

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY

DECEMBER 13, 2023

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson  
LORNA L. JOHN, Vice Chairperson  
CARL BLAKE, Board Member

ZONING COMMISSION MEMBERS PRESENT:

ROBERT MILLER, Vice Chairperson

OFFICE OF ZONING STAFF PRESENT:

MARK HAMALA, Zoning Specialist  
PAUL YOUNG, A/V Production Specialist

OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

SARAH BAJAJ, ESQ.  
COMETRIA COOPER, ESQ.  
CARISSA DEMARE, ESQ.  
RYAN NICHOLAS, ESQ.

The transcript constitutes the minutes from  
the Regular Public Meeting held on December 13, 2023.

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

9:30 a.m.

CHAIR HILL: Good morning, ladies and gentlemen, The Board of Zoning Adjustment. Today's date is December 13th, 2023. This public hearing will please come to order. My name is Frank Hill. I am the chairperson of District of Columbia Board of Zoning Adjustment. Joining me today is Vice Chairperson John, Board Member Carl Blake, and Zoning Commissioner Rob Miller. Today's meeting and hearing agenda are available on the Office of Zoning's website.

Please be advised that this proceeding is being recorded by a court reporter and it is also webcast live via WebEx and YouTube Live. The video of the webcast will be available on the Office of Zoning's website after today's hearing. Accordingly, everyone who was listening in on WebEx or by telephone will be needed during the hearing. Also please be advised that we do not take public testimony at our decision meeting session. If you are experiencing difficulty accessing WebEx or with your telephone call in please call OZ hotline number at (202) 727-5471 to receive WebEx log in and call in instructions.

At the conclusion of the decision meeting session I shall have a consultation with the Office of Zoning to determine whether a full or summary order may be issued a full order is required when the decision contains an adverse

1 to a party including an affected ANC. A full order may also  
2 be needed if the Board's decision differs from the Office of  
3 Planning's recommendation. Although the Board favors the use  
4 of summary orders whenever possible, an Applicant may not  
5 request the Board to issue such an order. In today's hearing  
6 session everybody who is listening on WebEx or by telephone  
7 will be muted during the hearing, and only persons who are  
8 signed up to participate or testify will be unmuted at the  
9 appropriate time.

10           Please state your name and home address before  
11 providing oral testimony or your presentation. Oral  
12 presentation should be limited to a summary of your most  
13 important points. When you are finished speaking please mute  
14 your audio so that your microphone is no longer picking up  
15 sound or background noise. Once again, if you are  
16 experiencing difficulty please call (202)727-5471. It is  
17 also listed on the screen. All persons planning to testify  
18 either in favor or in opposition should have signed up to  
19 participate in advance. Simply call by name and testify.

20           If this is an appeal only parties are allowed to  
21 testify. By signing up to testify all participants take the  
22 oath or affirmation as required by Y408.7, request to enter  
23 evidence at the time of the online virtual hearing such as  
24 written testimony and additional supporting documents other  
25 than live video, which may not be presented as part of the

1 testimony may be allowed pursuant to Y103.13 provided that  
2 the persons made their request to enter an exhibit explaining  
3 (a) how the proposed exhibit is relevant, (b) a good cause  
4 to justify allowing exhibit in the record, including an  
5 explanation of why the requestor did not file the exhibit  
6 prior to the hearing pursuant to Y206, and (c) how the  
7 proposed exhibit would not reasonably prejudice any parties.  
8 The order of procedures with special exception and variances  
9 are in Y409.

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

25           Finally, the District of Columbia Administrator's

1 Procedures Act requires that the public hearing on each case  
2 be held in the open before the public. However, pursuant to  
3 405(b) and 406 of that Act the Board may, consistent with its  
4 rules and procedures and the act, enter into closing meeting  
5 on a case for purpose of seeking legal counsel on the case  
6 pursuant to DC Official Code Section 2-575 (B)(4), and/or  
7 deliberating on a case pursuant to DC Official Code Section  
8 2-575(B)(13), but only after providing necessary common  
9 notice in the case in which a closed meeting have taken roll  
10 call vote. Mr. Hamala, do we have any preliminary matters?

11 MR. HAMALA: Let's see. We have two scheduling  
12 announcements. First, Application Number 20919 of William  
13 Huffman and Colleen Bevins has been rescheduled from December  
14 13th, 2023 to the December 20th, 2023 public hearing, and  
15 Application Number 20928 of Matt and Sarah Tucker has also  
16 been rescheduled from the December 13th public hearing to  
17 December 20th, 2023 public hearing. Then the Chairman has  
18 reviewed and granted waivers to allow late filings into the  
19 applicable record cases pursuant to subtitle Y Section 206.7  
20 and Y Section 103.13. We do have two preliminary matters for  
21 expert witnesses, but those can be addressed when the hearing  
22 cases are called.

23 CHAIR HILL: Okay, great. Thank you. Can you call  
24 our first public meeting case, please?

25 MR. HAMALA: Our first public meeting case is

1 Application Number 21037 of Nathaniel and Patricia Robb.  
2 This is an application pursuant to subtitle X901.2 for  
3 special exception under subtitle E5201, the law documents,  
4 the requirements of subtitle E210.1, and the rear yard  
5 requirements of subtitle E207.1, and the project is for a  
6 rear deck addition to an existing three-story two unit flat  
7 building in the RF1 zone located at 1361 Oak Street  
8 Northwest, square 2835, Lot 73.

9 CHAIR HILL: Okay. Let's see. A couple things.  
10 First of all, I would like to welcome back Carl Blake to the  
11 Board of Zoning Adjustment. It is so fortunate for us and  
12 the city that the mayor and the council has reappointed him,  
13 and it is so kind of him to also help out with all of his  
14 time, as this does take a tremendous amount of time to serve  
15 here. So I just wanted to welcome back Mr. Blake. Welcome  
16 back, Mr. Blake.

17 MEMBER BLAKE: Good to be back. Hey everybody.

18 CHAIR HILL: All right.

19 VICE CHAIR JOHN: Welcome back, Mr. Blake, we are  
20 happy to have you.

21 MEMBER BLAKE: Thank you, Vice-Chair John.

22 ZC VICE CHAIR MILLER: It is good to see you.

23 MEMBER BLAKE: Thank you, Vice Chair Miller.

24 CHAIR HILL: It is wonderful. We have a full board  
25 now. We can have split votes. All right. Let's see. So

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1 in this first expedited review I have reviewed the record,  
2 and in the record there are a couple of things that are still  
3 missing. One is that the Office of Planning has been unable  
4 to issue a report. Then there seems to be community concerns  
5 about the project, one of which is from the ANC. The ANC  
6 actually is a party to all cases, however, I guess if it is  
7 a public meeting case then we do not take public testimony  
8 for those cases. So what I would like to do is go ahead and  
9 take this off of the meeting calendar expedited review and  
10 set it for hearing. Does anyone have any opposition to that?  
11 If so, then please speak up.

12           Okay. Mr. Hamala, when can we hear this? When  
13 are we scheduling things now?

14           MR. HAMALA: Typically expedited review cases are  
15 scheduled sooner than later, but the calendar is also very  
16 full, so I can give you a couple of dates near and far.  
17 Near, perhaps January 31st we have eight hearing cases and  
18 one expedited review case. Further down to the calendar,  
19 March 20th only has two applications so far.

20           CHAIR HILL: All right. So unless the Applicant  
21 has any other things that they would like to put before the  
22 Board in terms of asking us to reschedule it, we are going  
23 to go ahead and put them on March 20th. They still have to  
24 work with the Office of Planning, and then also, I guess,  
25 they have not presented to the ANC yet, so that will give



1 them an opportunity to get better organized. So 3:30 we will  
2 come back unless the Applicant convinces us otherwise, okay?  
3 All right. The next one you can call when you get an  
4 opportunity.

5 MR. HAMALA: The next Application is Number 20507A  
6 of Solid Brick Ventures, LLC and 93 Hawaii Ventures, LLC for  
7 modification and a consequence. This is a request pursuant  
8 to subtitle Y Section 703 for modification and consequence  
9 to the Board's order, and Application Number 20507, and that  
10 is to reduce the number of dwelling units from 16 to 11 and  
11 to remove a third-story addition from the approved plans.  
12 The project concerns two of the 11 lots where the Board  
13 approved increases in the number of units in addition to  
14 existing two-story detached eight unit apartment houses in  
15 the RA1 zone.

16 CHAIR HILL: Okay.

17 MEMBER BLAKE: Mr. Chair.

18 CHAIR HILL: Yes, go ahead.

19 MEMBER BLAKE: I recused myself from this case when  
20 it came before us initially, and I would like to do so at  
21 this time as well.

22 CHAIR HILL: All right. Thank you, Mr. Blake.  
23 Okay. I remember this case, and they get a reducing from 16  
24 to 11 units and removing the third story. I think that the  
25 fact that they are reducing rather than increasing makes me

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1 more comfortable with this being an expedited review. I also  
2 will note that as reading through the Office of Planning's  
3 report I would agree with the Office of Planning's  
4 recommendation and analysis as how this could remain  
5 modification and consequence. They were also in approval of  
6 this. We do not have anything new from the ANC, however,  
7 again, the fact that they are reducing the number of dwelling  
8 units from 16 to 11 and also then removing the third story,  
9 again, makes me comfortable with this as a modification and  
10 consequence. So I will be voting to approve. Vice Chair  
11 Miller, do you have anything you would like to add?

12 ZC VICE CHAIR MILLER: No, I agree with your  
13 analysis of the modification and consequence, so that is a  
14 modification and consequence as opposed to significant since  
15 it is a reduction and that it can move forward.

16 CHAIR HILL: Thank you. Vice Chair John.

17 VICE CHAIR JOHN: Application, and I also agree it  
18 is a modification and consequence, and also there should be  
19 no potential adverse impact on any neighbor. The Applicants  
20 will remove the request for the third-story addition, which  
21 would make it less likely to be impactful on the  
22 neighborhood, so, again, I am in support.

23 CHAIR HILL: Thank you. I did misspeak, it is a  
24 modification and consequence. Thank you, Vice Chair John.  
25 I'm going to go ahead and make a motion to approve

1 Application Number 20507A as captioned read by the secretary  
2 and ask for a second. Vice Chair John.

3 VICE CHAIR JOHN: Second.

4 CHAIR HILL: Motion made and seconded. Mr. Hamala,  
5 if you could take a roll call, please.

6 MR. HAMALA: When I call your name please respond  
7 to Chairman Hill's motion to approve the application a yes,  
8 no, or abstain. Chairman Hill.

9 CHAIR HILL: Yes.

10 MR. HAMALA: Vice Chair John.

11 VICE CHAIR JOHN: Yes.

12 MR. HAMALA: Zoning Commissioner Miller.

13 ZC VICE CHAIR MILLER: Yes.

14 MR. HAMALA: Staff would record the vote as three  
15 to zero to two to approve Chairman Hill's motion to approve  
16 the application, seconded by Ms. John with Zoning  
17 Commissioner Miller in support with Board Member Smith not  
18 present not participating, and Board Member Blake not  
19 participating motion passes.

20 CHAIR HILL: Thank you, Mr. Hamala. All right.  
21 You may call our next one when you get a chance.

22 MR. HAMALA: Our next application is Number 20523B  
23 of AMSQ, LP. This is a request pursuant to subtitle Y,  
24 Section 705.1 for two-year time extension of the validity of  
25 the Order Approving Application Number 205231. This would

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1 be for a path addition to an existing detached commercial  
2 building in the D3 zone located at 300 New Jersey Avenue, NW,  
3 and 51 Louisiana, NW, square 631, Lot 808 and Lot 809.

4 CHAIR HILL: All right. Thank you. I have  
5 reviewed this, and do not really have any issues with the  
6 time extension. The Applicant is pointing to market factors  
7 concerning downtown DC, which continues to have difficulties,  
8 and they had a hard time or having a hard time securing a  
9 tenant, and so in addition to that these have been vetted  
10 through the ANC and the ANC did not have any issue in setting  
11 the time extension, nor did the Office of Planning. One  
12 thing is, I guess, that in terms of when we would do this  
13 time extension now what the Board has been doing is doing the  
14 time extension from when the order became final as opposed  
15 to different days. Two-year time extension based on that  
16 date the order became final when it set the validity of the  
17 relief in Order 20523 until October 22nd, 2025. So that is  
18 the only point that I wanted to raise, and, again, I think  
19 that the economic and market conditions I do wish them all  
20 the best. They are in that area of town. Vice Chair Miller,  
21 do you have anything you would like to add?

22 ZC VICE CHAIR MILLER: No, I agree with you that  
23 good cause has been demonstrated. The economic and market  
24 conditions beyond their control, and we have the support of  
25 Office of Planning and ANC City, so, yes, I support the time

1 extension.

2 CHAIR HILL: Thank you. Mr. Blake.

3 MEMBER BLAKE: I agree with the statements that you  
4 and Vice Chair Miller made, and I too would be in support of  
5 the time extension.

6 CHAIR HILL: Thank you. Vice Chair John.

7 VICE CHAIR JOHN: I am also in support of the time  
8 extension under Y705.2, and agree, Mr. Chairman, that the  
9 applicable date is the date of issue, which is October 22nd,  
10 2021.

11 CHAIR HILL: Thank you. Thank you. So two years  
12 will take it to October 22nd, 2025.

13 VICE CHAIR JOHN: Yes.

14 CHAIR HILL: Thank you. All right. I am going to  
15 go ahead and make a motion to approve Application Number  
16 20523B as captioned read by the secretary, and pointing the  
17 expiration date now to October 22nd, 2025, and ask for a  
18 second, Vice Chair John.

19 VICE CHAIR JOHN: Second.

20 CHAIR HILL: Mr. Hamala, if you could take a roll  
21 call, please.

22 MR. HAMALA: Respond with a yes, no, or abstain.  
23 Chairman Hill.

24 CHAIR HILL: Yes.

25 MR. HAMALA: Vice Chair John.

1 VICE CHAIR JOHN: Yes.

2 MR. HAMALA: Mr. Blake.

3 MEMBER BLAKE: Yes.

4 MR. HAMALA: Zoning Commissioner Miller.

5 ZC VICE CHAIR MILLER: Yes.

6 MR. HAMALA: Staff would record the vote as four  
7 to one to zero to approve the application on the motion made  
8 by Mr. Hill and seconded by Ms. John with Mr. Blank and  
9 Zoning Commissioner Miller in support of the motion with  
10 Board Member Smith not present, not participating.

11 CHAIR HILL: Thank you. All right. The next one,  
12 I guess, I believe is 20308A, is that correct Mr. Hamala?

13 MR. HAMALA: That is correct.

14 CHAIR HILL: Okay. Vice Chair Miller, if you could  
15 just sit on this with us. Mr. Blake you can -- unless you  
16 read in, I do not know, but I need a quorum, Vice Chair  
17 Miller if you could sit with us.

18 ZC VICE CHAIR MILLER: I have no problem staying  
19 with you. I did not read in. I did follow the hearings that  
20 you have had on this in the past, but I did not read into the  
21 record.

22 CHAIR HILL: Thank you. So in order for you to --  
23 Mr. Blake, did you read into the record? You are on mute,  
24 Mr. Blake.

25 MEMBER BLAKE: I said I did not read in on this,

1 so I will sit this one out.

2 CHAIR HILL: Okay. Thank you. Yes, Vice Chair  
3 Miller, I just need for a quorum to have someone present, and  
4 then we will see. We have absentee ballots for this, and so  
5 we shall see what happens in terms of our other Board members  
6 that were on this. Vice Chair John, let's see, so are you  
7 ready to deliberate, Vice Chair John? Then I am going to  
8 have Mr. Hamala read into the record -- or read us in the  
9 case.

10 VICE CHAIR JOHN: Yes, I am read.

11 CHAIR HILL: Okay. Thank you. Mr. Hamala, could  
12 you please read us in on this, please?

13 MR. HAMALA: Certainly. This is Application Number  
14 20308A of 4865 MacArthur Landlord, LLC, and as amended this  
15 is a request pursuant to subtitle Y, Section 704 for a  
16 modification of significance to change a condition adopted  
17 and order 20308 to make the wording of a memorandum of  
18 agreement between the Applicant and ANC 3D. This would be  
19 for a continuing care retirement community use in the R1B  
20 zone located at 4865 MacArthur Boulevard, NW, Square 1389,  
21 Lot 25.

22 CHAIR HILL: Thank you. Okay. All right. As you  
23 all recall, or at least Ms. John you recall, and I guess Vice  
24 Chair Miller did listen in, but he is not participating in  
25 this, we took a lot of testimony during this hearing, and

1 really what it all came down to was that one condition about  
2 building the sidewalks that we had originally added into our  
3 order as a condition, and the condition was I think actually  
4 incorrect on the Board's part. This was done in a way that  
5 I think -- I know that I am going to learn from now again,  
6 which is that the Board is unable to ask the applicant to pay  
7 for things that are within public space. So these sidewalks  
8 are all within public space. There are some sidewalks that  
9 it seems as though, and some conditions, that the applicant  
10 was able to do, or is able to do, and what they are asking  
11 the Board to modify in terms of the conditions are asking  
12 them to basically change actively -- trying to see here what  
13 the wording is. So its condition -- it is actually condition  
14 2C, which would go from actively seek promote with the  
15 Department of Transportation in writing and orally the  
16 following safety improvements near R1B's building project  
17 site, and if approved, construct these improvements. So they  
18 want to strike the words seek R1B building, and if approved  
19 construct these improvements. Basically tying them to  
20 constructing those improvements. I think we spoke a lot  
21 about what the Board is and is not able to enforce, and I  
22 think that the Applicant is building what they can build  
23 within their abilities within the cost parameters that they  
24 are able to accommodate. There was some pricing that has  
25 been included estimates about kind of the sidewalks and,

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1 again, these are just estimates. Then the ANC actually,  
2 again, added some discussion about those pricing estimates.  
3 And it's unfortunate that myself, the Board members, I guess,  
4 I think I need to drill down much more into what things are  
5 being asked of the Applicant during conditions when they are  
6 working with the community, and making sure that whatever  
7 those conditions are, conditions that the Board could  
8 actually enforce, and building sidewalks is not one of them.  
9 So I am disappointed that I have also approved something, or  
10 put something into the order, that is something that the  
11 Board is really not able to enforce. So I would agree with  
12 what the Applicant is trying to do just striking the language  
13 saying that they would build the sidewalks. They are still  
14 saying that they will work with DDOT to build, I guess,  
15 whatever they can, but even that is just so vague, I mean,  
16 I think, again, I do not like to use the, I guess, -- our  
17 colleague, Chairman Hood, uses the term promise land, if you  
18 will, like, saying that we can promise them things that we  
19 cannot actually enforce. So in the future I will not be --  
20 I will be very careful about what things we can and cannot  
21 enforce and including them in the order. So I would be in  
22 favor of changing the language that the Applicant is putting  
23 forward in this modification. Vice Chair John, do you have  
24 any comments?

25 VICE CHAIR JOHN: Not significantly different from

1 what you have said. I agree that the Board cannot enforce  
2 these conditions, because they are within the purview of DDOT  
3 as opposed to the Zoning Commission for PUD. The Zoning  
4 Commission might be able to work out these kinds of  
5 agreements, but for our purposes our regulations have strict  
6 conditions under which we can approve Applications. So I  
7 think this was a reasonable, I do not want to say mistake,  
8 but the first two conditions did contain -- at least the  
9 second condition 2A and B, did have language suggesting that  
10 the Applicant would construct the sidewalks at its own  
11 expense subject to the approval of the DDOT. The third  
12 condition in 2C did not have that language as was proposed  
13 in the MOA, and the language in the MOA said that the  
14 Applicant would actively promote with the District Department  
15 of Transportation both in writing and orally the following  
16 safety improvements near the project site. I think that is  
17 what the Applicant is asking us to replace or to modify, and  
18 I am in support of that language. Again, I agree with you,  
19 Mr. Chairman, that we should no longer include these  
20 conditions in our orders because to being with they are  
21 sometimes very involved, and the Board has sometimes ten  
22 cases every week, and we do not have the time to go up to  
23 peruse these agreements and make sure they are really  
24 accurate in terms of what the applicants have agreed to. We  
25 can accept the condition that the applicant has agreed to on

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1 occasion even if it is something that we would not ordinarily  
2 approve, depending on whether there is any potential adverse  
3 impact. The Board has to approve conditions that mitigate  
4 a specific adverse impact, which is related to the zoning  
5 relief requested. So in short, I agree with everything you  
6 said, Mr. Chairman, and I support the motion to reform the  
7 condition so that it is consistent with what the applicant  
8 agreed to in the MOA.

9 CHAIR HILL: Thank you. All right. So I am going  
10 to make a motion to approve Application Number 20308A, which  
11 is to change condition 2C to match the wording in the MOA,  
12 which is, again, to actively promote with the District  
13 Department of Transportation in writing and orally the  
14 following safety improvements near project site. Then strike  
15 the if approved construct these improvements, and ask for a  
16 second Vice Chair John.

17 VICE CHAIR JOHN: Second.

18 CHAIR HILL: The motion is made and seconded. Mr.  
19 Hamala, can we see what our voting colleagues have said?

20 MR. HAMALA: We have absentee ballots from Zoning  
21 Commissioner Stidham to vote to approve, and we have an  
22 absentee ballot from Mr. Smith also voting to approve the  
23 application.

24 CHAIR HILL: Okay. Thank you, Mr. Hamala. If you  
25 could ask about our votes then as well.

1 MR. HAMALA: When I call your name please respond  
2 with a yes, no, or abstain. Chairman Hill.

3 CHAIR HILL: Yes.

4 MR. HAMALA: Vice Chair John.

5 VICE CHAIR JOHN: Yes.

6 MR. HAMALA: Staff would record the vote as four  
7 to zero to one to approve the application on the motion by  
8 Mr. Hill, and seconded by Ms. John with Board Member Smith  
9 voting to approve by absentee ballot, and Zoning Commissioner  
10 Stidham to approve by absentee ballot with Board Member Blake  
11 not participating. Motion passes.

12 CHAIR HILL: Okay. Thank you, Mr. Hamala. If you  
13 want to call our next case and we can have our Board members  
14 rejoining us.

15 MR. HAMALA: Yes, and for the record, I wanted to  
16 clarify that Application Number 21037 of Nathaniel and  
17 Patricia Robb has been postponed to the March 20th hearing  
18 date and not March 30th.

19 CHAIR HILL: Okay, I'm sorry, 3/30 -- I'm sorry  
20 3/20.

21 MR. HAMALA: 3/20.

22 CHAIR HILL: Okay. Thank you.

23 MR. HAMALA: Then I have one further scheduling  
24 announcement, and sorry I am just learning about this now,  
25 but Application Number 21010 of NL 1271 5th Street, LLC has

1 previously been postponed from the December 13th hearing date  
2 to the February 28th, 2024 public hearing.

3 CHAIR HILL: Okay.

4 (Whereupon, the above-entitled matter went off the  
5 record at 10:11 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript


In the matter of: Public Meeting

Before: DC BZA

Date: 12-13-23

Place: teleconference

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

  
-----  
Court Reporter

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