And then we'll leave the record open
14 for any parties or ANCs on the 27th. And we'll come back for
15 a decision on the 28th.

16 MS. ROSE: So noted. Thank you.

17 BZA CHAIR HILL: Okay, okay. Does anybody have
18 anything else on that one? All right. That also being the
19 case, I guess we don't have anything else today. Is there
20 anything else before the Board, Ms. Rose?

21 MS. ROSE: No, nothing further, sir.

22 BZA CHAIR HILL: Okay. You guys, have a good day.

23 MS. ROSE: Thank you.

24 (Whereupon, the above-entitled matter went off the
25 record at 11:02 a.m.)

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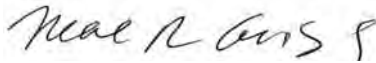
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