

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY

FEBRUARY 7, 2024

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The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened via Video Teleconference, pursuant to notice at 9:36 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, Member  
CHRISHAUN S. SMITH, NCPC Designee

ZONING COMMISSION MEMBERS PRESENT:

ROBERT MILLER, Vice-Chairperson  
TAMMY STIDHAM, NPS Designee

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
PAUL YOUNG, A/V Production Specialist

OFFICE OF PLANNING DEVELOPMENT REVIEW STAFF PRESENT:

RON BARRON  
SHEPARD BEAMON  
MICHAEL JURKOVIC

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OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

SARAH BAJAJ, ESQ.  
CARISSA DEMARE, ESQ.  
MARY NAGELHOUT, ESQ.  
RYAN NICHOLAS, ESQ.

The transcript constitutes the minutes from  
the Regular Public Meeting held on February 7, 2024.

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

9:36 a.m.

CHAIRPERSON HILL: Morning, ladies and gentlemen, Board of Zoning Adjustment. Today's date is 2/7/2024. This public hearing will please come to order. My name is Fred Hill, chairman of the District of Columbia's Board of Zoning Adjustment. Joining me today is Vice Chair Lorna John, Board members Carl Blake and Chrishaun Smith, and Zoning Commissioners Rob Miller and Tammy Stidham.

Today's meeting and hearing agenda are available on the Office of Zoning's website. Please be advised this proceeding is being recorded by a court reporter and is also webcast live via Webex and YouTube Live. The video of the webcast will be available on the Office of Zoning's website after today's hearing. Accordingly, everyone who is listening over Webex, over telephone will be muted during the hearing. Also, please be advised that we do not take any public testimony at our decision meeting sessions. If you're experiencing difficulty accessing Webex or your telephone call in, then please our OZ hotline number at 202-727-5471. Once again, 202-727-5471 to receive Webex login or call in instructions.

At the conclusion of a decision meeting

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

10 In today's hearing session, everyone who's  
11 listening on Webex or by telephone will be muted during  
12 the hearing, and only persons who signed up to testify or  
13 participate to testify will be unmuted at the appropriate  
14 time. Please state your name and home address before  
15 providing oral testimony or your presentation. Oral  
16 presentation should be limited to the summary of your most  
17 important points. When you're finished speaking, please  
18 mute your audio so that your microphone is no longer  
19 picking up sound or background noise. Once again, if  
20 you're experiencing difficulty accessing Webex or with  
21 your telephone call-in, then call OZ hotline number 202-  
22 727-5471. All persons planning to testify, either in  
23 favor or in opposition, should have signed up in advance.  
24 They'll be called by name to testify.

25 This is an appeal. Only parties are allowed to

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1       testify. By signing up to testify, all participants clear  
2       the oath or affirmation as required by Y408.7. Request to  
3       enter evidence at the time an online virtual hearing, such  
4       as written testimony or additional supporting documents  
5       other than live video, which may not be presented as part  
6       of testimony may be allowed pursuant to Y103.13, provided  
7       that the person making the request to enter an exhibit  
8       explain A) how the proposed exhibit is relevant; B) the  
9       good cause justifies allowing the exhibit into the record,  
10      including an explanation of why the requester did not file  
11      the exhibit prior to the hearing pursuant to Y206; and C)  
12      how the proposed exhibit would not egregiously prejudice  
13      any parties. The order procedures for special exceptions  
14      and variances are listed in Section Y409.

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

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1 and the staff will specify at the end of the hearing  
2 exactly what is expected and the date when persons must  
3 submit the evidence to the Office of Zoning. No other  
4 information shall be accepted by the Board.

5 Finally, District of Columbia Administrative  
6 Procedures Act requires that the public hearing on each  
7 case be held in the open before the public. However,  
8 pursuant to Section 405(b) and 406 of that Act, the Board  
9 may, consistent with its rules of procedures and the Act,  
10 enter into a closed meeting on a case for purposes of  
11 seeking legal counsel on a case pursuant to DC Official  
12 Code Section 2-575(b)(4) and/or deliberate on a case  
13 pursuant to DC Official Code Section 2-575(b)(13), but  
14 only after filing the necessary public notice and in the  
15 case of an emergency closed meeting, taking a roll call  
16 vote. Mr. Secretary, do we have any preliminary matters?

17 SECRETARY MOY: Good morning, Mr. Chairman,  
18 members of the Board. Very briefly, in regards to today's  
19 docket, we have three applications that have been granted  
20 continuance and postponements. Appeal No. 21007 of 4865  
21 Macarthur Landlord, LLC has been rescheduled to June 5,  
22 2024. Appeal No. 20921 of 5102 Airy Street Construction,  
23 LLC has been rescheduled to September 11, 2024. And the  
24 Application No. 20931 of Leila Bonet has been rescheduled  
25 to February 28, 2024. Other than that, Mr. Chairman, we

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1 do have other preliminary matters, but I think it's more  
2 efficient, as you know, for me to bring that to your  
3 attention when I call that case.

4 Finally, any late filings during the course of  
5 today's live hearing should be presented to the Board by  
6 the applicant or the parties or witnesses after I call the  
7 case. I will remind you later, but we do have one case,  
8 21035, where the applicant attempted to submit an updated  
9 burden of proof. But I like to review these documents  
10 before I share it with the Board, and I haven't had a  
11 chance to do that since it just came in. So I'll remind  
12 you when I call that case. And that's all I have, Mr.  
13 Chairman.

14 CHAIRPERSON HILL: Okay, great. Thank you.  
15 Well, good morning, everybody. Let's see, Mr. Moy, you  
16 can call our first decision case if you like.

17 SECRETARY MOY: Okay. In today's meeting  
18 session, as you just said, the first decision case before  
19 the Board is Application No. 21015, of Elisabeth Kidder  
20 and Daniel Spurlock. For the record, this is a requested  
21 relief for special exception under the rare addition  
22 requirements of Subtitle E, Section 207.5, pursuant to  
23 Subtitle X, Section 901.2 and special exception from the  
24 lot occupancy of Subtitle E, Section 210.1, pursuant to  
25 Subtitle E, Section 5201 and Subtitle X, Section 901.2.

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1                   Property is located at 425 4th Street,  
2                   Northeast Square 812, Lot 51. And as a reminder, this was  
3                   last heard at the Board's hearing on January 31st, where  
4                   you conducted testimony, closed a record, and set the case  
5                   for decision February 7. Participating is the chairman,  
6                   the vice chair, Mr. Blake, Mr. Smith, and Zoning  
7                   Commissioner Stidham. That's all I have, sir.

8                   CHAIRPERSON HILL: Okay, great. Thank you.  
9                   Well, Commissioner Stidham, thank you for joining us for  
10                  this decision session. Appreciate having you with us.  
11                  However, you are able to submit absentee in the future if  
12                  you're ever interested.

13                 There was something here about Neighbor in  
14                 Opposition's Request for a Reconsideration under HPRB. I  
15                 thought we had dealt with this the last time, but perhaps  
16                 not. We aren't HPRB and we have nothing to do with the  
17                 HPRB. Our decisions and what we do to go through the  
18                 criteria that's in the regulations deals with zoning. And  
19                 so we're only here about zoning. HPRB doesn't trump us in  
20                 terms of zoning. So I'm going to go ahead and dismiss  
21                 this Request for Reconsideration to HPRB and that'll be  
22                 something, I guess, that they can file with HPRB. And  
23                 unless anyone has any issues, I'm just going to go ahead  
24                 and do that. If you have any issues, please speak up.  
25                 Okay, hearing none, we're going to go ahead and dismiss

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1 that.

2 SECRETARY MOY: Mr. Chair? Mr. Chairman?

3 CHAIRPERSON HILL: Go ahead.

4 SECRETARY MOY: I don't know if it's just me or  
5 anyone else, but in the past 30, 40 seconds, my screen was  
6 going in and out. May I ask you to start over again just  
7 in case, for the record?

8 CHAIRPERSON HILL: No problem. Did I go in and  
9 out with anybody else? And if so, raise your hand. No?  
10 Okay.

11 So what I had started to say, or what I did  
12 say, was that there seems to be a Request for  
13 Reconsideration for HPRB. And we, the BZA, don't have  
14 anything to do with HPRB, so we can't make them do a  
15 reconsideration. So what I said was that, we, the Board  
16 of Zoning Adjustment are here just for zoning issues that  
17 relate to the criteria and the regulations that are within  
18 our purview, and HPRB is not one of them. So I was going  
19 to go ahead and dismiss the Request for Reconsideration to  
20 HPRB and I was just going to go ahead and do that, so as  
21 the Board chairman, and ask my Board if there was any  
22 issues, and if so, please go ahead and speak up. Hearing  
23 none, Mr. Moy, you can go ahead and just dismiss for  
24 whoever needs to write up what needs to be written up to  
25 dismiss that Request for Reconsideration.

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1                   So, as everyone recalls, I'm sure this was a  
2                   very long hearing and thorough in terms of we heard from  
3                   all of the people in opposition. We heard from the people  
4                   in favor and support, and then we heard from the  
5                   applicant. Just to kind of review, I mean, there was  
6                   again, a party of opposition. There was other members of  
7                   the community that spoke up in opposition. The ANC had a  
8                   split vote, I think it was, to support the application.  
9                   The Office of Planning was recommending approval and HPO  
10                  recommended the Board find the project compatible with the  
11                  Capitol Hill Historic District. And then also we got a  
12                  letter of support from the Architect of the Capitol.

13                         This all comes down to, again, those additional  
14                         5 feet. I mean, they can go 10 feet as a matter of right,  
15                         and then the additional 5 feet, 10 inches is what they're  
16                         asking for relief from.

17                         As is always the case, it's disappointing when  
18                         everyone isn't in favor of something happening, and I  
19                         completely understand why some people aren't in favor of  
20                         things happening, particularly when it affects them  
21                         directly. We've had a lot of these extensions before us,  
22                         and 5 feet, 10 inches actually isn't that big an  
23                         extension. The 10 feet that we often have before us, or,  
24                         I'm sorry, the 10 feet that is done by a matter of right,  
25                         it's not a lot of space, meaning that it's kind of like a

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1 bathroom or, you don't get a lot of space, in my opinion.  
2 But I think that many people try to do what they can as a  
3 matter of right, so that they don't have to come before  
4 the Board of Zoning Adjustment. Oftentimes, even those 10  
5 feet are going to do something to the neighbors, meaning  
6 even as a matter of right issue. So what's before us  
7 really is an undue impact for those additional footage and  
8 also the other criteria within the regulations.

9 As I went back through the shadow studies, I  
10 didn't see a lot of difference between the matter of  
11 right, which really is something they could probably do,  
12 which would -- meaning they would actually do it, and that  
13 would fill out that dog leg. So it would actually make a  
14 kind of, I think, a more intrusive project than what  
15 they're trying to do.

16 What I think they've done quite a bit is by  
17 keeping that dog leg, which is something that oftentimes  
18 applicants don't keep, I think they're keeping more of the  
19 character of the rear view, as oftentimes people are  
20 talking about the rear view from the alley. The dog leg,  
21 I think, actually is providing more of a character and  
22 scale issue from the rear. I think that the applicant  
23 went back and forth with the ANC and also probably the  
24 community to frost some glass to address some issues of  
25 privacy. So that was something that I think also I took

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1       into consideration.

2                       The issue of the lofts behind the building and  
3       the project, I mean, there's 45 feet between the end of  
4       that project and the lofts, meaning there's a tremendous,  
5       well, a lot of room for the city in terms of distance  
6       between projects. So I didn't really think that the lofts  
7       are that affected. I mean, it'll be a different view,  
8       it'll look different from what they're looking at now.  
9       But I think that as time moves on, it'll just look like  
10      anything else in terms of what they look out of the  
11      window. And again, as I spoke about that dog leg, I think  
12      it kind of keeps the character of the rear looking similar  
13      to the other parties, I'm sorry, the other units. Let's  
14      see.

15                     So again, it's that and even the opposition  
16      diagrams that they put forward, some of the scale I was a  
17      little, I didn't see the massing as, I don't know if it  
18      was architecturally accurate, as I looked at some of the  
19      additional massings that they put forward. However, I  
20      also think that the changes that they made to the color to  
21      show the difference between the matter of right and the  
22      addition also kind of pointed out to me just the  
23      slightness of the 5 feet in certain aspects or certain  
24      views.

25                     But again, I completely understand how the

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1 additional 5 feet is concerning for the neighbor with the  
2 skylights, but the shadow studies seem to see that those  
3 skylights aren't affected that much or that often.  
4 However, that's again a matter of opinion. Ours is more  
5 of an undue opinion rather than if I'm in somebody's house  
6 I'm going to think that's different than the way we look  
7 at things in terms of an undue impact.

8 I would also turn to the Office of Planning's  
9 report and how they walk through the criteria which I  
10 believe we asked them to walk through during the hearing  
11 for the benefit of all of those in the hearing room. So  
12 all those being said, it is disappointing that everyone  
13 couldn't be on the same page with this, but I'm going to  
14 be voting in favor of this application. Mr. Smith, do you  
15 have anything you'd like to add? I can't --

16 MEMBER SMITH: So the request before us is for  
17 two special exceptions, Mr. Chair. The first on the rear  
18 addition requirements of Subtitle E, Section 207.4 to  
19 permit a rear addition that will extend 15 feet standing  
20 and will have interest from rear wall of the dwelling unit  
21 to the south and another special section from the lot  
22 occupancy requirements.

23 So, as you say, we heard an extensive testimony  
24 from the applicant and parties in opposition regarding  
25 both special exception requests. Given the testimony

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1 provided as well as information within the record, I  
2 believe that the applicant has provided the required  
3 information for us to grant both of the special exceptions  
4 based on the criteria that we are required to weigh.

5 We'll start with Section 5201.4(a), appeal with  
6 light and air. The proposed addition extends 5 feet past  
7 the house to the north, which means that this side of the  
8 addition by and large is in compliance with the byroad  
9 addition that they can already do, get at the depth the  
10 difference between the addition and the rear of that  
11 house. The primary concern regarding light and air is,  
12 from my standpoint, is impacted property on the south side  
13 of the property in question. Given the scale of the  
14 addition from the rear of the home at 423 4th Street.

15 In order to mitigate these concerns, the  
16 applicant had proposed to construct a dog leg, as you  
17 stated, Chairman Hill, that steps the building from three  
18 stories to two from the northern property line between the  
19 two to allow additional light and air to the property to  
20 the south, especially given that the party in opposition  
21 to the south does have a detached garage that itself  
22 affects the access of light and air to their own rear  
23 yard.

24 So moving to 5201.4(b), I do not believe that  
25 the proposed addition would have an undue impact on the

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1 privacy and enjoyment of the adjacent properties. The  
2 proposed addition is comparable to the same depth as other  
3 rear additions in the block, including two others towards  
4 the south of the property in question, and the applicant  
5 is seeking to mitigate privacy concerns by frosting the  
6 proposed windows facing south of the dog leg. And I would  
7 recommend that we make that a formal condition instead of  
8 a gentleman's agreement that it seems to be now so that's  
9 memorialized or that's within the order. It's not  
10 memorialized, it's in it.

11 So moving to C, I believe that the proposed  
12 addition would not visually intrude upon adjacent  
13 properties. This proposed addition would extend 4 feet  
14 beyond the furthest rear wall of the adjacent home to the  
15 north, is similar in height and number of stories to other  
16 properties that back to Carbery Place, and is nearly 32  
17 feet from Carbery Place itself, roughly, based on what we  
18 heard testimony from Office of Planning, 44 feet from the  
19 western facing wall of the Carbery School condominiums,  
20 which to me is a reasonable distance in the urban and  
21 dense environment of the Capitol Hill neighborhood. Hard  
22 stop.

23 Moving to Section 403, which requires that the  
24 applicant is referred to multiple agencies, including, as  
25 required per this section, to agencies that review for

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1 compliance or historic preservation, viewshed and design  
2 matters, which are the local Historic Preservation and  
3 Review Board. And also because this is in Capitol Hill,  
4 the Architect of the Capitol, I would note that most  
5 importantly, we have letters recommending approval from  
6 both of these agencies. So they didn't have any, the  
7 bodies that deal with historic preservation didn't have  
8 major concerns with, or serious concerns with the design  
9 as proposed here.

10 So in closing, I agree with the Office of  
11 Planning's assessment that the property does meet the  
12 general special exception review standards of Subtitle X,  
13 Section 901 of the Zoning Regulations. And with that, I  
14 give great weight to OP staff report noting that ANC is  
15 also in support and I will support the application as  
16 well.

17 CHAIRPERSON HILL: Thank you, Mr. Smith. Thank  
18 you for that helpful analysis. Mr. Blake?

19 MEMBER BLAKE: Yes, thank you, Mr. Smith. That  
20 was a very thorough analysis and I appreciate that it  
21 states most of what I was going to say. I would point out  
22 that the shadow study definitely shows objectively that  
23 the additional massing compared to matter of right  
24 massing, which is really the standard that we look at on  
25 property 2 -- 427, is not undue relative to the matter of

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1 right. I recognize clearly that it is an additional  
2 amount of shadowing compared to what they currently have.  
3 And obviously, given the number of skylights that they  
4 have, light is obviously very important to that family.

5 But given the regulations and the comparative  
6 and the standard we use for the shadow studies and for  
7 versus matter of right, it does look to me that this is  
8 not undue. And I would agree with Board Member Smith's  
9 comment about the lack of the privacy intrusions not there  
10 in that you've got the frosted windows to the south and  
11 you've certainly a fairly large distance from the Carbery  
12 lofts in the rear, considering the size of the alley and  
13 the setbacks with the large yard they have.

14 So that said, we also have the support of the  
15 Office of the Architect of the Capitol, which again,  
16 supports the E-403. So I believe the applicant has  
17 actually met the burden of proof as well. I can  
18 understand the dilemma and the split votes because this is  
19 a very agonizing thing, experiencing that loss of light  
20 and what looks like a change in character. But it  
21 actually is a consistency which has been supported by the  
22 information and record. So I will be -- affirm the  
23 comments made by Board Member Smith and you, Mr. Chairman,  
24 and I'll be voting in favor of the application.

25 CHAIRPERSON HILL: Thank you, Mr. Blake.

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1 Commissioner Stidham?

2 COMMISSIONER STIDHAM: Thank you for the very  
3 thorough overview from Commissioner Blake and Smith. That  
4 doesn't leave me a lot to say, other than I do agree with  
5 everything that they've said and I believe that the  
6 applicant has supported their burden of proof with the  
7 documents that they've contributed, the light and sun  
8 studies, the massing studies, the architectural plans.  
9 And I am in support of moving forward on this one.

10 CHAIRPERSON HILL: Thank you, Vice Chair John?

11 BZA VICE CHAIRPERSON JOHN: Thank you, Mr.  
12 Chairman. I don't have a lot to add as well because  
13 everyone did such a thorough job of analyzing how the  
14 application meets the criteria for relief. And I would  
15 just echo, I believe Board Member Blake mentioned that the  
16 frosted windows should be made a condition if they're not  
17 already depicted on the plans. But I guess to be safe, we  
18 could add it as a condition.

19 I also agonized over this application, as I do  
20 for all applications that request relief from the 10 foot  
21 rule. But in this case, the increase is only 5.5 feet and  
22 the most impact is on the property to the south, I  
23 believe. And based on the shadow studies, I don't believe  
24 that there is any impact on light and air. And I  
25 appreciate that the applicant, as several of my board

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1 members said, made the effort to maintain the dog leg in  
2 the design of the building itself.

3 So even though I recognize that a 10 foot  
4 extension will create some impact on light, air and  
5 privacy, I agree with my Board Members that it is not  
6 undue, the impact is not undue, which is the criteria  
7 stated in the regulations. So again, I'm in support of  
8 the application. Thank you, Mr. Chairman.

9 CHAIRPERSON HILL: Thank you, Vice Chair John.  
10 Yeah, it was Board Member Smith that had mentioned the  
11 frosted windows. And Mr. Smith, I guess I was going to  
12 mention, the frosted windows as shown in Exhibit 42, Slide  
13 15, that mentioned those windows. If you want to take a  
14 look at Exhibit 42, Slide 15. I'll just give you a  
15 second.

16 MEMBER SMITH: Okay, so I see that's the  
17 applicant's PowerPoint so I'm assuming it's in the  
18 architectural plans. Let me pull those up.

19 CHAIRPERSON HILL: Yeah, whatever you want me  
20 to refer to.

21 MEMBER SMITH: Yeah, let's refer to Exhibit  
22 37A. This will be part of the package that they submit to  
23 the Department of Building.

24 CHAIRPERSON HILL: Okay, great. All right, I'm  
25 going to make a motion then to approve Application No.

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1 21015 as captioned and read by the secretary, including  
2 the condition that the windows be frosted as shown in  
3 Exhibit 37A, and ask for a second. Ms. John?

4 BZA VICE CHAIRPERSON JOHN: Second.

5 CHAIRPERSON HILL: The motion was made and  
6 seconded. Ask Mr. Moy to take a roll call, please.

7 SECRETARY MOY: Thank you Mr. Chairman. When I  
8 call your name will you please respond to the motion made  
9 by Chairman Hill to approve of the application for the  
10 relief requested, as well as adding the condition that the  
11 windows be frosted, as shown on Exhibit No. 37A. The  
12 motion to approve was seconded by Vice Chair John.

13 BZA VICE CHAIRPERSON JOHN: Second. I thought  
14 I did --

15 CHAIRPERSON HILL: No. she did second.

16 SECRETARY MOY: Yes, I meant, I think I said  
17 approve, but I meant seconded by Vice Chair John. Thank  
18 you. I guess I need another cup of coffee. Okay, so  
19 Zoning Commissioner Stidham? Mr. Smith? Mr. Blake?

20 MEMBER BLAKE: Yes.

21 SECRETARY MOY: Vice Chair John? Chairman  
22 Hill? Staff would record the vote as five to zero to zero  
23 and this is on the motion made by Chairman Hill to approve  
24 of the application for the relief requested, as well as  
25 adding the condition for frosted windows as shown on

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1 Exhibit No. 37A. The motion to approve was seconded by  
2 Vice Chair John and who also approved the application, as  
3 well as approval from Zoning Commissioner Stidham, Mr.  
4 Smith, Mr. Blake, Vice Chair John and Chairman Hill.  
5 Motion carries, sir, five to zero to zero.

6 CHAIRPERSON HILL: Thank you. And I would like  
7 to mention also that I hope the neighbors are all able to  
8 work together in any way they can in terms of at least  
9 letting people know what construction is going on and  
10 things like that, and that they went through this process.  
11 This is now what has been approved because of the  
12 regulations. It's not as though this has not been  
13 thoroughly vetted. However, I think it's always difficult  
14 to live next to somebody who does something else you don't  
15 want them to do.

16 So anyway. Okay. Commissioner Stidham, thank  
17 you so much for joining us.

18 COMMISSIONER STIDHAM: Thank you. Have a great  
19 day.

20 CHAIRPERSON HILL: You as well. Mr. Moy, you  
21 may call our next one.

22 SECRETARY MOY: The second case in the Board's  
23 public meeting session is Application No. 21062 of Risa  
24 Reed and Leland Stratton. This is a self-certified  
25 application pursuant to Subtitle X, Section 901.2 for

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1 special exceptions under Subtitle E, Section 5201.2 from  
2 lot occupancy requirements, Subtitle E, Section 210.1 and  
3 accessory structure building area requirements, Subtitle  
4 E, Section 5003.1. Property is located in the RF-1 zone  
5 at 932 O Street, Northwest Square 367, Lot 844. And  
6 that's all I have for you, sir.

7 CHAIRPERSON HILL: Okay, great. Thank you. So  
8 I went through the record and looked through this project  
9 and I didn't have any issues with it, actually. It looks  
10 like again, they're trying to get 50 feet more from the  
11 matter of right, which is basically at 5.87%. And I would  
12 also lean on the Office of Planning's report as I thought  
13 that they did a thorough job explaining the criteria. I  
14 also note that the ANC is in favor of this application and  
15 I'm comfortable voting in favor. Mr. Smith, do you have  
16 anything to add?

17 MEMBER SMITH: I agree your assessment of this  
18 case and will support the application as well.

19 CHAIRPERSON HILL: Thank you, Mr. Blake?

20 MEMBER BLAKE: Mr. Chair, I don't have anything  
21 to add. I do feel the applicant has met the burden of  
22 proof and acknowledge the ANC's support and give great  
23 weight to the Office of Planning's recommendation for  
24 approval. I'll be voting in favor of the application.

25 CHAIRPERSON HILL: Thank you. Welcome,

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1 Commissioner Miller. And do you have anything you'd like  
2 to add?

3 ZC VICE CHAIRPERSON MILLER: No, I concur with  
4 my colleagues. Thank you.

5 CHAIRPERSON HILL: Thank you, Vice Chair John?

6 BZA VICE CHAIRPERSON JOHN: Thank you, Mr.  
7 Chairman. I also am in support of the application. I  
8 believe it meets the requirements of the regulation and I  
9 think it's fairly straightforward. So I will be in  
10 support.

11 CHAIRPERSON HILL: Okay, I'm going to make a  
12 motion then to approve Application No. 21062 as captioned  
13 read by the secretary and ask for a second. Ms. John?

14 BZA VICE CHAIRPERSON JOHN: Second.

15 CHAIRPERSON HILL: The motion made and  
16 seconded. Mr. Moy, if you could take a roll call, please.

17 SECRETARY MOY: If you'll please respond to the  
18 motion made by Chairman Hill to approve the application  
19 for the relief requested. The motion to approve was  
20 seconded by Vice Chair John. Zoning Commissioner Rob  
21 Miller?

22 ZC VICE CHAIRPERSON MILLER: Yes.

23 SECRETARY MOY: Mr. Smith? Mr. Blake?

24 MEMBER BLAKE: Yes.

25 SECRETARY MOY: Vice Chair John? Chairman

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1 Hill?

2 CHAIRPERSON HILL: Yes.

3 SECRETARY MOY: Staff would record the vote as  
4 five to zero to zero. Five to zero to zero. And this is  
5 on the motion made by Chairman Hill to approve the motion  
6 to approve was second by Vice Chair John, who also voted  
7 to approve the application, as well as approval from  
8 zoning Commissioner Rob Miller, Mr. Smith, Mr. Blake, Vice  
9 Chair John, Chairman Hill. Motion carries, sir, five to  
10 zero to zero.

11 CHAIRPERSON HILL: Thank you, Mr. Moy. You may  
12 call our next one when you have moment.

13 SECRETARY MOY: The next case is the last case  
14 in the Board's meeting session. And this is Application  
15 No. 21063 of Leslie Wagner Cruz and Enrique Cruz. This is  
16 a self-certified application pursuant to Subtitle X,  
17 Section 901.2, special exception under Subtitle D, Section  
18 5201.1 from the side yard requirements of Subtitle D,  
19 Section 208.7. Property in the R-1B zone at 2835 Hearst  
20 Terrace, Northwest Square, 1421, Lot 46. Thank you, sir.

21 CHAIRPERSON HILL: Thank you. Give me one  
22 moment, please. Okay, great. Thank you. I just want to  
23 make sure I have the right one. Okay. I looked through  
24 this application and looked through all of the exhibits.  
25 I found, actually, the Office of Planning's report not

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1       only helpful in terms of how they went through it, but  
2       also there was a picture that actually showed the other  
3       two homes next to it and so it was easier to understand  
4       kind of the side yard and what happened and where it's  
5       being affected. It's, again, 1 foot 2 inches less than it  
6       should be in terms of the side yard requirements. And I  
7       didn't think that that was going to cause much of an issue  
8       for the project. And I would also agree with the analysis  
9       that the Office of Planning put forward in their report,  
10      as well as the support of the ANC and the abutting  
11      properties are in support. So really, no one seems to  
12      have an issue with it and it is something that I believe  
13      is de minimis. So I'm going to be voting in favor of this  
14      application. Mr. Smith, do you have anything like to add?

15               MEMBER SMITH: I don't have anything to add. I  
16      agree with your assessment, and I do believe they met the  
17      burden of proof for us to give them great weight in this  
18      particular case. And I will also support the application.

19               CHAIRPERSON HILL: Thank you. Mr. Blake?

20               MEMBER BLAKE: Only something short to add to  
21      what Board Member Smith and you, Mr. Chairman, put  
22      forward. And I do agree with the Office of Planning's  
23      analysis. It seems that the addition only has that effect  
24      at a very small portion toward the rear, and it's largely  
25      due to maintain the straight line. But at the same time,

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1 given the fact that the property itself kind of narrows at  
2 that point.

3 The only thing I would ask, and I would get the  
4 Board's thoughts on this, is that the privacy issue is  
5 addressed with the fence that exists. And consistent with  
6 we talked earlier, does it make sense to have a condition  
7 to maintain the privacy fence? That's the only thing I  
8 would say here. Otherwise, I'm in support of the  
9 application.

10 CHAIRPERSON HILL: I don't know. I'm trying to  
11 think where the privacy fence, how high is the fence that  
12 you're speaking of?

13 MEMBER BLAKE: The current fence, I believe, is  
14 10 feet. It is within regulations, whatever it is. But  
15 it is there. You can see it in the exhibit pictures.  
16 It's a relatively new-looking fence, so it's been there  
17 and it accomplishes the objective of maintaining the  
18 privacy that would potentially be lost by that. I note  
19 there is a staircase there as well, I believe, entering  
20 into, no, towards the rear. There is some type of  
21 something back there.

22 So again, it's not necessary. It's there. If  
23 we believe it's a necessary condition to maintain that for  
24 privacy sake, that's fine. Otherwise, I'm comfortable  
25 with the application.

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1 CHAIRPERSON HILL: I'm fine. I'll turn back  
2 around to Mr. Smith after we go through this with everyone  
3 else, but I'm fine putting a condition in there to  
4 maintain the privacy fence at the existing height located  
5 on the, which side of the property is that located? Is it  
6 on the south side of the property? I mean, it's the north  
7 side of the property? No, the south side. I think it's  
8 the south side. Do you all agree?

9 BZA VICE CHAIRPERSON JOHN: Mr. Chairman? I  
10 think maybe describing the width of that side yard, which  
11 is 3.9 feet, might be helpful in the event that it's not  
12 the south side.

13 CHAIRPERSON HILL: Okay, well, I'm also looking  
14 at the Office of Planning's report and how it says, "The  
15 existing side yard to the north would remain 5 feet." So  
16 that's why I'm -- But I can also mention 3.9 feet on the  
17 side that has the 3.9 feet that's asking for the relief  
18 requested, maintain a privacy fence at the existing  
19 height. Okay. Does that sound good with you, Mr. Smith?  
20 Okay. I get a thumbs up from Mr. Smith for the record.  
21 All right. Mr. Blake just gave his analysis. Vice Chair  
22 Miller, do you have anything you'd like to add?

23 ZC VICE CHAIRPERSON MILLER: Nothing to add,  
24 Mr. Chairman. I agree with everything since it's been  
25 said by you and my other colleagues. Thank you.

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1 CHAIRPERSON HILL: Thank you, Vice Chair John?

2 BZA VICE CHAIRPERSON JOHN: I have nothing to  
3 add, Mr. Chairman.

4 CHAIRPERSON HILL: Okay, I'm going to make a  
5 motion then to approve Application No. 21063, as captioned  
6 read by the secretary including that the privacy fence on  
7 the side that the relief is being requested for the 3.9  
8 ft, which we believe is the south side. However, whatever  
9 the side is that has the relief that's being requested,  
10 maintain the existing privacy fence at the existing height  
11 and ask for a second. Ms. John?

12 BZA VICE CHAIRPERSON JOHN: Second.

13 CHAIRPERSON HILL: The motion made and seconded  
14 Mr. Moy to take a roll call.

15 SECRETARY MOY: When I call your name, if  
16 you'll please respond to the motion made by Chairman Hill  
17 to approve the application for the relief requested, as  
18 well as adding, I suppose as a condition, that the  
19 applicant maintain the privacy fence at the existing  
20 height located on the side yard where the relief is being  
21 requested, or words to that affect. The motion was  
22 seconded by Vice Chair John. Zoning Commissioner Rob  
23 Miller?

24 ZC VICE CHAIRPERSON MILLER: Yes.

25 SECRETARY MOY: Mr. Smith? Mr. Blake?

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1 MEMBER BLAKE: Yes.

2 SECRETARY MOY: Vice Chair John? Chairman  
3 Hill?

4 CHAIRPERSON HILL: Yes.

5 SECRETARY MOY: Staff would record the vote as  
6 five to zero to zero, and this is on the motion made by  
7 Chairman Hill to approve. The motion to approve was  
8 second by Vice Chair John, who also voted to approve the  
9 application as well as approval from Zoning Commissioner  
10 Rob Miller, Mr. Smith, Mr. Blake, Vice Chair John and  
11 Chairman Hill. Motion carries, sir, five to zero to zero.

12 CHAIRPERSON HILL: All right, Mr. Moy. You can  
13 call our next one when you can. I think we're still in a  
14 meeting?

15 SECRETARY MOY: I'm sorry, sir?

16 CHAIRPERSON HILL: Is this next one still in  
17 our meeting session?

18 SECRETARY MOY: Yes, sir. Yeah, I misspoke  
19 earlier. We do have a mod of consequence.

20 CHAIRPERSON HILL: Okay, great.

21 SECRETARY MOY: I was getting a little bit  
22 ahead of myself, Mr. Chairman. My bad. Okay, now this  
23 one definitely is the last case in the meeting today. So  
24 this is Application No. 17320A of Protestant Episcopal  
25 Cathedral Foundation of the District of Columbia. The

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1 request pursuant to Subtitle Y, Section 703 is for a  
2 modification of consequence of plans approved in  
3 Application No. 17320, which would renovate and expand an  
4 existing building devoted to a private school use.  
5 Property is located in the R-1B zone at 3101 Wisconsin  
6 Avenue, Northwest Square 1944, Lot 25. And that's all I  
7 have. Thank you, sir.

8 CHAIRPERSON HILL: Okay, give me one second  
9 here again, please. Okay, so this thing's been modified a  
10 couple of times. So what they're trying to do is change  
11 the condition in number one, the approved plans. So those  
12 approved plans that are in, well, the conditions are in  
13 2D. And I can't remember where the plans are because I  
14 just remember looking at the plans. I mean, they're  
15 basically in there. The only people that are affected by  
16 this is the cathedral school people, or I should say St.  
17 Albans or it's their own property all around it. So I  
18 didn't see really any issue with the modification per se.  
19 I thought the building was very attractive and it's for an  
20 additional 2000 square feet to building.

21 So they're trying to change that first  
22 condition to allow the new plans. I did look at the new  
23 plans. I didn't have any issues with the new plans. The  
24 conditions that have been modified are also in, as I said,  
25 Exhibit 2D. And I would be happy leaving all the other

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1 conditions the way they are as from the previous  
2 modification, as from the previous order. That was a  
3 little convoluted, but I think I got my point across. Mr.  
4 Smith, do you have anything like to add?

5 MEMBER SMITH: No, I agree with you. I didn't  
6 have any major concerns or heartburn in this particular  
7 case, and by and large agree with the assessment of the  
8 Office of Planning in this particular case. So I believe  
9 they met the burden of proof for us to grant the model of  
10 consequence in this case.

11 CHAIRPERSON HILL: Okay. Thank you. Mr.  
12 Blake?

13 MEMBER BLAKE: I agree. Treating this as a  
14 modification of consequence, given the fact that it's on  
15 the larger property which is owned and operated by the  
16 same entity, and so I will be supporting the modification  
17 of consequence.

18 CHAIRPERSON HILL: Thank you. Commissioner  
19 Miller?

20 ZC VICE CHAIRPERSON MILLER: Thank you, Mr.  
21 Chairman. I would only add, if we haven't already  
22 mentioned, that the Advisory Neighborhood Commission 3C  
23 gave their unanimous support to the addition as well as to  
24 the modification. And Historic Preservation Review Board  
25 has also given their approval. And there's no change in

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1 the number of faculty or staff at the enrollment at the  
2 school. So I support the application. Thank you.

3 CHAIRPERSON HILL: Thank you, Commissioner  
4 Miller. Vice Chair John?

5 BZA VICE CHAIRPERSON JOHN: Thank you, Mr.  
6 Chairman. I support the application as well. There's no  
7 change to the number of students or activities or any  
8 increase in employees. So the change to add approximately  
9 2000 square feet is internal to the property and would not  
10 have any substantial impact on the surrounding  
11 neighborhood. I agreed that we should remove condition  
12 number one, which would allow the applicant to change the  
13 plan submitted to accommodate these new changes. I  
14 believe the Office of Planning had requested that the  
15 Board delete one condition which has expired, which I  
16 believe is the Performing Arts Center, and I think the  
17 applicant agreed to that. In any event, that condition  
18 has expired. So with that, I am in support of the  
19 application. I also believe it is properly considered as  
20 a modification of consequence. Thank you, Mr. Chairman.

21 CHAIRPERSON HILL: Thank you, Vice Chair John.  
22 Okay. I agree with you in the analysis of the Office of  
23 Planning as well as their recommendation to remove the  
24 reference to the Performance Arts Center, since that  
25 portion of the condition has lapsed. So I'm going to go

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1 ahead and make a motion to approve Application No. 17320A  
2 as captioned and read by the secretary, which is including  
3 the change to condition one to the plan shown in Exhibit  
4 2D, and also modifying the condition one to remove the  
5 reference to the Performance Arts Center and the remaining  
6 conditions that are in Exhibit 2D from the previous orders  
7 to remain in effect and ask for a second. Ms. John?

8 BZA VICE CHAIRPERSON JOHN: Second.

9 CHAIRPERSON HILL: The motion has been made and  
10 seconded. Mr. Moy, would you like to take a roll call.

11 SECRETARY MOY: Thank you, Mr. Chairman. All  
12 right. When I call your name, if you'll please respond to  
13 the motion made by Chairman Hill, which also includes  
14 changes to condition one and condition 2D. This motion  
15 was seconded by Vice Chair John. Zoning Commissioner Rob  
16 Miller?

17 ZC VICE CHAIRPERSON MILLER: Yes.

18 SECRETARY MOY: Mr. Smith? Mr. Blake?

19 MEMBER BLAKE: Yes.

20 SECRETARY MOY: Vice Chair John? Chairman  
21 Hill?

22 CHAIRPERSON HILL: Yes.

23 SECRETARY MOY: Apologize for that momentary  
24 lapse. My battery was running low. So much for  
25 technology. Should have gotten the solar battery.

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1 Anyways. All right, let me start over again with that  
2 vote count. I'm having a rough time this morning. I  
3 apologize. Okay, so when I call your name, if you'll  
4 please respond.

5 Zoning Commissioner Rob Miller?

6 ZC VICE CHAIRPERSON MILLER: Yes.

7 SECRETARY MOY: Mr. Smith? Mr. Blake?

8 MEMBER BLAKE: Yes.

9 SECRETARY MOY: Vice Chair John?

10 BZA VICE CHAIRPERSON JOHN: Yes.

11 SECRETARY MOY: Chairman Hill?

12 CHAIRPERSON HILL: Yes.

13 SECRETARY MOY: All right. Staff would record  
14 the vote as five to zero to zero, and this is on the  
15 motion that was made by Chairman Hill to approve. Motion  
16 to approve was seconded by Vice Chair John, who also voted  
17 to approve as well as approval from Zoning Commissioner  
18 Rob Miller, Mr. Smith, Mr. Blake, Vice Chair John and  
19 Chairman Hill. Motion carries, sir, five to zero to zero.

20 CHAIRPERSON HILL: Okay, since we're just  
21 starting our hearing session, why don't we go ahead and  
22 take a quick break and come on back in, like, 10-15  
23 minutes?

24 (Whereupon, the above-entitled matter went off  
25 the record at 10:28 a.m.)

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In the matter of: Public Meeting

Before: DC BZA

Date: 02-07-24

Place: teleconference

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