

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

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WEDNESDAY

JANUARY 18, 2023

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The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via teleconference pursuant to notice at 9:30 a.m. EDT, Lorna John, Vice Chair, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LORNA JOHN, Vice Chairperson
CHRISHAUN SMITH, Commissioner
CARL H. BLAKE, Commissioner
ROBERT MILLER, Zoning Commission Vice Chair

BOARD OF ZONING ADJUSTMENT STAFF PRESENT:

CLIFFORD MOY, Secretary

BOARD OF ZONING ADJUSTMENT LEGAL COUNSEL:

RYAN NICHOLAS, Esquire

The transcript constitutes the minutes from the Regular Public Hearing held on January 18, 2023.

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(9:30 a.m.)

1 VICE CHAIR JOHN: Good morning, ladies and gentlemen.
2 The Board of Zoning Adjustments January 18th, 2023 public hearing
3 will please come to order. My name is Lorna John, I am the Vice
4 Chairperson of the District of Columbia Board of Zoning
5 Adjustment. Joining me today are Board members Carl Blake and
6 Chrishaun Smith and Zoning Commissioner Rob Miller.

7 Today's hearing and -- today's meeting and hearing
8 agendas are available on the Office of Zoning's website. Please
9 be advised that this proceeding is being recorded by a court
10 reporter and is also webcast live via Webex and YouTube Live.
11 The video of the webcast will be available on the office of
12 Zoning's website after today's hearing. Accordingly, everyone
13 who is listening on Webex or by telephone will be muted during
14 the hearing. Also please be advised that we do not take any
15 public testimony at our decision meeting session. If you
16 experience difficulty accessing Webex or with your telephone
17 call-in, then please call our OZ hotline number at 202-727-5471
18 to receive Webex log-in or call-in instructions. At the
19 conclusion of a decision meeting, I shall, in consultation with
20 the Office of Zoning, determine whether a full or summary order
21 may issue. A full order is required when the decision it contains
22 is adverse to a party, including an affected ANC. A full order
23 may also be needed if the Board's decision differs from the Office
24 of Planning's recommendation. Although the Board favors the use
25 of summary orders whenever possible, an applicant may not request

1 the Board to issue such an order.

2 In today's hearing session, everyone who is listening
3 on Webex or by telephone will be muted during the hearing, and
4 only persons who have signed up to participate or testify will
5 be unmuted at the appropriate time. Please state your name and
6 home address before providing oral testimony or your
7 presentation. Oral presentations should be limited to a summary
8 of your most important points. When you're finished speaking,
9 please mute your audio so that your microphone is no longer
10 picking up sound or background noise. Once again, if you
11 experience difficulty accessing Webex or with your telephone
12 call-in, or if you have forgotten to sign up 24 hours prior to
13 this hearing, then please call our OZ hotline number at 202-727-
14 5471 to sign up to testify and to receive Webex log-in or call-
15 in instructions.

16 All persons planning to testify, either in favor or in
17 opposition, should have signed up in advance. They will be called
18 by name to testify. If this is an appeal, only parties are
19 allowed to testify. By signing up to testify all participants
20 completed the oath or affirmation as required by Section 408.7.
21 Requests to enter evidence at the time of an online virtual
22 hearing, such as written testimony or additional supporting
23 documents other than live video which may not be presented as
24 part of the testimony, may be allowed pursuant to Subsection Y
25 103.13, provided that the person making the request to enter an

1 exhibit explains how the proposed exhibit is relevant, the good
2 cause that justifies allowing the exhibit into the record,
3 including an explanation of why the requester did not file the
4 exhibit prior to the hearing pursuant to Subtitle Y, Section 206,
5 and how the proposed exhibit would not unreasonably prejudice any
6 party.

7 The order of procedure for special exceptions and
8 variances pursuant to Subtitle Y, Section 409 will be as follows:
9 preliminary and procedural matters; statement of the applicant
10 and the applicant's witnesses; report and recommendation from the
11 D.C. Office of Planning; reports and recommendations from other
12 public agencies; reports and recommendations from the Advisory
13 Neighborhood Commission and the ANC's witnesses, if any, for the
14 area within which the property's located; parties in support of
15 the application; individuals and organization representatives in
16 support of the application; parties in opposition to the
17 application; individuals and organization representatives in
18 opposition to the application; individuals and organizational
19 representatives who are undeclared with respect to the
20 application; rebuttal and closing statements by the applicant.

21 Pursuant to Subtitle Y, Sections 408.2 and 408.3 the
22 following time constraints shall be maintained: the applicant
23 and all parties except an affected ANC in support, including
24 witnesses, exclusive of cross-examination, maximum of 60 minutes
25 collectively; the appellee, persons and parties except an

1 affected ANC in opposition, including witnesses, collectively
2 have an amount of time equal to that of the applicant and parties
3 in support, but in no case more than 60 minutes collectively;
4 individuals, maximum of 3 minutes; organization representatives,
5 maximum of 5 minutes. These time constraints do not include
6 cross-examination and/or questions from the Board. Cross-
7 examination of witnesses by the applicant or parties, including
8 the ANC, is permitted. The ANC within which the property is
9 located is automatically a party in a special exceptional
10 variance case. Nothing prohibits the Board from placing
11 reasonable restrictions on cross-examination, including time
12 limits and limitations on the scope of cross-examination pursuant
13 to Subtitle Y 408.5.

14 At the conclusion of each case, an individual who was
15 unable to testify because of technical issues may file a request
16 for leave to file a written version of the planned testimony to
17 the record within 24 hours following the conclusion of public
18 testimony in the hearing. If additional written testimony
19 accepted, then parties will be allowed a reasonable time to
20 respond as determined by the Board. The Board will then make
21 its decision at its next meeting session, but no earlier than 48
22 hours after the hearing. Moreover, the Board may request
23 additional specific information to complete the report. The
24 Board and the staff will specify at the end of the hearing exactly
25 what is expected and the date when persons must submit the

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

3 Once again, after the Board adjourns the hearing, the
4 Office of Zoning, in consultation with me, will determine whether
5 a full or summary order may issue. A full order is required when
6 the decision it contains is adverse to a party, including an
7 affected ANC. A full order may also be needed if the Board's
8 decision differs from the Office of Planning's recommendation.
9 Although the Board favors the use of summary orders whenever
10 possible, an applicant may not request the Board to issue such
11 an order.

12 Finally, the District of Columbia Administrative
13 Procedure Act requires that the public hearing on each case be
14 held in the open before the public. However, pursuant to Sections
15 405(b) and 406 of that Act, the Board may, consistent with its
16 rules of procedure and the Act, enter into a closed meeting on a
17 case for purposes of seeking legal counsel in a case, pursuant
18 to D.C. Official Code Section 2575(b)(4), and/or deliberating on
19 a case pursuant to D.C. Official Code Section 2575(b)(13), but
20 only after providing the necessary public notice, and in the case
21 of an emergency closed meeting, after taking a roll call.

22 Mr. Secretary, do you have any preliminary matters?
23 And if so, if not, let's proceed.

24 MR. MOY: Thank you, Madam Vice Chair. And good morning
25 to you and the Board. I do not at the moment have any preliminary

1 matters to share with the Board, and I think we can move forward
2 with the first case when you're ready, ma'am.

3 VICE CHAIR JOHN: Okay. Okay. Please go ahead.

4 MR. MOY: Okay. So the first case before the Board in
5 today's hearing is Application No. 20732A of NY Avenue
6 Titleholder, LLC. This application is a request for a
7 modification of consequence pursuant to Subtitle Y, Section 703
8 for the plans that were approved in the original order. This is
9 to allow a residential or lodging use on floors two, three --
10 two -- on floors two through four, which is currently approved
11 as residential and allow the approved commercial space on floors
12 one and two to be used as commercial or amenity space. And that's
13 all I have for the Board. Thank you.

14 VICE CHAIR JOHN: Thank you. Are we ready to
15 deliberate? I guess we are. So I'll start. In the original
16 order, the Board provided relief for the application to allow
17 Penthouse habitable space on a building within the vicinity of
18 the White House under Sections Subtitle C 1501.1(e) and also
19 relief under 1504.1(d) for the one-to-one setback requirement.
20 In this modification of consequence, the Applicant is requesting
21 the ability to establish a residential or lodging use in all
22 portions of floors two through four, rather than just residential
23 use. And I don't believe this applies to lodging, which is
24 permitted as a matter of right. And so the Applicant wants to
25 modify the plans to allow the portions that were previously

1 devoted just to commercial leasable area to be utilized as
2 building amenity or commercial space. Now, in order to grant a
3 modification of consequence, the Board can evaluate whether the
4 proposed change is to a condition cited by the Board in a final
5 order or a redesign or relocation of architectural elements and
6 open spaces from the final design approved by the Board.

7 I think in this case the application meets the
8 requirement for relief because the Applicant is not seeking
9 anything new -- any expansion of the original request, just to
10 change the plans to provide flexibility in terms of where the
11 building amenity is located. So those are my thoughts. I'd like
12 to hear from other Board members who may wish to add to or modify
13 anything I've said.

14 Mr. Blake, would you like to star- -- oh, Mr. Smith,
15 Board Member Smith, I thought you were going to say something.
16 You're muted, Board Member Smith. We can't hear you. Okay. Mr.
17 Smith, let's --

18 COMMISSIONER BLAKE: I'll go then, Vice Chair.

19 VICE CHAIR JOHN: Yeah. Thank you. Thank you.

20 COMMISSIONER BLAKE: I agree with you that the burden
21 of proof has been met to be granted the modification of
22 consequence. There are no material factual issues for the Board
23 really to evaluate. The proposed modification will not create
24 any new areas of relief. And as you point out, does not extend
25 any areas of relief previously granted. It only applies to a

1 limited portion of the overall building. The modification of the
2 approval plans results in a building that is still well within
3 the matter of right development standards for the D-6 zone, and
4 the standards for special exception relief are still readily met
5 by the project, even as modified by the application. And also
6 I'd point out that the light, air, and privacy available to
7 neighboring properties also won't be affected since there are no
8 additions or exterior changes that are proposed as part of the
9 requested modification.

10 So for that reason I think that the criteria's been
11 met. OP has no objections, DDOT has no objection, but the Office
12 of Planning is in approval. The ANC did not submit a report.
13 However, they were properly served and they were in support of
14 the previous application. We also have the U.S. Secret Service
15 has -- in support. So again, I would agree with you that we
16 should be -- I'm comfortable supporting the Applicant's request.

17 VICE CHAIR JOHN: Thank you.

18 Commissioner Miller?

19 ZC VICE CHAIR MILLER: Thank you, Vice Chair John.
20 Board Member Blake has comprehensively analyzed the case and I
21 agree with -- I concur with all the arguments he made in favor
22 of approving this modification of consequence to provide a little
23 bit more flexibility on those lower floors to get them rented
24 out. This was a -- your previous order, but the Board's previous
25 order did the penthouse and setback relief which facilitated the

1 conversion of this downtown office building, which I think is
2 -- it's an ongoing construction, I believe. The conversion of
3 this office building to 255 residential, that's an important
4 trend that we want to facilitate. And this just provides -- this
5 modification of consequence provides some more flexibility for
6 those lower floors to be rented out. To matter of right uses,
7 still compliant and conforming with all the development
8 standards, as Mr. Blake said. Thank you.

9 VICE CHAIR JOHN: Thank you, Commissioner Miller.

10 Board member Smith, is your mic working? You can't
11 hear.

12 COMMISSIONER SMITH: Okay. Can you hear me?

13 VICE CHAIR JOHN: Yes, we can.

14 COMMISSIONER SMITH: Okay.

15 VICE CHAIR JOHN: Great.

16 COMMISSIONER SMITH: Let's do this.

17 COMMISSIONER BLAKE: There's an echo.

18 COMMISSIONER SMITH: I agree with everything that my
19 -- what my fellow Board members have stated. This seems to be
20 to me, to be a fairly straightforward modification of
21 consequence. And you know, honestly, I'll leave it at the
22 statements that were provided by our Board members. So I will
23 support the application.

24 VICE CHAIR JOHN: Okay. Thank you.

25 So it seems that I can now make a motion to approve

1 Application No. 2732A as captioned and read by the secretary and
2 ask for a second, Mr. Blake?

3 COMMISSIONER BLAKE: Second.

4 VICE CHAIR JOHN: Thank you.

5 Mr. Moy, could you take a roll?

6 MR. MOY: Yes, thank you, Madam Vice Chair.

7 When I call your name, if you would please respond to
8 the motion made by Vice Chair John to approve the application for
9 this modification of consequence. The motion was second by Mr.
10 Blank.

11 Zoning Commissioner Rob Miller?

12 ZC VICE CHAIR MILLER: Yes.

13 MR. MOY: Mr. Smith.

14 COMMISSIONER SMITH: Yes.

15 MR. MOY: Mr. Blake?

16 COMMISSIONER BLAKE: Yes.

17 MR. MOY: Vice Chair, John.

18 VICE CHAIR JOHN: Yes.

19 MR. MOY: We have a Board member not participating with
20 us today. Staff would record the vote as four to zero to one,
21 and this is on the motion made by Vice Chair John to approve the
22 application or the requested modification of consequence. The
23 motion was second by Mr. Blake, who is also in support of the
24 motion, as well as Zoning Commissioner Rob Miller, Mr. Smith, and
25 again of course Mr. Blake and Vice Chair John. Board member not

1 present. Motion carries on a vote of four to zero to one.

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

3 So before we call the next case or the first case on
4 the hearing agenda, I'd like to take maybe five minutes to give
5 Mr. Smith some time to see if he can get back on. And so we will
6 start at 10:05. It's a short day today, so once we start the
7 hearing, we will go through, if everyone agrees, without taking
8 a break. I don't see any objections. So let's reconvene at
9 10:05. Thank you.

10 (Whereupon, there was a brief recess.)

11 VICE CHAIR JOHN: So before we call our next case, it
12 seems you all heard me when I couldn't find my documents just
13 now, but I was muted, so I'm not sure what's going on.

14 Anyway, let's call the next case, Mr. Young -- I mean,
15 Mr. Moy, please call the next case.

16 MR. MOY: Ah, okay. Let's see, where are we? Okay.
17 Here we go. So the next case is Application No. 20854 of Sarah
18 and John Dick. This is an amended self-certified application
19 amended to add relief from Subtitle C, Section 701.5 pursuant to
20 -- self-certified pursuant to Subtitle X, Section 901.2 for
21 special exceptions under Subtitle D, Section 5201.1 from the side
22 yard requirements of Subtitle D, Section 206.2, and as I just
23 mentioned, under Subtitle C, Section 703.2 from the minimum
24 vehicle parking requirements of Subtitle C, Section 701.5. And
25 that's all I have for the Board. Thank you.

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

2 Mr. Young, can you let the Applicant in please?

3 MS. DICK: Good morning. This is Sarah and John Dick.
4 We've been added, thank you.

5 VICE CHAIR JOHN: Okay. Thank you. Good morning. Are
6 you choosing not to use your video?

7 MS. DICK: Oh, I can start it, sorry.

8 VICE CHAIR JOHN: Thank you.

9 MS. DICK: Hello.

10 VICE CHAIR JOHN: Hi. Good morning. Please introduce
11 yourselves and state your home address for the record.

12 MS. DICK: This is Sarah and John Dick at 6407 31st
13 Street, N.W.

14 VICE CHAIR JOHN: Thank you. So who will be presenting
15 today?

16 MS. DICK: We are just here if there are any questions.
17 The main salient points of our request is we have engaged with
18 our ANC and our neighbors directly adjacent to our property and
19 have support for the project.

20 I don't know if there's anything else you want to add,
21 John, in terms of presenting.

22 MR. DICK: No, the introduction and our paperwork
23 present the exceptions that we're requesting. We think that our
24 exceptions are within the allowable exceptions under the D.C.
25 zoning rules and within the authority of this Board to provide

1 us relief.

2 VICE CHAIR JOHN: Okay. So I normally explain that you
3 have 15 minutes to present your testimony, and I take it that
4 your testimony will be your written burden of proof, since you're
5 not electing to go through the written burden of proof at this
6 time?

7 MS. DICK: I mean, we're happy to go through it. Sorry,
8 I maybe misunderstood that part.

9 VICE CHAIR JOHN: Okay.

10 MS. DICK: Would you like us to review the written
11 burden of proof?

12 VICE CHAIR JOHN: If you could, especially with respect
13 to when the garage was built?

14 MS. DICK: Yes, ma'am.

15 VICE CHAIR JOHN: If you could focus on that.

16 MR. DICK: So the garage --

17 VICE CHAIR JOHN: Uh-huh.

18 MS. DICK: Sure.

19 MR. DICK: Our understanding is that the garage is
20 likely -- there aren't specific records of when the garage was
21 built. We're -- our best estimate is that it was built at the
22 time the house was built, which was 1941, which predates the 1958
23 zoning rules for D.C. However, we were informed by the Office
24 of Buildings that --

25 MS. DICK: Planning.

1 MR. DICK: Sorry. That at some point after 1958 our
2 house came into conformance with the minimum parking
3 requirements, which at that time required all single-family
4 detached dwellings had off-street parking space. However, our
5 property, under the -- even though the rules changed in 2016,
6 which did not require properties such as ours that do not have
7 an alley access, to maintain the single parking space, we were
8 informed that our property still had to comply with the minimum
9 parking requirements because we at one point in time had a legal
10 parking space, which is the garage. And so we are asking for
11 relief from removing that parking space, which is the garage,
12 which is not serving as a parking space currently. And in
13 compliance with DDOT, we would be also removing our curb cut and
14 current driveway that leads to that garage. So there would be
15 basically an exchange of the minimum parking requirement
16 currently, which is the garage, or the addition of effectively a
17 parking space in front of our house where the curb cut would be
18 replaced.

19 VICE CHAIR JOHN: Okay.

20 Does the Board have any questions?

21 I'll go to the Office of Planning. Good morning, Mr.
22 Mordfin. Can't hear you.

23 (Pause.)

24 MR. MORDFIN: Oh, did that help?

25 VICE CHAIR JOHN: We didn't hear you, Mr. Mordfin.

1 MR. MORDFIN: She did not?

2 VICE CHAIR JOHN: Now I'm hearing you.

3 MR. MORDFIN: Okay. All right. Sorry.

4 VICE CHAIR JOHN: Thank you.

5 MR. MORDFIN: Okay. Okay. This application requests
6 two areas of relief and the second area of relief for parking
7 was the result of consultation with the zoning administrator's
8 office. So I'll start off with the parking. So the house was
9 -- a building permit was issued for that house in 1940 and it
10 likely was built with that garage, which means it had one legal
11 parking space at the time of the adoption with the 1958 zoning
12 regulations. So what that means is that once you're in
13 conformance, you can't get rid of that parking space because
14 you've already shown that you can conform to the zoning
15 regulations. Now, in 2016 with the new zoning regulations, you
16 can get a special exception to not provide the parking space.
17 And you only have to meet one of those conditions, there's a list
18 of several in there, in order to be eligible to be granted the
19 special exception. In this case, there is no public alley either
20 built or unbuilt behind this property. So. therefore they are
21 eligible for the special exception relief, and then DDOT added a
22 requirement that -- to remove the curb cut because DDOT does not
23 support curb cuts that don't lead to legal parking. So because
24 this application is in conformance with the special exception
25 requirements for reducing the parking, in this case from one to

1 zero, OP supports the application.

2 The second area of relief that they requested is for
3 side yard. So one of the side yards they're proposing is in
4 conformance, the other one is less than five feet. That is also
5 the existing situation. So because the existing situation is not
6 changing, it's remaining at, I believe it's, 4.6 feet, the light
7 and air we did not find that would be adversely affected because
8 the situation really is not changing. As for privacy of use of
9 enjoyment of the neighboring properties, the Applicant will not
10 be providing any windows or doors facing that property, and in
11 addition, any existing windows they propose to brick up so to
12 help preserve the privacy of that neighbor. So therefore, we
13 find they are in conformance with that provision.

14 The building additions together with the original
15 building, it will look similar. The architecture is similar. It
16 will fit in with the character of the street. And the Applicant
17 did submit plans and photographs and elevation drawings
18 sufficient to document their request. So therefore -- and also
19 OP makes no recommendations for special treatment. So therefore,
20 OP recommends approval of this application for both the special
21 exception for parking and also for reducing the side yard to 4.6
22 feet. Thank you. And I'm available for any questions.

23 VICE CHAIR JOHN: Okay. Thank you. So Mr. Mordfin,
24 was there a requirement for parking in ZR 58?

25 MR. MORDFIN: The 1958, if this house was built in '58,

1 required -- or after -- one parking space. Prior to '58, there
2 was no -- there were no parking regulations. So because this
3 parking space existed when the '58 regulations were adopted, the
4 parking space would be required. And the zoning administrator
5 told me the only way they could get around that, aside from
6 getting the special exception, if they didn't want to go for the
7 special exception, would be to completely demolish the existing
8 structure and rebuild. So that's a rather difficult route to
9 take to -- for the parking, but they are eligible for the special
10 exception according to the zoning administrator, to go for it,
11 and they do meet the requirements of the provisions of that
12 Section of 5201.4 -- I'm sorry, not 5201.4, 701. So -- or 703.2.
13 So based on that, we find that, you know, they can meet the
14 special exception provisions to reduce the parking from one to
15 zero.

16 VICE CHAIR JOHN: Thank you, Mr. Mordfin.

17 Does the Board have any questions?

18 COMMISSIONER SMITH: I think I have one just for
19 clarification purposes. Was the parking -- the parking ribbon
20 on this property, was it constructed with the home or was it
21 after 1958?

22 MR. MORDFIN: Yeah. We don't know for sure. I mean,
23 there's a building permit that was issued in 1940 and the house
24 was built in '41. It doesn't say whether the parking space --
25 rather the garage was constructed as original to the house. In

1 talking with architects in our office, they said likely from the
2 character of the garage and the character of the house, they were
3 likely constructed together.

4 COMMISSIONER SMITH: Okay. Okay. That was the only
5 question that I had.

6 COMMISSIONER BLAKE: Mr. Mordfin, again, just to
7 clarify for me, could you just say again, you said the reason
8 that you're understanding that the -- how the transformation was
9 from not -- the fact that it was done before 19 -- in 1941 means
10 that it predated the regulations. And you're saying that because
11 it existed at the time -- your interpretation is that because it
12 existed at the time the regulations took place, it was -- it is
13 now required because it existed?

14 MR. MORDFIN: Correct. They had one legal parking
15 space and the zoning regulations in '58 required one parking
16 space for one family detached dwellings. So they were then in
17 conformance on the date of the adoption of the '58 regulations.
18 If they didn't have a parking space, they wouldn't have been
19 required one, but they did.

20 COMMISSIONER BLAKE: What provision in the ZR '16
21 requires that -- prevents removal of the space?

22 MR. MORDFIN: It's just the interpretation of the
23 zoning administrator. And his interpretation was because it's
24 there, it has to remain unless they totally demolish the
25 structure, in which case there is no structure that was there at

1 the time of adoption of the '58 regs. So this is the zoning
2 administrator's interpretation of the zoning regulations.

3 VICE CHAIR JOHN: So I was looking at ZR '58 and I
4 could not find the requirement for a parking space for a single-
5 family house. Do you happen to have that specific requirement?

6 MR. MORDFIN: I will have to look it up, if you give
7 me a minute to --

8 VICE CHAIR JOHN: Okay.

9 MR. MORDFIN: -- to do that.

10 VICE CHAIR JOHN: Because my understanding is that it
11 was allowed but not required. And if it was not required before
12 '58, and there's no requirement under '58, so it would be a pre-
13 '58 requirement, meaning there'd be no parking requirement. So
14 in other words, unless '58 applied retroactively to create a
15 parking requirement, then there would be none.

16 MR. MORDFIN: Okay. Just a minute. I'm looking for
17 the section, 2101.1. I'm in the wrong section. Sorry.

18 VICE CHAIR JOHN: That's okay. We have time today.

19 MR. MORDFIN: Okay. I went into the wrong chapter and
20 did not find it there. One minute, I apologize. I know there
21 are only two cases today. Okay. I'm just having trouble getting
22 to Chapter 21. Okay. Okay. So, let's see. Okay. So it does
23 say for one-family dwelling in all districts, one space for each
24 dwelling unit. So it doesn't matter what it was zoned in '58.

25 COMMISSIONER BLAKE: Is that for new construction or

1 -- could we --

2 MR. MORDFIN: Yeah. Okay. So at the top of this
3 section, okay, this is Section 2101, schedule of requirements for
4 parking spaces. So 2101.1, "On or after May 12th, 1958, all
5 buildings for structure shall be provided with parking spaces as
6 specified in the following table, except for buildings and
7 structures located in Saint Elizabeths or waterfront zones,"
8 which this property was not located in either of those. And then
9 for residential uses it says "one parking space per dwelling
10 unit." So in that case, one parking space would have been
11 required for this.

12 VICE CHAIR JOHN: Right.

13 So Mr. Moy (sic), was the intention that homeowners
14 would retrofit their building to add a parking space or did that
15 just apply to new construction?

16 MR. MORDFIN: I think that just applied to new
17 construction or if you maybe modified it. You know, if you had
18 an existing house that did not have a parking space, you were
19 just non -- you were then nonconforming, you were legally
20 nonconforming because it was built legally because there was no
21 requirement. This one happened to have a garage that most likely
22 was built together with the house, so that brought it into
23 conformance with the regulation of providing one parking space.

24 VICE CHAIR JOHN: But it was legally nonconforming, so
25 they didn't have to provide.

1 MR. MORDFIN: Well, they weren't legally nonconforming.
2 They were conforming because they had the parking space.

3 COMMISSIONER SMITH: When they added the one parking
4 space, they became conforming.

5 MR. MORDFIN: Right. But likely this garage was built
6 at the same time as the house was constructed from the architects
7 that I talked to in this office about that, they said from the
8 architecture it looks like it was all built at the same time. We
9 don't know for sure, because there's a building permit for the
10 house, but it doesn't mention parking or not parking. So you
11 know, there are no details that go with that building permit. If
12 there were records from 1941, we don't have them anymore.

13 COMMISSIONER SMITH: Yes. So on the date of the
14 adoption of the 1958 regulations, they were automatically
15 conforming because they had one parking space.

16 MR. MORDFIN: Yes.

17 COMMISSIONER SMITH: Yeah. So I can understand the
18 opinion of the zoning administrator with -- so it would not -- I
19 could see how the Board may can take a difference of
20 interpretation on that because it was -- the parking space that
21 was created -- the structure with the parking spaces as it was
22 created, it did not have a parking requirement at that time, but
23 upon the adoption of the '58 ordinance, any house that at least
24 one parking space became conforming to that minimum one parking
25 space regulation. So with the adoption of the ZR '16 regulations,

1 even though there's now a provision in ZR '16 where if you -- if
2 the property was constructed before '58, you're not required to
3 have a parking space if you had a parking space or you were
4 meeting the legal parking requirements at some point in time
5 between 1958 and 2016 because you either added it or you had it
6 as a matter of fact at that particular point in time, then you
7 became conforming. So you can't retroactively use the ZR '16
8 provision that says that you're not required to have parking if
9 it was built before '58. So I can agree with the zoning
10 administrator's interpretation of that. And where the Board
11 lands, I can understand that interpretation, but I'm comfortable
12 with keeping the -- the special exception and keep it on the safe
13 side.

14 VICE CHAIR JOHN: Thank you.

15 Does the Board have any other questions?

16 Commissioner Miller?

17 ZC VICE CHAIR MILLER: I don't have any questions. I
18 have comments, but we'll get to that unless you want me to comment
19 now.

20 VICE CHAIR JOHN: Okay. All right. No, we're going
21 to go to the Applicant now.

22 ZC VICE CHAIR MILLER: Okay.

23 VICE CHAIR JOHN: Does the Applicant have any questions
24 for the Office of Planning?

25 MS. DICK: No.

1 MR. DICK: No.

2 MS. DICK: I don't.

3 VICE CHAIR JOHN: Okay.

4 And Mr. Young, are there any witnesses signed up to
5 testify?

6 MR. YOUNG: No, we do not.

7 VICE CHAIR JOHN: Okay.

8 So at this time, we normally ask for closing
9 statements, so if you would like to make a closing statement.

10 MS. DICK: I mean, we've been living in D.C. since
11 2009. We have two young kids. We love this neighborhood and
12 we're just looking forward to bringing this home up to a level
13 of safety and code to be functional for our family. This is our
14 dream of our forever home and we're excited about the process and
15 we hope the Board will (indiscernible) our application.

16 MR. DICK: Yeah. We'd also like to thank Stephen for
17 his work in helping us identify the issues with the code and
18 getting to this point, and your time in considering our
19 application.

20 MS. DICK: Thank you.

21 VICE CHAIR JOHN: Okay. Thank you. So we're going to
22 excuse you from the hearing at this time and close the hearing
23 and the record. Thank you.

24 Okay. Are we ready to deliberate? I'd like to start
25 with someone else to hear your thoughts. I mean, you know, I

1 agree with the Office of Planning that the side yard relief is
2 fairly straightforward and I am still trying to figure out where
3 I am on the parking relief. On the one hand, I think the operative
4 phrase is required parking and the other provision that says that
5 once the parking is established and the use and the structure
6 remain, then the parking cannot be changed by -- I believe it
7 has to have a variance, I'm not quite sure, but I'd like to hear
8 your thoughts on that.

9 COMMISSIONER SMITH: Okay. I'll go first. I think
10 it's -- it just comes down to a series of reflection points and
11 when it comes down to this particular situation, the parking
12 regulations, not just with this property, but other properties
13 within the District. The -- prior to ZR '58, there wasn't a
14 parking requirement. So this property was built in 1941, prior
15 to a parking requirement. However, this particular home, as some
16 other homes are within the District, was conveniently, just as a
17 convenience, built with a parking -- a couple -- a parking space
18 in a garage and on a driveway. And when the ZR '58 regulations
19 were adopted, it stated that in R zones it required one parking
20 space. If they didn't have a parking space, if the property was
21 never constructed with any parking space, or it did not meet the
22 minimum parking space for the zone, then it would continue to be
23 nonconforming. But it could continue to exist and it could
24 continue to operate. But I can understand the zoning
25 administrator's interpretation that if you ever between -- in

1 those 58 years between ZR '58 and ZR '16, if there ever was as
2 situation that you brought that property in compliance with the
3 parking requirements of ZR '58, however they existed at that
4 time, you were no longer nonconforming, you are now legally
5 conforming to the regulations. So because this property was
6 built in 1941 with a parking space, at least one parking space,
7 the minute ZR '58 was adopted and because they had that minimum
8 one parking space, they met the parking requirement and they
9 couldn't reduce through the entire duration for those 58 years
10 up until ZR '16 was adopted. ZR '16 was adopted with that one
11 provision that says that if you were built prior to 1941 -- I
12 mean 1958, and you did not have parking, and all of a sudden you
13 had to have parking, or if there was a requirement for ZR '16,
14 it essentially said that you didn't have to come into compliance,
15 you could continue to operate. But the wrinkle with this one is
16 they were in compliance, they were no longer nonconforming, they
17 didn't fall into that provision. So I can understand the zoning
18 administrator's interpretation that in order for them to reduce
19 it because they were compliant for 58 years, they have to get
20 this special exception for parking reduction. So I do full
21 heartedly agree with that interpretation of the zoning
22 administrator, not just for this, but also for other properties
23 that may have come into conformance to the parking standards,
24 that particular provision, this new provision in ZR '16 wouldn't
25 apply.

1 If we were to apply this across the rest of the
2 District, there would probably be a lot of buildings that may
3 have gotten special exceptions prior to after the adoption of the
4 ZR '58 regulations. The building was built before the ZR '58
5 regulations, and then all of a sudden they added parking
6 afterwards, it seems to me it would absolve them of keeping the
7 parking that they may have built that brought them into
8 compliance. So I can understand the position or the approach of
9 the zoning administrator to avoid this particularly slippery
10 slope and to interpret the regulations in this particular
11 fashion.

12 So I would be in support of keeping that special
13 exception by ruling it as null and void. And I do believe that
14 the Applicant's met the burden of proof for us to grant that
15 special exception for the reasons stated by Mr. Mordfin.

16 VICE CHAIR JOHN: Thank you, Mr. Mr. Smith.

17 So if I could just follow up, you're saying that because
18 the ZR '16 regulations continued the parking requirement, the
19 required parking requirement in ZR '58, then parking relief is
20 available under ZR '16?

21 COMMISSIONER SMITH: Correct.

22 VICE CHAIR JOHN: So but it was required parking.

23 COMMISSIONER SMITH: Right. They met -- they came into
24 compliance upon the adoption of ZR '58 with the minimum parking
25 -- the minimum one-space parking requirement.

1 VICE CHAIR JOHN: Okay.

2 COMMISSIONER SMITH: I know ZR '16 states that any
3 building built prior to '58 doesn't -- isn't required to have
4 parking, but I believe that that provision is null and void for
5 this particular property because they came into compliance with
6 the '58, they came into compliance with the '58 regulations upon
7 the adoption of ZR '58 because they had that one parking space.

8 VICE CHAIR JOHN: Okay. Thank you.

9 Commission -- Board Member Blake?

10 COMMISSIONER BLAKE: Sure. I again, I'm in favor at
11 least for the side yard relief. To further the discussion on
12 parking, this is a very unique situation, obviously, in terms of
13 having covered because of the -- that nuance that we just talked
14 about in the interpretation, I would agree with that
15 interpretation. I would also agree that relief is -- should be
16 granted, the mechanism by which I'm a little bit less clear.
17 However, I agree with the -- that the conditions for a special
18 exception would be met for the parking, given the fact that there
19 is no public alley in the rear. But I would also say in that
20 context, I would not be in favor of including a condition in the
21 requirement to remove the curb cut as that's a public space issue.
22 I think it would be dealt with separately. But I would be in
23 favor of allowing for the special exception for the removal of
24 the parking -- minimum parking requirement. So I'd be in support
25 of the application.

1 VICE CHAIR JOHN: Thank you, Board Member Blake.
2 Commissioner Miller?

3 ZC VICE CHAIR MILLER: Thank you, Vice Chair John.

4 And I wanted to thank the Applicant for reaching out
5 to their neighbors, three of their neighbors who are in support
6 of the -- sent letters of support in -- in support of the
7 application, and also the ANC, I believe, in this case also, ANC
8 3-4G, also as an exhibit in support, at Exhibit No. 30. So I
9 thank the Applicant for reaching out, expanding -- wanting to
10 expand their space for their family, their growing family.

11 And I think the Applicant has met the burden of proof.
12 I agree with the comments of my fellow Board members. You know,
13 whether -- I think the zoning administrator's interpretation that
14 in '58, once the parking space was there and wasn't removed prior
15 to the '58, it became a legally conforming parking and it met
16 the then new requirement that one-family dwellings all have one
17 space. And in '16, we allowed for a relief valve from that one
18 parking space if it met certain criteria. I think that's been
19 demonstrated, as the Office of Planning has said, and the
20 Applicant's statement has said that they need at least one, the
21 no access to a public alley. There also are the neighbors. One
22 of the neighbor's comments specifically that the street -- that
23 there's not a lot of demand for street parking. So even if -- I
24 think it just makes sense that they can apply for relief from
25 the parking -- the existing parking requirement that exists for

1 one-family dwellings. If it wasn't triggered when '58
2 automatically, as Board Member Smith indicated, his
3 interpretation, he thinks the zoning administrator has, although
4 we don't really have, I don't think, in front of us necessarily
5 the zoning administrator opinion, but if it didn't happen that
6 way, I think it's certainly the fact that they're expanding the
7 structure now, or want to, should trigger that requirement of the
8 space that's there. They're actually removing the space that's
9 required to have more space for their house, so.

10 And DDOT has their own -- DDOT has no objection. And
11 they had their one condition, which Office of Planning supported,
12 that is if -- that they don't want curb cuts and driveways on
13 public space if there's no parking being provided. And that'll
14 go through the public space committee process. Whether we make
15 that a condition or not, I think we should at least note in the
16 order, if we get to that point of order, approving of this
17 application, that the Applicant today and I think in their
18 statement committed to comply with that condition, if that is a
19 DDOT condition. It's certainly in their report in front of us
20 on this case and, but it'll go before a different body, the public
21 space committee, which DDOT controls. So I think we can note it
22 in our own order that the Applicant is committed to complying
23 with DDOT's condition. So I'm supportive of the application.
24 I'm sorry I took so long, Vice Chair, but I'm ready to move
25 forward.

1 VICE CHAIR JOHN: Okay.

2 So I'm in support of the application with respect to
3 the relief for the parking and the side yard relief. I think
4 that for me the difference was that -- the issue was what is
5 required parking. And since ZR '58 did have a one-parking space
6 requirement, that requirement continued into ZR '16. And I agree
7 that ZR '16 provides relief from the one-parking space
8 requirement, and so I can get to it that way. So I think we're
9 all in agreement and I appreciate everyone's comments.

10 So I will make a motion to approve Case No. 20854 as
11 captioned and read by the secretary and to note that DDOT required
12 additional conditions which will not be incorporated in the
13 order, and ask for a second, Mr. Blake?

14 COMMISSIONER BLAKE: Second.

15 VICE CHAIR JOHN: Mr. Moy, would you please take the
16 roll call?

17 MR. MOY: Yes. Thank you, Madam Vice Chair.

18 When I call your name, if you'll please respond to the
19 motion made by Vice Chair John to approve the application for the
20 relief requested as well as noting the DDOT requirement that
21 where the Applicant has committed to meet the DDOT condition.
22 The motion was second by Mr. Blake.

23 Zoning Commissioner Rob Miller?

24 ZC VICE CHAIR MILLER: Yes.

25 MR. MOY: Mr. Smith.

1 COMMISSIONER SMITH: Yes.

2 MR. MOY: Mr. Blake.

3 COMMISSIONER BLAKE: Yes.

4 MR. MOY: Vice Chair John?

5 VICE CHAIR JOHN: Yes.

6 MR. MOY: And we have a Board member not participating
7 today. Staff would record the vote as four to zero to one. And
8 this is on the motion made by Vice Chair John to approve. The
9 motion to approve was second by Mr. Blake, who is in support of
10 the motion, as well as Zoning Commissioner Rob Miller, Mr. Smith,
11 of course Mr. Blake and Vice Chair John. Motion carries on a
12 vote of four to zero to one.

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

15 MR. MOY: This would be Application No. 20815 of Maurice
16 Hawkes. This application is amended pursuant to Subtitle X,
17 Section 1002 for two variances, two area variances and one use
18 variance. The area variance is from the side yard requirement,
19 Subtitle D, Section 206.2 and the rear addition requirement,
20 Subtitle D, Section 306.3. The use variance relief is from the
21 nonconforming use requirement, Subtitle C, Section 204.1. The
22 property is in the R-2 zone at 4027 through 4029 Ely, E-L-Y,
23 Place, S.E. Square 5397S, Lot 70. And that's all I have.

24 VICE CHAIR JOHN: Thank you.

25 Mr. Hawkes, can you hear me?

1 MR. HAWKES: Yes, I can hear you.

2 VICE CHAIR JOHN: Okay. Are you choosing not to use
3 your video?

4 MR. HAWKES: I can use video, that would be fine.

5 VICE CHAIR JOHN: Yeah.

6 MR. HAWKES: Do I switch to -- I'm trying to get onto
7 it. Okay. All right. It's asking me to restart. So can I just
8 proceed without it, without the video?

9 VICE CHAIR JOHN: Sure.

10 MR. HAWKES: Okay.

11 VICE CHAIR JOHN: So please introduce yourself for the
12 record and give us your home address as well.

13 MR. HAWKES: Sure. My name is Maurice Hawkes, my
14 property address is 4027 to 4029 Ely Place, S.E., in Washington
15 D.C.. I've lived in D.C. since 2001 and I actually lived around
16 the area since 2004. I bought a house in 2021, that house is a
17 two-story brick house, semi-attached. It had -- it has 1,332
18 square feet, 666 square feet on each floor. It was built in
19 1950. And on -- and converted to a duplex sometime around 1958.
20 And again, it has 666 square feet on each floor. So it was
21 noticeable to me that the area in -- within the house was small.
22 I recently had my mother move in with me because she has lung
23 cancer and I have to care for her, and I was hoping to convert
24 the space into a larger livable space for me and my mother to
25 reside. And I was just proposing a rear addition onto the home,

1 which would be 18 by 18 feet, which would bring each floor to a
2 total of 990 square feet. It looked to me -- it appears that it
3 wouldn't impact the neighborhood. I didn't have any neighbors
4 to testify, but when I did speak with them, they -- when I spoke
5 with the adjacent neighbor, it did seem that she was in favor of
6 it and it didn't have any impact on the -- it had some impact on
7 the lighting and -- the lighting on the neighbor adjacent to me,
8 but it does enhance increased privacy and it doesn't really impact
9 their light in a drastic way. I'm not really sure what else I
10 can add to that.

11 VICE CHAIR JOHN: Okay. Okay, Mr. Hawkes.

12 Does the Board have any questions for the Applicant?

13 COMMISSIONER BLAKE: Yeah, I have a question, Madam
14 Vice Chair.

15 Mr. Hawkes, could you just explain exactly -- you said
16 you do live in the building currently in one of the apartments?

17 MR. HAWKES: I'm temporarily -- I have to live with my
18 mom, so I'm temporarily living with relatives in Hyattsville.

19 COMMISSIONER BLAKE: Okay. But do you intend to live
20 in this building?

21 MR. HAWKES: Yes.

22 COMMISSIONER BLAKE: Okay. And you intend to live in
23 both apartments or one apartment?

24 MR. HAWKES: One apartment? I intend to -- as income
25 to help pay for the mortgage, I intended to rent out the other

1 apartment.

2 COMMISSIONER BLAKE: Okay. Thank you, I just wanted
3 to clarify that. Thank you very much. I'd like to hear from
4 the Office of Planning. Thank you.

5 VICE CHAIR JOHN: Thank you.

6 So are there any other questions from the Board? If
7 not, I'll go to the Office of Planning.

8 Mr. Jesick?

9 MR. JESICK: Yes, thank you, Madam Vice Chair and
10 members of the Board. My name is Matt Jesick, and the Office of
11 Planning is recommending approval of this application. We
12 reviewed the application pursuant to the most recent zoning
13 administrator memo, which cited the need for a use variance and
14 an area variance for the proposed addition. For my testimony,
15 I'll focus on the use variance. We do feel that the application
16 meets the use variance criteria. The first point of the test is
17 that it does demonstrate exceptional conditions, the property.
18 It appears to have been built as a flat prior to the 1958 zoning
19 regulations being adopted, and there are certificates of
20 occupancy in the record establishing the use as a legal use
21 throughout that intervening -- throughout the intervening years.
22 And the two units on the property, the upstairs unit and
23 downstairs unit, are exceptionally small in size at 666 square
24 feet each. With those exceptional conditions, the strict
25 application of the nonconforming use provisions would result in

1 undue hardship to the owner. The owner seeks to modernize the
2 dwelling units and bring them up to modern living space standards
3 and add a modest sized bedroom at the rear and would like to
4 maintain the historic long-standing two-unit configuration on the
5 property. But strict application of the nonconforming use
6 provision would of course prevent the expansion of the use. We
7 don't feel that there'd be any detriment to the public good. The
8 use would slightly expand in size, of course, but we don't feel
9 that that would result in any sort of substantial increase in the
10 intensity of use on the property in terms of, you know, parking
11 or car traffic or noise. We also feel that there would not be a
12 substantial impairment to the intent of the zoning regulations.
13 One purpose of the residential zones, and I'm quoting from
14 Subtitle D, Section 100.2(b), one purpose is to recognize and
15 reinforce the importance of neighborhood character, walkable
16 neighborhoods, housing affordability, aging in place,
17 preservation of housing stock, improvements to the overall
18 environment, and low and moderate density housing to the overall
19 housing mix and health of the city. So allowing this use to
20 remain and be modernized and expanded would help to achieve those
21 goals of the zoning regulations. And that is why we are
22 recommending approval of the use variance.

23 My analysis for the variance to rear yard is also in
24 the report, and I'd be happy to take any questions. Thank you.

25 VICE CHAIR JOHN: Okay. Can we talk about the rear

1 yard as well, the variance with respect to the -- the area
2 variances with respect to the side yard and the ten-foot rear
3 wall? So -- go ahead.

4 MR. JESICK: Oh, sorry. Yes, excuse me. In regard to
5 the side yard, the Applicant has revised their design, so that
6 side yard relief is no longer necessary. But in regard to the
7 rear yard, normally the Board would see relief from the ten-foot
8 rule as a special exception. This was referred by the zoning
9 administrator as a variance. The reason being that 5201 only
10 applies to buildings with one dwelling unit. Nevertheless, we
11 found that it met the variance tests for granting relief. And
12 again, we noted previously that the units are very small and the
13 building has a depth of only about 37 feet. So the footprint of
14 the building is slightly small.

15 We felt that strict application of the zoning regs
16 would result in a practical difficulty given the exceptional
17 conditions. The depth of an addition of only ten feet could
18 allow for a small room at the back of the house, but would not
19 allow an efficient layout together with upgraded mechanical
20 systems as called for in the proposed layout. We didn't feel
21 that this addition to the rear would result in a substantial
22 impact to the public good. There would be some additional
23 shadowing in the morning on the property to the west, but we
24 didn't feel that rose to an undue level of impact. The house to
25 the east is set considerably farther back, so any shadow impacts

1 in the afternoon would be minimal to that property. And also,
2 as noted previously, we felt that a slight enlargement to the
3 house would not result in an impairment to the zoning regulations.
4 So therefore we are also recommending approval of a variance to
5 the rear yard.

6 VICE CHAIR JOHN: Okay. Thank you, Mr. Jesick.

7 Does the Board have any questions?

8 COMMISSIONER SMITH: Yeah, so I'm attempting to
9 understand the position of the Office of Planning for how this
10 -- there's an exceptional practical difficulty for -- regarding
11 the use -- the use variance. The use currently exists now as a
12 nonconforming use, and the provisions of the zoning regulations
13 regarding nonconformity, noncomformity -- it is the intent of the
14 zoning regulations for nonconformities to gradually go away.
15 That's per -- exactly per the zoning regulations. The
16 nonconformity can continue to exist and that nonconformity can
17 continue to exist with a renovation, and he can renovate it how
18 he sees fit within those four walls. And within those four walls,
19 he possibly could get a reasonable sized living space for both
20 of these units. So I'm trying to reconcile, one, how they meet
21 that third prong, how is this not a substantial -- if we allow
22 an expansion of a nonconforming use, would that not completely
23 neuter that provision that within the zoning regulations that
24 nonconformities should gradually -- the intent is for them to
25 come into compliance. So that seems to be contrary to that

1 particular prong. And how can that Applicant -- has the Applicant
2 demonstrated that they cannot operate -- continue to operate the
3 nonconforming use within these four walls? How can they -- I'm
4 still trying to reconcile that, whether it's a ten-foot addition
5 or a five-foot addition, it's still a nonconforming use and
6 they're expanding a nonconforming use, and nothing with the
7 record I've seen has shown that they can't continue to operate
8 their nonconforming use, renovate these two units as it is now
9 within these four walls. So can you expand on why they can't do
10 that now? And that final prong, can you expand on that more than
11 what you've expanded on it with what (audio blanks)?

12 MR. JESICK: Sure, thank you. I think the Applicant
13 was looking to, you know, add some, you know, living space to
14 modernize the units in order to maintain the dwelling as it has
15 been for 70 plus years. One thing I could point to is Subtitle
16 D, Section 300.4, which is one of the purposes of the R-2 zone,
17 and it says one of the purposes is to protect these areas from
18 invasion by denser types of residential development. A flat and
19 a single-family use are both considered low density residential.
20 And again, the flat has existed here for about 70 years. And
21 it's not just this lot, there's actually a little cluster of
22 flats on this street that were, as far as we can tell, built as
23 flats. So they've been part of the neighborhood fabric that
24 entire time, the greater part of a century. And we felt that a
25 modest addition would not deter -- or detract from the intent of

1 the zoning regulations to protect the R-2 zone and protect the
2 neighborhood from, as it says, invasion by denser types of
3 development.

4 COMMISSIONER SMITH: Per what you just stated, would
5 this expansion increase that density?

6 MR. JESICK: It's not increasing the number of units.

7 COMMISSIONER SMITH: Okay. Okay. Well, that's the
8 only question I have for right now. Still not convinced, but
9 that's all that I have for now.

10 COMMISSIONER BLAKE: I have a question for you. I have
11 a question for Mr. Jesick. In this case you just mentioned to
12 me that there's several other flats on this square like this. So
13 what makes this then unique that would create the -- you know,
14 that kind of goes with this whole thing? To me, you just -- it
15 was -- if this was one of a kind on the square, it'd be one thing,
16 but there's several others just like this on the square. It's a
17 square issue. It's not a property-specific issue. So I'd be
18 curious about that if you want to reconcile that comment?

19 The other comment I had -- and -- that which you talk
20 a little bit about -- well, why don't you -- address that, I have
21 one question after that.

22 MR. JESICK: Sure. Well, as with any variance, you
23 know, the variance criteria ask is it -- is the property
24 encumbered by a unique or exceptional or extraordinary condition.
25 So it doesn't necessarily have to be unreservedly unique amongst

1 nearby properties. If the property exhibits exceptional
2 conditions, which then lead to a practical difficulty, or in this
3 case an undue hardship for the property owner, then that can be
4 the basis for a variance.

5 COMMISSIONER BLAKE: Okay. I don't quite agree with
6 that. But when you talk about the -- the homeowner was on the
7 call earlier and he said his objectives was to live in the
8 building and to expand the space and rent out the apartment. I
9 also noticed that in the record we've had -- we've looked at this
10 as a special exception, and we've looked at this now as a
11 variance, it would seem that we could potentially do this with
12 lesser relief than a variance through special exception, given
13 the owner's objectives. Can you elaborate on why you've not
14 approached it that way? In other words, could we accomplish this
15 through a special exception?

16 MR. JESICK: Well, the expansion of the nonconforming
17 use, I think it would always be a variance, a use variance. I
18 think the questions were regarding the rear yard relief, the
19 zoning administrator had referred it as a variance. I understand
20 from my discussions with OZLD that they believe that the special
21 exception relief may still be available. So we just followed
22 what was in the record from the zoning administrator in our
23 analysis. But I can understand OZLD's position as well.

24 COMMISSIONER BLAKE: All right. Well, I'm looking at
25 the -- I'm looking at this and I have a heavy lift with the

1 variance requirements on this situation. However, given what the
2 Applicant described to me, the change in use to a dwelling, a
3 residential dwelling, with an accessory apartment would
4 accomplish the goals that they're trying to accomplish and
5 through special exception relief. So can you tell me why that
6 course of action would not make sense? Because you'd then be
7 bringing a flat into conformance with the regulations for the
8 single family and we'd be doing a special exception to do this.
9 So why -- that seems like an easier approach to get this done.

10 MR. JESICK: Yes, accessory apartments are permitted
11 in the R zones. I'm not sure that the current layout would
12 conform with all the provisions of the accessory apartment zoning
13 regulations. I would have to look into that more. I know there's
14 a size limit, for example, on the accessory unit. Could they
15 achieve that through a special exception? Again, I'd have to
16 look at the regulations in more detail.

17 COMMISSIONER BLAKE: And I do think that the provisions
18 within that could -- some of those provisions could be waived.
19 I think we should spend a little bit of time and explore that
20 avenue.

21 VICE CHAIR JOHN: Commissioner Miller?

22 ZC VICE CHAIR MILLER: Thank you, Madam Vice Chair.

23 I can support this application either as -- I agree
24 with -- well, let me start over. Thank you to the Applicant for
25 bringing it forward, thank you to the Office of Planning for your

1 recommendations, thank you to my colleagues for your comments and
2 questions.

3 I think that the application does meet the criteria for
4 the use variance -- expansion of the nonconforming use variance,
5 and it does meet the area variance relief criteria for the rear
6 yard and -- in terms of that third prong I think it is somewhat
7 in conflict with the arguments for the first prong, the
8 extraordinary or exceptional nature. It's exceptional because
9 it's exceptionally small. They want to modernize, to modernize
10 beyond the ten by ten foot that's allowed as a matter of right,
11 they need some kind of relief. Ten by ten is what triggers the
12 relief requirement under our regulations. That's being looked
13 at by Office of Planning and Zoning Commission, but that's what
14 the existing regulation is. Anyway, I think it is exceptionally
15 -- it is exceptionally small, these two units in the R-2 zone.
16 The addition would allow for a modest expansion that is -- that
17 is consistent with the pattern in this particular neighborhood.
18 It would not -- I agree with the Office of Planning's argument
19 that it would not do any harm to the intent of the regulations,
20 given that moderate density is what's allowed by both the current
21 comp plan and by the R-2 zoning. I could -- I see the OZLD
22 argument that special exception relief might be available for
23 that rear yard because there's nothing that precludes -- nothing
24 in our regulations that specifically precludes this type of
25 application from coming forward, although there is that

1 provision, what is it, 306.4 that it refers to one dwelling, one
2 principal dwelling unit, on a lot may apply for relief when it's
3 being expanded, and we have two, I guess two dwelling units with
4 a flat on this particular property -- on this particular site.
5 So anyway, I could see the argument that it's not necessarily
6 precluded, but I think they've met the argument for the variance,
7 they're in front of us, I'm prepared to move forward today with
8 that rather than having to make new arguments about special
9 exception and waivers of the criteria there that might be
10 necessary in order to do a special exception.

11 So unless we can get there today, I don't want to delay
12 this application from moving forward. So I guess those are my
13 comments, Madam Vice Chair, thank you. I could go with either
14 interpretation. I think they're both reasonable. I think it's
15 been advertised one way, it's supported one way. It would have
16 been -- it might have been easier the other way, although the
17 waiver would be required, I think, because not all the criteria
18 for that special exception would be met. So I think the point
19 is that relief is available under the zoning regulation and that
20 there's an application for relief in front of us for this modest
21 expansion to make more livable these two units. So I'm ready to
22 move forward, Madam Chair -- Madam Vice Chair.

23 VICE CHAIR JOHN: Thank you.

24 So Mr. Jesick, the buildings on that street are
25 basically the same type of building, right, semi-detached,

1 smaller semi-detached buildings?

2 MR. JESICK: This section of the street appears to have
3 been built as semi-detached flats. Not the entire street, but
4 this little portion of it.

5 VICE CHAIR JOHN: And they're all the same size roughly?

6 MR. JESICK: I believe they're, yeah, about all the
7 same size.

8 VICE CHAIR JOHN: And when you say that that 660 (sic)
9 square feet is very small, what's the size of the average room
10 in that kind of house? I mean, give me an idea. I don't have
11 the layout in front of me, but give me an idea of the
12 configuration or I can ask Mr. Hawkes if you don't have that
13 information.

14 MR. JESICK: I would have to pull up the floor plans,
15 but I can take a look at that for you.

16 VICE CHAIR JOHN: All right. While you do that, let
17 me go to Mr. Hawkes. Mr. Hawkes, can you hear me?

18 MR. HAWKES: Yes, I can.

19 VICE CHAIR JOHN: So please explain to me why you think
20 that configuration is small, and the 660 (sic) square feet is
21 very small, what's the size of the rooms? And if you were to
22 convert the building to a principal unit with an accessory
23 structure, what would be involved?

24 MR. HAWKES: Sure. The current bedrooms were, I'm
25 guessing, but it would -- I'm guessing that it would be about a

1 100, maybe 150, square feet. The kitchen, the existing kitchen,
2 was a -- or is a sort of a galley kitchen. It was sort of almost
3 in like a hallway space.

4 VICE CHAIR JOHN: Uh-huh.

5 COMMISSIONER BLAKE: So it's very thin. It's very
6 thin. It doesn't allow you to really walk through this space
7 comfortably. Again, I'll be taking care of my mother and we
8 would probably need additional space to really have a better
9 quality of life. There -- the existing space has a very small
10 dining area adjacent to the kitchen, that was about 100 square
11 feet. And a small living space, living area space, in the front
12 of the house. If I expanded that, that would enable me to put
13 an additional bedroom and a bathroom into that additional 300
14 some odd square feet of space. So that would definitely increase
15 the quality of life.

16 VICE CHAIR JOHN: So -- thank you. So there are two
17 bedrooms now on each -- in each unit or one?

18 MR. HAWKES: There's one -- there's only space for one.

19 VICE CHAIR JOHN: Okay. And in terms of configuration,
20 are the two units connected at all or are they separated by
21 stairs.

22 MR. HAWKES: They're separated by stairs.

23 VICE CHAIR JOHN: Okay.

24 MR. HAWKES: And they actually have two separate
25 entrances --

1 VICE CHAIR JOHN: Okay.

2 MR. HAWKES: -- in the front of the house.

3 VICE CHAIR JOHN: Okay. All right. Thank you.

4 Did you have any additional information, Mr. Jesick?

5 No?

6 MR. JESICK: No, I think he -- Mr. Hawkes described the
7 floor plan adequately.

8 VICE CHAIR JOHN: Thank you.

9 Does the Board have any additional questions for the
10 Office of Planning?

11 Mr. Young, has anyone signed up to testify?

12 COMMISSIONER SMITH: I think I do have one.

13 VICE CHAIR JOHN: Okay. Could you let the person in
14 please?

15 COMMISSIONER SMITH: Chair John, I do have one
16 question.

17 VICE CHAIR JOHN: Oh, I'm sorry, you have a question.
18 I thought I heard Mr. Young. Please go ahead.

19 COMMISSIONER SMITH: I think we have the same
20 inflection. Or the same tone, sorry. Mr. Jesick, what per the
21 D.C. zoning regulations -- what constitutes a dwelling unit?
22 What are the provisions needed for a space to be considered a
23 legal dwelling unit?

24 MR. JESICK: Let me find the definition for you. All
25 right. The definition for a dwelling unit is "one or more

1 habitable rooms comprising complete independent living facilities
2 for one or more persons, and including within those rooms,
3 permanent provisions for living, sleeping, eating, cooking, and
4 sanitation. A dwelling unit is intended for a single household."

5 COMMISSIONER SMITH: Okay. Okay. I'm just looking at
6 the floor plan to see the minimum requirements for it to be a
7 dwelling. That was the only question I had, I just wanted to
8 see what the minimum requirements for something to be considered
9 a dwelling unit. Thank you. That's all I had, Chair John.

10 VICE CHAIR JOHN: Thank you.

11 Mr. Young, did you say there was someone signed up to
12 testify?

13 MR. YOUNG: No, we do not.

14 VICE CHAIR JOHN: Okay.

15 So -- just a minute. So Mr. Hawkes, did you have any
16 closing comments?

17 MR. HAWKES: Yes. I'd just like to thank the Board for
18 considering my application for a variance. And again, just state
19 that by allowing me to expand the house, it would increase the
20 quality of life for me and my mother and I -- with minimal impact
21 to the surrounding neighbors. And I think it would greatly
22 benefit the neighborhood overall. Thank you.

23 VICE CHAIR JOHN: Thank you. So Mr. Hawkes, I'm going
24 to thank you for your presentation and close the hearing and the
25 record at this time.

1 Okay. So who wants to start?

2 COMMISSIONER SMITH: I'll -- I mean, I'll start. I do
3 believe that the property -- well, the side yard requirement is
4 in need because of the -- they have revised their application,
5 but I'll start off with the use variance criteria. I'm not
6 convinced by the arguments that the Office of Planning that the
7 Applicant's met the burden of proof for us to grant a use
8 variance. A use variance, by its very nature, should be a final
9 hurdle. The property is legally nonconforming. And the zoning
10 -- the intent of nonconformities is for nonconformities to
11 gradually come into compliance with the zoning regulations. I
12 do believe what is being requested to expand a nonconforming use
13 does -- it's not in congruence with that basic zoning ordinance
14 regulation to gradually bring these properties into conforming.
15 So I do not believe it meets any -- I do believe it would
16 substantially impair the intent, purpose, and integrity of the
17 zoning plan as embodied within the zoning regulations.

18 Regarding what peculiar or exceptional practical
19 difficulties to the owner, I do not believe that size of a
20 dwelling unit is a practical or a peculiar difficulty on this
21 Applicant, considering that they could continue to operate the
22 property -- they could continue to operate the property as a
23 nonconformity without this expansion. There are all the
24 provisions for it to continue to operate as a dwelling unit. And
25 there is a question of space, the Applicant could, instead of

1 having two units, expand -- create one single-family dwelling
2 unit that would provide that space that he needs. In the argument
3 of -- the argument that he's making is more following to an
4 economic argument that he needs to have two units, which I don't
5 believe that we need to be making -- it's to me more of a stronger
6 case than he's making the economic argument to keep the second
7 unit, as opposed to any major practical difficulty.

8 And regarding the other provision of the use variance
9 criteria, an applicant for a use variance must prove that as a
10 result of the attributes of a specific piece of property, the
11 strict application of a zoning regulation would result in
12 exceptional and undue hardship upon the owner of the property.
13 Again, there isn't anything necessarily attributable to the piece
14 of property where the Applicant can't continue to operate these
15 two units -- this property as two units. The undue hardship,
16 the undue hardship portion can be remedied, as Mr. Blake stated,
17 by the Applicant pursuing re-arranging -- doing some slight
18 changes in the configuration of possibly even front façade for
19 them to instead of seeking a use variance to operate a flat that's
20 nonconforming, instead the property can come into compliance with
21 the zoning regulations by having an accessory apartment unit.
22 They can apply for a special exception and based on the size of
23 the second unit, they may need to get a waiver from us because
24 it's about 50 percent of the size of the entire building because
25 it takes up the second -- the entire second floor, and they could

1 conduct that expansion without the need of this -- of the use
2 variance. So I do not believe that they meet the burden of proof
3 for us to grant use variance, and I do believe that there is
4 another relief valve for them to be able to essentially achieve
5 what they -- what he's trying to achieve and bring the property
6 into conformance with the zoning regulations. So I will not be
7 in support of a use variance, and would recommend that we continue
8 this application for him to revise the application to request a
9 special exception.

10 VICE CHAIR JOHN: Thank you, Mr. Smith.

11 Mr. Blake?

12 COMMISSIONER BLAKE: I agree with Mr. Smith's analysis
13 of the situation. As I pointed out, given the Applicant's -- I
14 do not think the criteria is met for variances for use or area
15 variances. And if -- but I do think the Applicant's desire is
16 reasonable, but can be accomplished as well moving within the
17 zoning regulations through special exceptions through lesser
18 relief. So for that reason, I too am not in support of variance
19 either the area or use variance, and I would like to continue
20 the case to give the Applicant the opportunity to see if a lesser
21 form of relief, special exception relief, could be pursued to
22 accomplish the objectives that he has laid out.

23 VICE CHAIR JOHN: Thank you.

24 Commissioner Miller?

25 ZC VICE CHAIR MILLER: Thank you, Madam Vice Chair. I

1 guess you've closed the record, right, on this case?

2 VICE CHAIR JOHN: Yes, but we can -- you can -- we can
3 reopen the record.

4 ZC VICE CHAIR MILLER: I'm not sure if that's necessary,
5 but I think the Applicant, based on my colleagues' comments,
6 would need to work with the Office of Planning on framing the
7 argument, the alternative argument, for a -- to avoid the need
8 for a variance relief in this case to make the argument for an
9 accessory apartment and the waivers necessary, not meeting the
10 one criteria that it not occupy more than 35 percent of the house.
11 And as Mr. Smith pointed out, it would occupy 50 percent of the
12 house, of the other unit. So as, you know, as long as the
13 Applicant and the Office of Planning can work together and to try
14 to frame that alternative argument in a reasonable manner, I
15 could be supportive of continuing the case. I just -- I was
16 contemplating whether we should ask Mr. Jesick does he understand
17 that argument and does he think it's a reasonable one to make
18 and could he assist the Applicant in framing that. So I just
19 have some reluctance in putting something off that seems very
20 reasonable and I thought on its face it could have met the
21 variance criteria, although I'd rather not set the precedent that
22 a variance is required if we can do it, as my colleagues have
23 said, with some lesser burden of proof that's required for a
24 lesser -- for lesser relief under a special exception. But I
25 just hate -- not hate-- I don't like putting homeowners, small

1 homeowners, individual citizens, running them through a lot of
2 hoops just because we're strictly construing the regulations, but
3 I can understand my colleagues' arguments on that point and I'd
4 rather have the lesser standard be a precedent than the higher
5 standard of a use variance. So if the OP can work with the
6 Applicant to frame that argument in a timely manner, I'd be
7 prepared to delay for that purpose, Madam Vice Chair.

8 VICE CHAIR JOHN: Thank you, Commissioner Miller.

9 And I have struggled with this application with respect
10 to the two variances that were requested. And in each case, with
11 respect to the exceptional condition, I believe there is clearly
12 an exceptional condition because this is a legally nonconforming
13 flat with a certificate of occupancy and it's existed for some
14 time. So I have difficulty with the economic hardship, which is
15 a lesser burden for the area variance, but the Applicant has to
16 show undue hardship for the use variance. And for that reason I
17 asked the question about what would be required to bring the
18 property in compliance with the principal building and accessory
19 structure configuration. And so I'm still struggling, but I
20 agree that it might be useful to continue the case to give the
21 Applicant an opportunity to work with OP to see if there is a
22 way to meet the criteria for converting to a principal unit with
23 an accessory structure. And so yeah, this was --

24 ZC VICE CHAIR MILLER: Can we ask the -- is it, Mr.
25 Jesick if he thinks that that can be accomplished? I hate to

1 ask you to reopen the record for that, but I just want to --

2 VICE CHAIR JOHN: Okay. We can --

3 ZC VICE CHAIR MILLER: -- I just would like to know if
4 that's the case.

5 VICE CHAIR JOHN: So the Board on its own motion or,
6 you know, has the authority to waive two of the criteria. The
7 only criteria that the Board cannot waive is the requirement to
8 reside in the building, if I'm correct. So if the Applicant or
9 -- I don't know who owns the building, we could ask that question,
10 but if the Applicant and his mother both own the building, the
11 Applicant's mother could live in the building. So I will reopen
12 the case if that is your request, Mr. Miller -- Commissioner
13 Miller, having said all of that. I will reopen the record.

14 ZC VICE CHAIR MILLER: Okay. Thank you. Yeah, I just
15 wanted to hear from the Office of Planning about the alternative
16 relief that's been suggested here by my colleagues, whether
17 that's workable from their perspective.

18 VICE CHAIR JOHN: Thank you.

19 So Mr. Moy, the record is reopened and I will ask to
20 see if Mr. Jesick is still available.

21 MR. JESICK: Yes. Again, my name is Matt Jesick with
22 the Office of Planning. Thank you, Madam Vice Chair. And yes,
23 Commissioner Miller, we follow you perfectly. We can work with
24 Mr. Hawkes on that alternative for the relief following the
25 criteria of Subtitle U, Section 253. Just glancing at it quickly,

1 and again, you know, we may revise our thoughts later, but there
2 does appear to be just that one criteria that would need to be
3 waived, which is the 35 percent rule regarding the size of the
4 accessory unit. So that would seem to be within the Board's
5 purview to follow that course of action.

6 ZC VICE CHAIR MILLER: And if that was the application,
7 then a variance would not be required in this case if the Board
8 were to agree?

9 MR. JESICK: Yes. The waiver can be granted by special
10 exception, and then the rear yard would without question become
11 a special exception.

12 ZC VICE CHAIR MILLER: Would the use variance be -- go
13 away as well?

14 MR. JESICK: Correct. Yes, because you would just be
15 expanding a principal dwelling unit with an accessory dwelling
16 unit. You would not be expanding a flat.

17 ZC VICE CHAIR MILLER: That's what I understood and I
18 just wanted to clarify that for the public record and for the
19 Applicant and for myself. So thank you.

20 VICE CHAIR JOHN: Okay. Thank you.

21 Mr. Moy, could you let Mr. Hawkes back in please?

22 MR. MOY: Yes. Thank you.

23 Paul, please?

24 VICE CHAIR JOHN: Mr. Hawkes, can you hear me? Can you
25 hear me, Mr. Hawkes?

1 MR. HAWKES: I can hear you now.

2 VICE CHAIR JOHN: Thank you. So have you been listening
3 to the discussion so far?

4 MR. HAWKES: Yes, I have.

5 VICE CHAIR JOHN: And do you understand what the Board
6 is proposing?

7 MR. HAWKES: Yes. Yes, I do.

8 VICE CHAIR JOHN: Okay.

9 MR. HAWKES: To convert to a principal dwelling with
10 an accessory unit.

11 VICE CHAIR JOHN: Right. So instead of making a
12 decision today, the Board will continue the case to give you time
13 to work with the Office of Planning to amend the application if
14 that is what you would like to do. If that is not what you would
15 like to do, then the Board would consider the application as
16 presented, which is a request for two variances. And as you have
17 heard, the variance for the nonconforming structure is the most
18 difficult one because it requires a showing not only of the
19 exceptional condition, but that there is undue hardship. It is
20 a higher burden. So if you get through that, that use variance,
21 there's still the area of variance, which is a lesser burden. So
22 we're going to continue this case then. Well, I assume you agree
23 with what I've said in terms of continuing the case to allow you
24 to make a decision and how you would like to proceed?

25 MR. HAWKES: I do agree, and I will work with the Office

1 of Planning to move this forward.

2 VICE CHAIR JOHN: Okay. All right. Thank you. So
3 again, we're going to continue the case so I won't close the
4 hearing and the record.

5 And Mr. Moy, do you have a suggestion as to when we can
6 hear this case again?

7 MR. MOY: Thank you, Madam Vice Chair. I do, in fact.
8 Given the direction of the discussion and to allow time for the
9 Applicant to make any changes, if he should decide to do that, I
10 would recommend for the Board that we reschedule this hearing to
11 either March 1st or March 8th. We currently have four cases on
12 March 1st and three cases on March 8th. So I'll leave that to
13 you as to which of those two dates you would like us to reschedule
14 this.

15 VICE CHAIR JOHN: So I'd like to recommend March 1st.

16 MR. MOY: Okay. Very good. If we do that, then I
17 would ask that -- let me bring up my calendar -- I would ask then
18 that the Applicant make supplemental filings which could possibly
19 include revised drawings, but two weeks prior to the March 1st
20 hearing date, which would be February the 15th. That would give
21 our agency and OP time to weigh in, other parties, two weeks
22 prior to the March 1st hearing date. So in other words, what
23 I'm saying is the Applicant -- if the Applicant can admit their
24 filing by February 15th.

25 VICE CHAIR JOHN: Okay. So we'll continue the case to

1 March 1st. Okay?

2 MR. MOY: Yes.

3 VICE CHAIR JOHN: Thank you. So Mr. Moy -- thank you,
4 Mr. Hawkes. We'll see you on March 1st.

5 MR. HAWKES: Okay. Thank you.

6 VICE CHAIR JOHN: Okay.

7 So Mr. Moy, is there anything further before the Board
8 today?

9 MR. MOY: Thank you for asking. As a matter of fact,
10 I do.

11 VICE CHAIR JOHN: There is.

12 MR. MOY: Yeah, there is, just very slight on my part.
13 So I would like to state for the record there were two additional
14 case applications that was scheduled on today's docket, but they
15 -- these two cases were rescheduled to March 22nd because of the
16 boundary changes to the ANCs. And the two cases are 20830 of
17 Stephen and Stephanie Tankel and 20843 of Christian and Anabel
18 Genetski, G-E-N-E-T-S-K-I. So both of these case applications
19 are scheduled for March 22nd. And that's all I have for you.

20 VICE CHAIR JOHN: Thank you.

21 Does the Board have anything further?

22 All right. Well, thank you all for your participation
23 and your comments today. And I'll see you all next week. Thank
24 you.

25 (Whereupon, the above-entitled hearing was adjourned.)

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C E R T I F I C A T I O N

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: Board of Zoning Adjustment

Date: 01-18-2023

Place: Teleconference

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

DONNA JENKINS