

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

JUNE 5, 2024

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Video/Teleconference, pursuant to notice at 9:30 a.m. EDT, 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  
KEARA MEHLERT, Secretary

ZONING COMMISSION MEMBERS PRESENT:

ROBERT MILLER, Vice-Chairperson  
TAMMY STIDHAM, NPS Designee

OFFICE OF ZONING STAFF PRESENT:

PAUL YOUNG, A/V Production Specialist

OFFICE OF PLANNING DEVELOPMENT REVIEW STAFF PRESENT:

MAXINE BROWN-ROBERTS  
MICHAEL JURKOVIC  
PHILIP BRADFORD

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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 Hearing held on June 5, 2024.

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## CONTENTS

	Page
Application No. 20631-A of 723 Morton Street, LLC	4
Application No. 21123 of Rick Anderson	18
Application No. 20768 of District Properties.com, Inc.	24
Application No. 20769 of District Properties.com, Inc.	25

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

9:57 a.m.

BZA CHAIR HILL: Okay, the next one, if you wouldn't mind, Madam Secretary calling.

MEMBER MEHLERT: This is a hearing item. This is application number 20631-A of 723 Morton Street, LLC. This is a self-certified application pursuant to Subtitle Y, Section 705 for a time extension to extend the validity of the Board's order in application number 20631, which is final on April 7, 2022, and pursuant to Subtitle Y, Section 704 for a modification of significance to approve an area variance pursuant to Subtitle X, Section 1002 from the lot dimension requirements of Subtitle E, Section U2.1.

This project is to divide one record lot to allow two new flats, including one IZ unit, on two new adjoining record lots. The project is located in the RF-1 zone at 723 Morton Street NW, square 2894, lot 91.

The hearing for this case began on May 8th and the Board for testimony requested additional information from the applicant and Office of Planning. Participating on Chairman Hill, Vice Chair John, Mr. Blake, Mr. Smith and Commissioner Stidham.

BZA CHAIR HILL: Okay, great. If the applicant could hear me, if they could please introduce themselves for the record.

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1 MS. WILSON: Hi, Alex Wilson from Sullivan and  
2 Barrows on behalf of the applicant in this case. And I'm here  
3 with Mr. Fridy who is the applicant.

4 BZA CHAIR HILL: Got it. Commissioner Wray, you  
5 want to say hello?

6 MR. WRAY: Good morning everyone. Michael Wray  
7 representing ANCLC.

8 BZA CHAIR HILL: Great. Good to see you. I'm in a  
9 bit of a hurry, meaning I got a thing at 10:30 a.m., but I think  
10 we're okay. But I'm just saying. So Ms. Wilson, can you tell  
11 us what happened since last time you were with us?

12 MS. WILSON: Sure. And we did submit a very brief  
13 presentation to the record. But I can just summarize it since  
14 we are short in time.

15 We submitted information demonstrating that the  
16 by-right options of two larger units or two smaller units are  
17 not marketable or economically viable. Therefore, the  
18 applicant would not be able to obtain financing for those  
19 by-right projects, ultimately resulting in no project.

20 As requested, we attempted to engage with the next  
21 door neighbor again, but there was no answer and the last  
22 communication was clear that he does not intend to continue  
23 the negotiations so the next step would unfortunately be to  
24 explore litigation if the project can't move forward with the  
25 variance.

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1 Council had a call with OP. It's still not entirely  
2 clear to us why OP finds that the unique confluence of factors  
3 affecting only this property does not create or relate to the  
4 practical difficulty of developing with only two units. The  
5 OP report didn't analyze the additional argument presented and  
6 the confluence of factors is directly related, since the  
7 difficulty is with doing only two units and but for the history  
8 leading to the vacancy, the property would be able to be  
9 developed with more than two units, with the four units, either  
10 by-right or via special exception.

11 And then administratively, we fixed the lot labels  
12 on the plans and then the self-certification so that's  
13 consistent with the original approval. I do have a summary  
14 of our variance arguments and I could, in a few minutes if  
15 you're interested.

16 BZA CHAIR HILL: Yeah, yeah --

17 MS. WILSON: Okay.

18 BZA CHAIR HILL: It's on the slide deck?

19 MS. WILSON: Yes. We submitted late, so I'm not sure  
20 it made it into the record. Mr. Young, did you receive that  
21 yesterday? Would have been around eleven.

22 MR. YOUNG: I think it's in here.

23 MS. WILSON: Oh, great. Thank you. If you could  
24 please go to slide three. Thank you. The property in  
25 question faces unique challenges due to its size, location,

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1 configuration, and history. Factors such as lot width  
2 compared to lot area, historical subdivision and previous  
3 illegal construction have created unique practical  
4 difficulties. It's undeniable that this lot is unique  
5 relative to other lots in the area, and attempts to comply with  
6 the zoning regulations through purchasing adjacent land have  
7 proven unsuccessful.

8 The requested variance is minimal compared to the  
9 burden of strict compliance, which can be considered as part  
10 of the variance test for the court of appeals. Market  
11 conditions and zoning regulations make alternative options  
12 such as developing fewer larger units or litigation  
13 impractical or financially unviable.

14 Additionally, there will be over \$300,000 lost in  
15 existing plans and permitting if a by-right project must be  
16 achieved, since the applicant can't use the plans that were  
17 already approved in permitting, in addition to there  
18 effectively being no project. And then the special exception  
19 approval obtained in the last hearing is lost effectively since  
20 it cannot be done without this variance. So all the work to  
21 attempt to comply with the regulations up to this point will  
22 have been for nothing.

23 In terms of degree of relief, the requested variance  
24 is minimal, only about seven inches, less than the required  
25 lot width and this slight difference is imperceptible. It

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1 will not impact the visualization of the neighborhood because  
2 a by-right project could look identical from the street. It  
3 could still span lot line to lot line, so the variance's impact  
4 is negligible.

5 The issues with effectively an imaginary line, or  
6 rather a line on paper, that makes the difference between two  
7 units and four units on a piece of land with enough land area  
8 for four units. Therefore, denying the variance over such a  
9 minor difference would be unnecessarily restrictive and  
10 counterproductive to the production of housing and more  
11 affordable housing. Next slide, please.

12 Thank you. Granting the variance will not harm the  
13 area's character or future development. The proposed  
14 development aligns with the existing character and addresses  
15 the need for infill housing. Denying the variance would  
16 result in vacant land and hinder the provision of affordable  
17 housing and more affordable housing. So not necessarily IZ  
18 units, but the provision of housing that's not in the  
19 multi-million dollar range.

20 So the proposed infill development will provide  
21 residential row buildings on smaller lots with two units on  
22 each lot, which matches the existing pattern of development  
23 in the area and the intent of the RF-1 zone in which the lot  
24 is located. Many of the lots in the surrounding area are under  
25 the required eighteen feet and many are even under sixteen

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1 feet, similar to the applicant's proposed lot configuration.

2 The property is currently vacant and unimproved,  
3 making it an anomaly in the area. And by developing the  
4 property, the applicant aims to improve its condition, thereby  
5 enhancing the overall neighborhood. The proposal aligns with  
6 the zoning regulations which allow for two units on each lot  
7 as a matter of right, and sees a relatively minor variance to  
8 enable the development.

9 In summary, the proposed development is consistent  
10 with the existing neighborhood. The unique conditions  
11 directly relate to the practical difficulties. But for the  
12 history and vacancy, four units would be permitted here, either  
13 via special exception or by-right, and the market conditions  
14 don't support two units here. This, coupled with the  
15 applicant's recent attempts to comply with the regs and the  
16 potential to end litigation, demonstrate a clear difficulty.

17 Further, there is no visual difference between a  
18 by-right project and the proposed project under this variance.  
19 The degree of relief can be weighed against the request and  
20 the zone plan, and on balance, the request is negligible and  
21 there will be no harm to the character of the neighborhood or  
22 zone plan, whereas denial will result in continued vacancy and  
23 litigation, as well as a loss of approved plan and permits given  
24 that the by-right developments are not viable.

25 And that summarizes our variance argument. I know

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1 that we would be interested to hear from the Office of Planning  
2 because again, it's still not clear how, to us, they're  
3 analyzing the additional information. Thank you.

4 BZA CHAIR HILL: Okay. Okay, Commissioner, since  
5 you're here, is there anything you want to add?

6 MR. WRAY: Thank you. The ANC continues to support.  
7 We have believed in this project from the beginning, mostly  
8 relying on the history of the site as what causes it to be very  
9 unique. The applicant has said multiple times this would be  
10 developed into four units if it had not been for the intervening  
11 illicit work done by a previous owner. So it has nothing to  
12 do with this applicant.

13 We, also the ANC, is amazed that in the face of the  
14 criticism that I offered last time, the Office of Planning gave  
15 you two full sentences, two sentences in explaining why it is  
16 that they deny that this is a unique property and they offer  
17 no actual analysis on the points raised by the applicant, which  
18 I am disappointed to see.

19 And then I'll simply add that unlike so many projects  
20 in the ANC, this is not controversial. There are no neighbors  
21 here to tell you not to do this because they were amazed to  
22 find out that this was going to have to have a second hearing.  
23 They're ready to move on and they would like to see the infill  
24 property taken care of. So I'm hoping that the board can see  
25 clear that the Office of Planning is simply holding onto the

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1 idea that there will never be an area variance. That is not  
2 in the regulation. That is why we have the variance tests and  
3 we believe that we're meeting them here. So again, I would  
4 support this, and I would hope that the board members would  
5 support this. Thank you.

6 BZA CHAIR HILL: Okay, thanks, Commissioner. I  
7 don't necessarily need to hear from the Office of Planning  
8 because I think it's pretty clear what the Office of Planning  
9 thinks. But I will go ahead and ask the Office of Planning  
10 in a moment. But Ms. Wilson, again, one of the units does have  
11 an IZ unit, right?

12 MS. WILSON: Correct. Yes. It's three -- and one IZ.

13 BZA CHAIR HILL: Right. It's three -- right. Okay.  
14 Can the Office of Planning hear me, and if so, do they want  
15 to add anything?

16 MR. JURKOVIC: Good morning, this is Mike Jurkovic  
17 with the Office of Planning. We have nothing to add past what  
18 we have already stated in the record.

19 BZA CHAIR HILL: Okay, thanks, Mr. Jurkovic. All  
20 right, does the board have any questions of Mr. Jurkovic?  
21 Okay. All right, let's see. Does anybody have, oh, Mr.  
22 Young, is anyone here wishing to speak?

23 MR. YOUNG: We do not.

24 BZA CHAIR HILL: Got it. Vice Chair John, you had  
25 your hand up?

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1 BZA VICE CHAIR JOHN: Yes. Just a quick question for  
2 Ms. Wilson. So, as I was reading the record again last night,  
3 this is what I understand. One unit, one flat will have an  
4 IZ unit because it's sixteen feet wide. That's correct. The  
5 other lot is the one that's seeking the variance at fifteen  
6 feet four inches wide.

7 MS. WILSON: Correct.

8 BZA VICE CHAIR JOHN: Okay, so why isn't there an IZ  
9 unit in that building?

10 MS. WILSON: So the project will be required to  
11 comply with the IZ regulations as a whole. So it's a minimum  
12 of 10% of the GFA. So they consider the four units one IZ  
13 project. And so we will be exceeding that with about, what  
14 is it, about 18%, 20%, something to that effect, at least with  
15 one of the units.

16 MR. FRIDY: Yes, we will be closer probably to 15%  
17 or 18% GFA that will go into IZ.

18 BZA VICE CHAIR JOHN: So while you're looking that  
19 up in the interest of time, now, you said but for the history,  
20 the project would be matter of right. Are you referring to  
21 the original existence of the two lots, which were then changed  
22 to a record lot?

23 MS. WILSON: Yes, but it's more of the existing  
24 buildings. So I think the board's familiar. Once you lose  
25 buildings, especially in the RF-1 zone, constructing new

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1 buildings by-right is more restrictive under certain  
2 circumstances than converting or combining existing  
3 buildings. So in this case, had we had the two existing  
4 buildings, one option would have been to combine internally  
5 and we could have done a conversion under U-320.2, and it would  
6 have had the same configuration, three market rate units and  
7 then one IZ unit as the fourth unit.

8 BZA VICE CHAIR JOHN: Right, but you don't have two  
9 existing buildings. You never had two existing buildings. I  
10 just don't understand.

11 MS. WILSON: There were two existing buildings on the  
12 lot historically.

13 BZA VICE CHAIR JOHN: Right. And then you lost that  
14 because of the conversion to one record lot.

15 MS. WILSON: No. I think Commissioner Ray might  
16 have more historical information, but the previous owners  
17 attempted to illegally create an eight unit apartment building  
18 and demolish that building.

19 BZA VICE CHAIR JOHN: Right. But there were, as I  
20 understand it, and I'm going to stop for a minute. There were  
21 two tax lots. Is that correct or no? Okay.

22 BZA CHAIR HILL: Correct.

23 BZA VICE CHAIR JOHN: Someone converted those two  
24 lots into one record lot, and then there was an illegal  
25 construction of eight units. So I'm not sure, the only way,

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1 I think that you could say, but for the history, you could have  
2 done a matter of right project is if the two original tax lots  
3 remained.

4 MS. WILSON: We could have still done a conversion  
5 with one building on one record lot to three market rate and  
6 one IZ units under U-320.2 because we have nine hundred square  
7 feet per unit, had they not done the --

8 BZA VICE CHAIR JOHN: In the illegal construction.

9 BZA CHAIR HILL: Correct.

10 BZA VICE CHAIR JOHN: Okay. All right, thank you.

11 BZA CHAIR HILL: Okay. Anybody else? Okay, Mr.  
12 Young, did I ask, is there anybody here wishing to speak?

13 MR. YOUNG: Anyone?

14 BZA CHAIR HILL: Okay. All right. I got nothing.  
15 If anybody has any questions. Ms. Wilson, you got anything  
16 at the end?

17 MS. WILSON: Thank you for your time.

18 BZA CHAIR HILL: Great. Commissioner Ray, still  
19 like the mustache. All right. Y'all have a good day.  
20 Bye-bye. I am uncomfortable with the application. I think  
21 that it is actually a unique situation. I think that I would  
22 just even agree with the most recent summary that was provided  
23 by the applicant in their PowerPoint presentation. I think  
24 that, given that it was, and I appreciate, actually, even the  
25 summary that Vice Chair John just went through, because then

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1 now that made it clearer for me as to the historical context,  
2 whether everybody agrees with me or not. And do appreciate  
3 the ANC commissioner and the ANC taking their time to come  
4 before us and that this basically is a nominal deviation, but  
5 they still are asking for an area of variance and I do still  
6 think they are making the meeting the criteria for that. So  
7 I am going to be voting in favor of this application. Mr.  
8 Smith, do you have anything you would like to add?

9 MEMBER SMITH: Chairman Hill, I agree with your  
10 assessment on this particular case and the arguments made by  
11 the applicant. We did continue this case to effectually get  
12 more information from the applicant regarding the practical  
13 difficulty question. And the applicant has provided  
14 additional information regarding the historical changes that  
15 have occurred on this property, the demolition of the original  
16 buildings that were located here, and the development  
17 constraints that RF-1 zone, in essence, incurs or causes on  
18 these very small lots, given their width in the area of the  
19 lot. And also more important to me was the removal or the  
20 resubdivision of this particular lot that created some  
21 additional hardships on the property owner.

22 So I do agree with the applicant's points regarding  
23 the unique practical difficulties in developing in addition  
24 to the financial hardship that they also state that I think  
25 is a another confluence of factors that create a practical

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1 difficulty for the development of this particular lot.

2 So I am in support of the variance. I understand that  
3 Office of Planning, in their report, their recommendation was  
4 to condition that another IZ unit would be created on that  
5 particular property. I do not believe if we can do that.  
6 They're not requesting a special exception. They're  
7 requesting a variance and us granting the variance with, in  
8 theory, the property would be a lot at a particular point in  
9 time. So we can't capture another out of the unit via what  
10 it looks like through the special exception standards.

11 So I am in support of the application. And I will  
12 note that the adjacent lot would have one IZ in it. So we would  
13 see the creation of one additional IZ unit as a result of this  
14 development. So with that, I will support the application.

15 BZA CHAIR HILL: Thank you. Mr. Blake?

16 MEMBER BLAKE: Yes sir, I'm supporting the  
17 application. I would agree with the analysis provided by the  
18 applicant in the presentation and I will be voting in favor  
19 of the application.

20 BZA CHAIR HILL: Thank you. Commissioner Stidham.

21 MEMBER STIDHAM: I agree with both your comments and  
22 those of Board Member Smith. I think that the applicant has  
23 made their case and I'm prepared to support as well.

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

25 BZA VICE CHAIR JOHN: Thank you, Mr. Chairman. I'm

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1       also in support of the application. I think that this lot has  
2       had a lot of difficulty and I think that the requested relief  
3       is seven and a half inches and so in terms of impact to the  
4       overall project, I don't believe it's easily discernible when  
5       you look at the project as a whole. So I think that it would  
6       be consistent with what's available in the neighborhood. And  
7       so as I said, I'm also in support.

8               BZA CHAIR HILL: Okay. Thank you. I'm going to  
9       make a motion to approve application number 20631-A as  
10      captioned read by the secretary and ask for a second. Ms.  
11      John?

12             BZA VICE CHAIR JOHN: Second.

13             BZA CHAIR HILL: Motion made and seconded. And  
14      Madam Secretary, take a roll call, please.

15             MEMBER MEHLERT: Respond to the chair's motion to  
16      approve the application. Chairman Hill?

17             BZA CHAIR HILL: Yes.

18             MEMBER MEHLERT: Vice chair John?

19             BZA VICE CHAIR JOHN: Yes.

20             MEMBER MEHLERT: Mr. Smith?

21             MEMBER SMITH: Yes.

22             MEMBER MEHLERT: Mr. Blake?

23             (No audible response.)

24             MEMBER MEHLERT: And Commissioner Stidham?

25             MEMBER STIDHAM: Yes.

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1 MEMBER MEHLERT: Staff would report the vote is five  
2 to zero to zero to zero to approve application 20631 a on the motion  
3 made by Chairman Hill and seconded by Vice Chair John.

4 BZA CHAIR HILL: Okay, thank you.

5 (Recess taken)

6 MEMBER MEHLERT: So the board has returned from its  
7 recess where it's brief break and is in the hearing session.  
8 This is application number 21123 of Rick Anderson. As  
9 amended, this is a self-certified application pursuant to  
10 Subtitle X, Section 901.2 for a special exception under  
11 Subtitle U, Section 301.1E to allow residential use of a new  
12 accessory building. This is to construct a new two-story  
13 accessory structure in the rear yard of an existing three  
14 story, semi-detached principal dwelling. The project is  
15 located in the RF-1 zone at 1311 S Street NW, square 238, lot  
16 852. This case was originally scheduled for the May 22nd  
17 hearing and was postponed at the applicant's request.

18 BZA VICE CHAIR JOHN: Thank you, Ms. Mehler. Mr.  
19 Hunt, can you introduce yourself, please?

20 MR. HUNT: Yes. Thank you. Can you hear me?

21 BZA VICE CHAIR JOHN: Yes, I can hear you.

22 MR. HUNT: I'm the architect and represent the  
23 client, Rick Anderson. This is --

24 BZA VICE CHAIR JOHN: I'm sorry, I can't hear you,  
25 Mr. Hunt. Can you turn up your microphone?

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1 MR. HUNT: Hang on just a second. Can you hear me  
2 now?

3 BZA VICE CHAIR JOHN: Slightly better.

4 MR. HUNT: I'll just have to speak up then. I'm the  
5 architect and represent Rick Anderson, the owner. This is a  
6 case where the family is seeking to add a flat over an existing  
7 garage. However, that garage was determined to be  
8 structurally inadequate. It's just a tin shack. So it  
9 triggered a Subtitle U, Section 301E, accessory buildings  
10 matter of right after January 2013, but cannot be converted  
11 into a dwelling unit for a period of five years. So because  
12 we are replacing an existing garage, it triggered this  
13 requirement for a special exception.

14 I don't think it's a very big ask. We got 9-0  
15 approval from the ANC. There are many, many other arguments,  
16 but I think it's a fairly straightforward request. And if you  
17 have any questions, I can answer them. And if I need to, I  
18 can share my screen to show the drawings.

19 BZA VICE CHAIR JOHN: We can't let you share your  
20 screen, but I can ask Mr. Young to pull up a slide if you would  
21 like to.

22 MR. HUNT: I don't think it's necessary at the  
23 moment, but we'll see.

24 BZA VICE CHAIR JOHN: Okay. Does the board have any  
25 questions for Mr. Hunt? Okay, I'll go to the Office of

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1 Planning. Are you choosing not to use your video, Mr.  
2 Bradford?

3 MR. BRADFORD: No. You don't see my video?

4 BZA VICE CHAIR JOHN: I see something, but not you.

5 MR. BRADFORD: There we go. Good morning. Philip  
6 Bradford, Development Review Specialist with the Office of  
7 Planning. The Office of Planning is recommending approval of  
8 this case. And we stand on the record of the staff report.  
9 And I'm available for any questions the board may have.

10 BZA VICE CHAIR JOHN: So, does the board have any  
11 questions for the Office of Planning? Mr. Hunt, do you have  
12 any questions?

13 MR. HUNT: Not at the moment.

14 BZA VICE CHAIR JOHN: So, Mr. Bradford, this  
15 accessory building is not in a required setback, right?

16 MR. BRADFORD: That is correct. It is not in a  
17 required setback.

18 BZA VICE CHAIR JOHN: Okay, so can you explain to me  
19 your analysis?

20 MR. BRADFORD: Well, as a self-certified  
21 application, this is the relief that the applicant and  
22 Department of Buildings determined was required. But there  
23 have been other cases where Office of Planning has felt that  
24 without being in the required setback, the relief may not be  
25 necessary. But as an abundance of caution, we recommend

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1 approval of the case.

2 BZA VICE CHAIR JOHN: Okay, thank you. Does any  
3 board member have a question for Mr. Bradford? Okay. Mr.  
4 Young, is there anyone wishing to testify?

5 MR. YOUNG: We do not.

6 BZA VICE CHAIR JOHN: And there's no commissioner  
7 here from the ANC?

8 MR. YOUNG: There is not.

9 BZA VICE CHAIR JOHN: Okay. All right, so with that,  
10 I'll close the record and, oh, thank you, Mr. Hunt. Oh, do  
11 you have any comments before I close the record, Mr. Hunt?

12 MR. HUNT: I am a little surprised by the setback  
13 information. That was not something that has been discussed.  
14 I wasn't aware of it. There is a covenant, a ten foot setback  
15 covenant to allow access to the neighbor, for the neighbor,  
16 so he has access in a locked lot. So basically the replacement  
17 garage is occupying essentially the same location as the  
18 existing garage so there's really no change.

19 BZA VICE CHAIR JOHN: Okay. And it's separated from  
20 the lot line by how many feet, you said?

21 BZA CHAIR HILL: It's lot line to lot line off by an  
22 inch. We always pull it in a little bit.

23 BZA VICE CHAIR JOHN: No, from the garage to the lot  
24 line.

25 MR. HUNT: Oh, to the back? Ten feet.

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1 BZA VICE CHAIR JOHN: Yeah. Okay. All right, so did  
2 you have anything else to add, Mr. Hunt?

3 MR. HUNT: Nope.

4 BZA VICE CHAIR JOHN: All right, well, thank you for  
5 your time. And with that, I'll close the record and the  
6 hearing. Okay, does anyone want to start? If not, I will make  
7 a few comments.

8 So this is one of those cases where it's a  
9 self-certified application and it does not appear that relief  
10 might be necessary. I'd like to hear other board members  
11 comment on this because the applicant is not seeking relief  
12 from any development standards. So I'm not sure that any of  
13 these, that the quoted section applies because the accessory  
14 structure is not located within a required setback because the  
15 current setback requirement is now seven point five feet  
16 minimum.

17 So may I go to you, Mr. Smith, for your comments?

18 MEMBER SMITH: I agree with you on the issue of  
19 whether what's being requested is needed. I really don't have  
20 anything to add, so yes, I would like to hear more from the  
21 rest of my board members on this.

22 BZA VICE CHAIR JOHN: Okay. Board Member Blake?

23 MEMBER BLAKE: I agree, but I think out of an  
24 abundance of caution, we can approve it. I think practice in  
25 the past has been to do that, so I'd be comfortable making that

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1 even though I know it's not within a required setback. I think  
2 it would be, out of an abundance of caution, just to approve  
3 it.

4 BZA VICE CHAIR JOHN: Thank you, Commissioner  
5 Miller?

6 ZC VICE CHAIR MILLER: Commissioner John, I concur  
7 with my colleagues that because the application meets all  
8 development standard and because the proposed accessory  
9 building, which is where expansion which is located where the  
10 existing accessory building, is not within the required  
11 setback, that relief doesn't appear to be necessary. But I  
12 agree that out of abundance of caution, since it's a  
13 self-certified application, there's no harm in approving it.

14 BZA VICE CHAIR JOHN: Okay. Thank you very much.  
15 So with that, I will make a motion to approve application number  
16 21123 as captioned and read by the secretary. Mr. Blake?

17 MEMBER BLAKE: Second.

18 BZA VICE CHAIR JOHN: Commissioner Miller?

19 ZC VICE CHAIR MILLER: Yes. If you're asking for my  
20 vote.

21 BZA VICE CHAIR JOHN: Yes. I thought I heard that  
22 you all were in support. And I am in support, so, yes. Okay.  
23 Ms. Mehlert, would you please take the roll call?

24 MEMBER MEHLERT: Yes. Please respond to the vice  
25 chair's motion to approve the application. Vice Chair John?

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1 BZA VICE CHAIR JOHN: Yes.

2 MEMBER MEHLERT: Mr. Smith?

3 MEMBER SMITH: Yes.

4 MEMBER MEHLERT: Mr. Blake?

5 MEMBER BLAKE: Yes.

6 MEMBER MEHLERT: And Commissioner Miller? Staff  
7 would record the vote pass four to zero to one to approve  
8 Application 21123 on the motion made by Vice Chair John and  
9 seconded by Mr. Blake with one board member not participating.

10 BZA VICE CHAIR JOHN: Thank you. Okay, the next  
11 case, I believe, is application number 20768 of District  
12 Properties. Is that correct, Ms. Mehlert?

13 MEMBER MEHLERT: Yes.

14 BZA VICE CHAIR JOHN: Okay, please go ahead and call  
15 that case.

16 MEMBER MEHLERT: Next is application number 20768 of  
17 Districtproperties.com Incorporated as amended. This is a  
18 self-certified application pursuant to Subtitle X, Section  
19 901.2 for special exceptions under Subtitle D, Section 5201  
20 from the side yard requirements of Subtitle D, Section 208.2  
21 and under Subtitle C, Section 1102.4, to allow a residential  
22 use in a 100-year floodplain. This is to construct a new  
23 two-story detached principal dwelling on an unimproved  
24 substandard lot. It is located in the R1B zone at 4337 Douglas  
25 Street NE, square 5115, lot 59. This case was originally

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1 scheduled for July 20, 2022 and has been postponed several  
2 times at the applicant's request and the merits have not been  
3 heard.

4 BZA VICE CHAIR JOHN: Thank you, Ms. Mehlert. Mr.  
5 Seck?

6 MR. SECK: Yes, chairman.

7 BZA VICE CHAIR JOHN: Good morning. Can you please  
8 introduce yourself for the record and tell us how your  
9 application meets the criteria for relief?

10 MR. SECK: Yes. Good morning, Vice Chair John.  
11 Good morning, board members. My name is Omar Seck,  
12 representing Districtproperties.com Inc. and I'm here also  
13 with our architect, Lina Gomez, who is also joining. If I may  
14 ask, Vice Chair John we have a next case which is 20769 on the  
15 same street. Basically, same case, same job. I don't know  
16 if you want to do a combined presentation or it's going to be  
17 separate.

18 BZA VICE CHAIR JOHN: We'll do them separately.

19 MR. SECK: Yes. No problem. Thank you. So this  
20 case is for special exception. We're seeking a special  
21 exception under DC Zoning Regulation of 2016, Title 11,  
22 Subtitle D, Chapter 5201 regarding side yard variance. And  
23 this is in a residential R1B zoning. It's proposing a single  
24 family two-story house. The exact address is 4337 Douglas  
25 Street NE near I-295.

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1           We have gone through a series of post-one month before  
2           and we had presented the case to ANC last month, finally, and  
3           I will elaborate on that real quick after the presentation of  
4           the property.

5           It's a single family house that meets all criteria  
6           except for side yard. Basically the property is twenty-five  
7           feet wide and it goes from Douglas to the rear of an undeveloped  
8           street. There's no proposed parking. It has basically four  
9           bedrooms, I believe. My architect will correct me. Let me  
10          pull up the plans. Three bathroom single family dwelling  
11          sitting on a corner space.

12          We recently did a flood zone study also when it was  
13          brought up to our attention by the Office of Planning. We  
14          requested the documents from DDOEE in order to do a flood  
15          certification. The house meets the criteria in the flood  
16          area. It also is not a cause of light and air as to the  
17          neighbor. This particular house sits next to an abandoned  
18          house to the right, on the street view you'll see it has been  
19          abandoned for a while, and a house on the left.

20          We have also addressed issues regarding trees. They  
21          were concerned about some heritage tree, which sits on the lot  
22          to the right, actually two lots down. And those were declared  
23          hazardous by DDOT Urban Forestry inspector and our arborist.  
24          And we have submitted applications to remove this tree, along  
25          with some other catalpa trees that also were deemed hazardous.

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1           We have received support from the neighbor to the  
2 left, which is an existing and occupied home. And we have  
3 received her support to cut the tree because it's right at the  
4 property line. We're waiting for the approval of the permit  
5 and also before construction to remove these trees. We have  
6 received the DDOT support for this application and Office of  
7 Planning and we would like to get the support from BZA.

8           However, ANC, to go back to my presentation to the  
9 board, was very clear. There was no opposition voiced at the  
10 time. Neighbors did ask questions, which I did answer. And  
11 there was one concern about, actually no. Let me not mix it.  
12 That's for the next house. About the tree. One neighbor  
13 raised question about how we address the trees. So that's what  
14 I just explained. We have permit pending.

15           And also the chairman of the ANC did say that they  
16 need about seven days for the constituents to review the plans  
17 and the case in order to vote. So they couldn't take a vote  
18 that day. And their next session will be later on this month,  
19 which I did ask the chairman if they were having an executive  
20 meeting before our hearing today but unfortunately they did  
21 not have one where they could vote on the case. So that is  
22 still pending a support letter. I will rest the case there  
23 and see if there are any questions that I or the architect can  
24 answer. Thank you.

25           BZA VICE CHAIR JOHN: So Mr. Seck, did the ANC, I'm

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1       sorry, I didn't fully understand the discussions with the ANC.  
2       Did they commit to hearing this case at the next ANC meeting?

3               MR. SECK:   They wouldn't commit to vote.   However,  
4       I believe the commissioner that was sitting for the chair, the  
5       chair had to leave at the moment.   And Commissioner Bryan, I  
6       believe, said that they will submit a letter to the record that  
7       we have presented the case and they heard the case.   Though  
8       after they get a feedback from the neighbors, then they will  
9       vote on the next session.

10              BZA VICE CHAIR JOHN:   Okay, thank you.   Does the  
11       board have any questions for Mr. Seck?

12              MEMBER BLAKE:   Is it definitely on the agenda for the  
13       next meeting for a vote?

14              MR. SECK:   I haven't gotten a letter from the  
15       commissioner yet, even the letter that he said he was  
16       submitting to the record that we presented.   I haven't  
17       personally seen it yet, so I'm not very certain.

18              MEMBER BLAKE:   Okay, thank you.

19              MR. SECK:   Yeah, we will reach out to them, though.  
20       And I see also there's been correspondence which we can present  
21       to the board if you like.   The correspondence with SMD  
22       Commissioner Sirraaj Hasan.   And I know he cannot support by  
23       himself, he has to go to the vote.   And he responded to us this  
24       past Monday because he was not at the meeting at the time when  
25       I went in May.

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1 MEMBER BLAKE: Thank you.

2 MR. SECK: Thank you.

3 BZA VICE CHAIR JOHN: Any other board member? Okay,  
4 I'll go to the Office of Planning.

5 MS. BROWN-ROBERTS: Good morning, Madam Chairman and  
6 members of the BZA. Maxine Brown-Roberts from the Office of  
7 Planning on BZA 20768.

8 As outlined in our OP reports regarding the side yard,  
9 the applicant meets the standards of Subtitle D 5201 and  
10 Subtitle X 901.2, and particularly the light and privacy of  
11 the adjacent property should not be unduly compromised.

12 Regarding the special exception for the floodplain,  
13 the requirements of Subtitle C, Section 1102.5, we believe the  
14 requirements have been met. Additionally, DDOEE informs us  
15 that at the time of permitting, more detailed plans would have  
16 to be provided to address these and other standards.

17 The Office of Planning therefore recommends approval  
18 of the requested special exceptions. Thank you, Madam  
19 Chairman. And I'm available for questions.

20 BZA VICE CHAIR JOHN: Thank you, Ms. Brown-Roberts.  
21 Does the board have any questions for the Office of Planning?  
22 Mr. Seck, do you have any questions for the office -- oh, I'm  
23 sorry. Mr. Blake, I didn't see your hand.

24 MEMBER BLAKE: Yeah. Quick question for Office of  
25 Planning. Do you have several other cases that we've had in

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1 the recent past that you can recall with regard to the water  
2 plain requests for approval?

3 MS. BROWN-ROBERTS: I did some research and I haven't  
4 come across any. I've been with the Office of Planning for  
5 some time and I've never done one. This is the first time I'm  
6 doing one.

7 MEMBER BLAKE: In determining whether this meets the  
8 criteria described in it, did you review the plans presented  
9 or are you relying on DDOEE's final assessment in the  
10 permitting process?

11 MS. BROWN-ROBERTS: Both. I reviewed the  
12 information that was submitted by the applicant that pertains  
13 to the requirements outlined in Subtitle C, 1102.5. We also  
14 referred the application to DDOEE and I had a conversation with  
15 them about the application. In conversation, they stated that  
16 the levels that are shown on the plans, they had spoken to the  
17 applicant about it and they were in agreement with those, the  
18 base level and that sort of thing. They were in agreement with  
19 those. However, their analysis would be based on more  
20 detailed plans which will be done at the permitting.

21 So basically they were saying yes, the applicant  
22 consulted with them and they were supportive of what was  
23 provided.

24 MEMBER BLAKE: Did you receive any additional  
25 information for the other relevant agencies that should review

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1 the plan?

2 MS. BROWN-ROBERTS: No, no, there's nothing else.

3 MEMBER BLAKE: But you did refer to those agencies?

4 MS. BROWN-ROBERTS: Well, the referrals should have  
5 gone out from the Office of Zoning.

6 MEMBER BLAKE: Okay, thank you.

7 BZA VICE CHAIR JOHN: Any other questions? Oh, Mr.  
8 Smith.

9 MEMBER SMITH: I think just as a follow up to that,  
10 Ms. Gomez, I believe, or Mr. Seck.

11 MR. SECK: Yes.

12 MEMBER SMITH: Probably Ms. Gomez because Ms. Gomez  
13 is your architect, right?

14 MR. SECK: Yes.

15 MEMBER SMITH: Can you speak to some of those  
16 questions that Mr. Blake raised? You submitted to the record  
17 to the Office of Planning a plan showing the BFE. And can you  
18 speak to the finished floor elevation of this house and is it  
19 above the BFE 400-year flood line?

20 BZA VICE CHAIR JOHN: Ms. Gomez, please introduce  
21 yourself for the record.

22 MS. GOMEZ: My name is Lina Gomez. I'm the designer  
23 of the project. And, yeah. To refer to the questions, yes,  
24 as we have submitted to the record and also discussed with  
25 Maxine, as per the information we received from DDOEE regarding

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1 the base flood elevation and the freeboard, we had indicated  
2 of the levels. And also like the first floor elevation is more  
3 than two feet from the base flood elevation. So also we have  
4 provided flood vents elevating the equipment. We have also  
5 provided some information regarding evacuation plans and all  
6 the requirements that need for that.

7 So yeah, the analysis has been made and we have  
8 indicated in the building elevations or the related base flood  
9 elevation and the freeboard design elevation complies with the  
10 requirements.

11 BZA VICE CHAIR JOHN: So Ms. Gomez, may I pull up a  
12 slide and ask you to address those questions? What slide in  
13 your presentation would be helpful?

14 MS. GOMEZ: I'm not sure about what would be the slide  
15 number. But if it's useful, I can tell you the sheet number  
16 from the drawings that we submitted.

17 BZA VICE CHAIR JOHN: Okay. I think application 67,  
18 Mr. Young, is the, I mean exhibit 67 is the updated  
19 architectural plans and elevations. Can you pull that up?

20 MS. GOMEZ: Yes. And that will be the last two pages  
21 of that.

22 BZA VICE CHAIR JOHN: Okay.

23 MS. GOMEZ: No, this one, I believe.

24 BZA VICE CHAIR JOHN: What about slide 13, Mr. Young?  
25 Yes.

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1 MS. GOMEZ: Keep scrolling to the last pages because  
2 I, yeah, page 15 and 16 please. Yes, this one. So in this  
3 page we did the analysis. We have on the right side the showing  
4 the 100 year. And on the upper top corner, building elevation  
5 showing, please zoom out on that area? Can you please zoom  
6 in?

7 MEMBER SMITH: Mr. Young, can you zoom in on the  
8 elevation?

9 MS. GOMEZ: Yes. Zoom in if it's readable. Yes, a  
10 bit more.

11 MEMBER SMITH: Keep going. Because I think she  
12 wants to show us the freeboard and BFE elevations. Yeah. So  
13 try to zoom in close to the, under the numbers on the porch.

14 MS. GOMEZ: Yeah. So you can see here we have  
15 identified the elevations. So you will see the base flood  
16 elevation is more or less at what is the existing grade at the  
17 front of the building. And the freeboard at two feet from  
18 there. And the first floor elevation is at elevation 19.  
19 Well, the base flood elevation is at elevation 16. Also, you  
20 can see we have provided the flood vents within one foot from  
21 the existing grade. And if you can scroll to show the rear  
22 elevation where we have the AC condensers, we have elevated  
23 also this equipment above the freeboard.

24 MEMBER SMITH: You elevated, that's what you said.  
25 You elevated above the freeboard?

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1 MS. GOMEZ: Yes. All the finished floor are  
2 elevated above the freeboard. Also the condenser units and  
3 other equipment is also elevated above the freeboard. If you  
4 scroll a bit more, if you can see the real elevation. Yeah.  
5 Go a bit down, the other elevation.

6 MR. SECK: Lina, you want to show the right side of  
7 this view right here to show the back of the house?

8 MS. GOMEZ: Yeah. The back of the house.

9 MR. SECK: Yes. Mr. Young, if you can slide to the  
10 right, the right there is fine. But if you can slide to the  
11 right.

12 MS. GOMEZ: Yeah, that way. Okay, that's fine.  
13 Yeah, just keep going down a bit more.

14 MEMBER SMITH: Keep going to the right.

15 MS. GOMEZ: No, just keep going down, please. Yeah,  
16 you can see in the back of the building, we have located the  
17 AC condenser.

18 MEMBER SMITH: I'll see the condenser here. Yeah.  
19 And you've elevated it. Okay. I think I'm good. Thank you,  
20 Ms. Gomez and Mr. Young, you can drop the slide. I just wanted  
21 to verify. Thank you.

22 BZA VICE CHAIR JOHN: Are there any other questions?

23 ZC VICE CHAIR MILLER: I just had one question for  
24 the applicant's representative not really relevant to the case  
25 before us, but just out of curiosity. So there's an adjacent

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1 property to the west, I believe, that is abandoned, boarded.  
2 A house that's abandoned, vacant and boarded for some time?  
3 Boarded up, is that correct? And do you know what's happening  
4 with that, if that's fair?

5 MR. SECK: Actually, it's to the east. When you're  
6 facing the house to the right side, I believe that's considered  
7 east.

8 ZC VICE CHAIR MILLER: And so there's --

9 MR. SECK: That's abandoned, yes. It is boarded and  
10 it's been there for quite some time. The one to the left side  
11 is occupied and actually has a basement. It's a first floor  
12 AND a basement and it is occupied.

13 ZC VICE CHAIR MILLER: You know what's happening with  
14 the abandoned adjacent structure?

15 MR. SECK: No.

16 ZC VICE CHAIR MILLER: It's not owned by the  
17 applicant?

18 MR. SECK: No. No, we don't own it.

19 ZC VICE CHAIR MILLER: Or controlled by the  
20 applicant? Okay.

21 MR. SECK: No.

22 ZC VICE CHAIR MILLER: Okay. Thank you.

23 MR. SECK: Thank you.

24 BZA VICE CHAIR JOHN: Okay, are there any other  
25 questions for anybody? Okay, Mr. Young, is there anyone

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1 signed up to testify?

2 MR. YOUNG: We do not.

3 BZA VICE CHAIR JOHN: Okay. And so Mr. Seck, do you  
4 have any closing comments?

5 MR. SECK: No, I just want to thank the board for the  
6 question and listening to case and ask for your support. Thank  
7 you.

8 BZA VICE CHAIR JOHN: Okay, so Mr. Seck, please stand  
9 by for a minute until the board deliberates. I'm not sure what  
10 we will do. But for the moment I'm going to close the hearing  
11 and the record and see what my board members would like to do.

12 Okay. So thank you. So there is no report from the  
13 ANC to which the board could give great weight. So as a  
14 threshold matter, is the board interested in postponing this  
15 case to hear from the ANC? Just go around the room, Mr. Blake.

16 MEMBER BLAKE: It would be nice to have a complete  
17 record. This has been lingering for quite some time. It  
18 sounds like they would get support from the ANC, but I would  
19 have no problem having a complete record that's consistent with  
20 what we've been doing lately. So yes, I'd be comfortable  
21 waiting for that.

22 BZA VICE CHAIR JOHN: Okay. Thank you. Board  
23 Member Smith?

24 MEMBER SMITH: Yes, I agree with Board Member Blake  
25 that it would be great to have a complete record for this

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1 particular case. I will support postponing this with a  
2 limited scope hearing. Just waiting for the record, I mean  
3 the letter from the ANC.

4 BZA VICE CHAIR JOHN: Okay. And Commissioner  
5 Miller?

6 ZC VICE CHAIR MILLER: Madam Vice Chair, yeah, I  
7 think even though this case has been around for a while and  
8 postponed for a while and I think the record is sufficient to  
9 proceed, I would like to give another opportunity for this to  
10 be on the ANC's agenda for a vote. Apparently, according to  
11 the last Letter of Acknowledgement that we have from the ANC  
12 where it describes the presentation made by the applicant to  
13 the ANC at the May meeting, it indicates that they needed seven  
14 days to get on their agenda. And it hadn't been circulated  
15 seven days prior to their May 14th meeting so that's why they  
16 said that's why they only did an acknowledgement letter as  
17 opposed to a vote and a report that we would give great weight  
18 to.

19 I just would note that the applicant said he didn't  
20 know if he was on the agenda for the next meeting, which I think  
21 is June 11th, according to the ANC's letter, which is less than  
22 seven days. So I'm not sure that he's going to be on the agenda  
23 for their next meeting if he doesn't know that he's on the  
24 agenda yet. But bottom line, I would like to give out one more  
25 opportunity for the ANC to weigh in and give an up or down or

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1 concerns about the application. Thank you.

2 BZA VICE CHAIR JOHN: Okay. Thank you,  
3 Commissioner. So I'm in agreement as well. Mr. Young, could  
4 you let Mr. Seck back in, please?

5 Thank you. Mr. Seck, I think the board is unanimous  
6 that we would like to hear from the ANC Commission. It seems,  
7 based on their letter, that there is support for your project,  
8 but it's not something that the board could give great weight  
9 to. And there were some questions that they had which  
10 apparently you were supposed to follow up on.

11 In any event, it doesn't seem as if there's great  
12 resistance to your project. And so my suggestion to you would  
13 be to try to get on the calendar, the next meeting, which is  
14 not going to be, well, I don't think you can get on for June  
15 11th so it would be July. And I wanted to hear your thoughts  
16 on that.

17 MR. SECK: Thank you, Vice Chair John. Yeah, I will  
18 have my office and myself reach out to the chairman and also  
19 the SMD who responded to the emails last Monday to get on that  
20 June 11, as Commissioner Miller mentioned. Then if they said  
21 no, we'll definitely consider the July. I believe the  
22 question is to see when you're going to hear us back.

23 BZA VICE CHAIR JOHN: Yes. Yes. So if you're  
24 meeting with them, they're not meeting in August. Right?

25 MR. SECK: Some commissions don't, yes.

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1 BZA VICE CHAIR JOHN: So this looks like September.

2 MR. SECK: Yes. I see. Let me ask Lina. Well,  
3 she's not on there. Most likely, we haven't received an  
4 invitation yet.

5 BZA VICE CHAIR JOHN: Right.

6 MR. SECK: But I now recall that they were mentioning  
7 the next meeting being June 11th and yes, I remember them  
8 mentioning that. So I will reach out to them today and we can  
9 upload the decision whether they're going to hear us this June  
10 11 or not. It's up to you. And then you can suggest a date  
11 or you want to pick a date now?

12 BZA VICE CHAIR JOHN: I think right now you're  
13 looking at a September date. And Ms. Mehlert, please chime  
14 in. If the hearing, well, you don't even know if they're  
15 meeting in August. So maybe one thing we could do, Mr. Seck,  
16 is to push this case back to the end of the day to give you  
17 time to reach out to the ANC, see if you can get on the July  
18 11th agenda. In which case we could probably hear your case,  
19 Ms. Mehlert, towards the end of July? Is there room in the  
20 schedule? It would be set for a decision, meaning just to hear  
21 from the ANC. We would not be taking any new testimony.

22 MEMBER MEHLERT: So if they're able to get on the June  
23 11th agenda, we could possibly schedule it for June 26th. If  
24 not the ANC, it looks like they meet on July 9th. We probably  
25 would want to confirm with the ANC. And if that's the case,

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1       then we could try and squeeze it in before the August recess,  
2       if that's all you need to hear is from the ANC.

3               BZA VICE CHAIR JOHN: I think the latter. I was in  
4       the wrong month. I was thinking I was in July. So if the board  
5       does not object, I would think that the July timeframe, Mr.  
6       Seck, would be more reasonable. So we'll just go ahead and  
7       set this down for decision. And so we would close the record,  
8       except for the response from the ANC. And we would have a  
9       decision. And what date do you think you could squeeze them  
10      in, Ms. Mehlert?

11              MEMBER MEHLERT: We could do the 24th or 31st.  
12      Commissioner Miller is back with us on the 31st.

13              BZA VICE CHAIR JOHN: Okay, Mr. Miller, would you  
14      come back on the 24th just for this? Or would you like to hear  
15      it on the 31st?

16              ZC VICE CHAIR MILLER: Either way, whatever the chair  
17      and the other board members want to do and the staff.

18              BZA VICE CHAIR JOHN: I think the 24th. I never like  
19      to do anything on the last day or the last hour of --

20              ZC VICE CHAIR MILLER: That's fine. That's fine.

21              BZA VICE CHAIR JOHN: So the 24th, Mr. Seck. So you  
22      will have to get on the July 9th calendar for the ANC.

23              MR. SECK: If not the June 11th, which is in few days.  
24      There's still a possibility, probably, but I'll reach out to  
25      them today.

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1 BZA VICE CHAIR JOHN: But in any event, your session

2 --

3 MR. SECK: In July, right.

4 BZA VICE CHAIR JOHN: This gives you more time.

5 MR. SECK: Yes, agree.

6 BZA VICE CHAIR JOHN: And my suggestion to you also  
7 would be to have the architectural plans and some visuals that  
8 you could explain what you're doing to the ANC.

9 MR. SECK: Yes.

10 BZA VICE CHAIR JOHN: Okay, thank you.

11 MEMBER MEHLERT: Commissioner John, I just wanted to  
12 also see if you wanted to leave the record open for any response  
13 from the additional agencies that weren't noticed for the  
14 requirements of Subtitle C 1102.5. Since the applicant added  
15 this relief last Friday, the Office of Zoning wasn't able to  
16 send referrals to Fire and Emergency Medical Services, MPD or  
17 Homeland Security, which was a requirement for those  
18 regulations.

19 BZA VICE CHAIR JOHN: Okay, thank you for mentioning  
20 that. So, yes, we will leave the record open for those  
21 comments. And if the Office of Planning is listening, may I  
22 suggest that the Office of Planning also reach out to see if  
23 there are any responses.

24 ZC VICE CHAIR MILLER: And I guess if the applicant  
25 needs to respond to any concerns that are raised by those

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1 agencies, we would want that before our decision.

2 BZA VICE CHAIR JOHN: Sure. And that's fair. So in  
3 that case, let's back up a bit and then set this case for a  
4 limited hearing, then instead of a decision. And so, Ms.  
5 Mehlert, we would set times for responses.

6 MEMBER MEHLERT: Okay. So if you would like to have  
7 a limited scope hearing on July 24th, we could request  
8 responses from the agencies and the ANC by July 12th. And then  
9 the applicant could respond by the 19th of July. I don't know  
10 if that --

11 BZA VICE CHAIR JOHN: That's fine. And I'd ask the  
12 Office of Planning to submit a supplemental report including  
13 the information from those two agencies, as it did for the  
14 Department of Energy. So OP would submit a supplemental  
15 report.

16 MEMBER MEHLERT: Would you like to have that due  
17 after the other agencies? So, any response from the  
18 additional agencies and due and ANC due by July 12th and then  
19 the OP and applicant due by July 19th, the following week?

20 BZA VICE CHAIR JOHN: I think we would need to give  
21 the applicant an opportunity to respond to any adverse comments  
22 from DDOEE. So I think the OP report and board members, please  
23 feel free to chime in. The OP report, I believe, should  
24 include that information as it did for the previous response  
25 from DDOEE. Is the Office of Planning still here?

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1 MS. BROWN-ROBERTS: Madam Chairman? Here.

2 BZA VICE CHAIR JOHN: Yes, Ms. Brown-Roberts. Thank  
3 you for joining us again. Did you hear the discussion so far?

4 MS. BROWN-ROBERTS: Yes. Yes. There's no problem.

5 BZA VICE CHAIR JOHN: All right, so let's start over,  
6 Ms. Mehlert. The Office of Planning will respond by July 12th  
7 with information from the other agencies, FEMS and so on that  
8 need to comment.

9 MEMBER MEHLERT: Okay.

10 BZA VICE CHAIR JOHN: Ms. Brown-Roberts?

11 MS. BROWN-ROBERTS: Are we asking the other agencies  
12 to respond by a specific date?

13 BZA VICE CHAIR JOHN: Yes.

14 MS. BROWN-ROBERTS: Okay. Which is?

15 MEMBER MEHLERT: So that's where I was kind of  
16 wondering about the date. So if you want the ANC and those  
17 additional agencies to provide a response by, I mean, we could  
18 ask the agencies to respond by July 5th and then give OP July  
19 12th if you want to include them in OP's report.

20 BZA VICE CHAIR JOHN: Okay, that's fine.

21 MEMBER MEHLERT: And then any response from the  
22 applicant will be due on the 19th.

23 BZA VICE CHAIR JOHN: Okay, so one more time. The  
24 additional agencies will respond by July 5th.

25 MEMBER MEHLERT: Yep. The Office of Planning and

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1       ANC by July 12th. And anything supplemental, additional  
2       response from the applicant by July 19th. And then scheduled  
3       for a limited scope hearing on July 24th.

4               BZA VICE CHAIR JOHN: Excellent. Thank you. Any  
5       comments about that from anyone? Okay, so we'll continue this  
6       hearing then until July 24th with the schedule that the Madam  
7       Secretary just proposed.

8               All right, so the next case is also from the same  
9       applicant, Districtproperties.com, and that is 20769. Please  
10      call that case, Ms. Mehlert.

11              MEMBER MEHLERT: Yes, the next case is application  
12      number 20769 of Districtproperties.com, Inc. As finally  
13      amended, is a self-certified application pursuant to Subtitle  
14      X, Section 901.2 for special exceptions under Subtitle D,  
15      Section 5201. The side yard requirements of Subtitle D,  
16      Section 208.2 under Subtitle C, Section 1102.4 to allow  
17      residential use in a 100-year floodplain. Project is to  
18      construct a new two-story detached principal dwelling on an  
19      unimproved substandard lot. It is located in the R1B zone at  
20      4533 Douglas Street NE, square 5115, lot 15. And again, this  
21      case was originally scheduled for July 20, 2022 and has been  
22      postponed several times. The merits have not been heard.

23              BZA VICE CHAIR JOHN: Thank you. Mr. Seck, please  
24      introduce yourself again for the record. And there were some  
25      differences between this case and the previous one, so can you

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1 just summarize with the relief that you're requesting and  
2 describe how this case is different?

3 MR. SECK: Yes, good afternoon again. Actually,  
4 good morning, Chairman John and board members. Yes, my name  
5 is Omar Seck, representing Districtproperties.com Inc. for  
6 case number 20769 at 4533 Douglas Street NE. This is for a  
7 special exception we'll be seeking to the zoning board  
8 according to Subtitle D, Chapter 5201 and Subtitle X, Chapter  
9 901.2 for side yard variance. It is a house that is similar  
10 to the other that's a two-story building in the R1B zone being  
11 constructed on crawlspace meeting the flood area similar to  
12 the other one, though, this particular house is located and  
13 our architect, Lina, can chime in on that, in a better zone  
14 according to the flood zone than the previous home.

15 We have received also support from OP and DDOT.  
16 There is no tree issue here to be addressed. At the  
17 presentation in my ANC meeting last May, there was a concern  
18 raised regarding the current crosswalk that's being built over  
19 I-295. The chairperson sitting for the chairman asked if  
20 there will be some effect. I had visited the site. We are  
21 sitting few houses away from the corner street with Kenilworth  
22 Avenue, so there's not a direct effect of pedestrian coming  
23 down the ladder, the stairs of that crosswalk.

24 Again, no tree issue here. We're sitting between two  
25 occupied houses. This home fits in the character of the

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1 neighborhood. It is two-story like many of them, and the light  
2 and air is not in effect in this case. We did some studies  
3 showing the windows, which the architect can elaborate if there  
4 is any questions, for the privacy of the neighbors.

5 The ANC, similar to the previous case, did say that  
6 the resident will need seven days to review the case and take  
7 a vote on this. There was no resistance that day from either  
8 the commissioners or the constituents that were present that  
9 day. We're hoping and now believe that there would be a letter  
10 of support from them. Again, just like the previous case, they  
11 submitted a letter showing that we did a full presentation.

12 The DDOEE issue that was brought in last week and  
13 updated in the file similar. We are going to be in compliance  
14 with the requirement for construction in a flood zone area and  
15 that is taking its course to meet the requirements for the flood  
16 certifications during and after construction.

17 I will rest the case here, see if there is any -- oh,  
18 the same house is also rearing to an undeveloped street. In  
19 the future, if that happens, there could be a parking provided  
20 for the home. But there's no parking. The side yard would  
21 be three feet, and that's the reason of the special exception  
22 relief we'll be seeking.

23 I would like to rest the case here and see if there's  
24 any questions. The architect is on board if you want to add  
25 anything. Lina Gomez. Thank you.

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1 BZA VICE CHAIR JOHN: Thank you Mr. Seck. One  
2 question. So when you presented to the ANC in May, you were  
3 still seeking a variance, is that correct?

4 MR. SECK: Yes. That's correct. We had previously  
5 on the previous report we had a variance request and the special  
6 exception. Yes.

7 BZA VICE CHAIR JOHN: Okay. So then when you meet  
8 with the ANC again on this case, you will amend the presentation  
9 to show the correct relief that you're seeking?

10 MR. SECK: Yes. Okay, that's good. Yes, I will  
11 send them the new report.

12 BZA VICE CHAIR JOHN: With the information showing  
13 how you will comply with the floodplain.

14 MR. SECK: Yes.

15 BZA VICE CHAIR JOHN: Okay. Does any board member  
16 have questions for Mr. Seck? No. Can I go to the Office of  
17 Planning?

18 MS. BROWN-ROBERTS: Thank you, Madam Chairman.  
19 Again for the record, this is Maxine Brown-Roberts from the  
20 Office of Planning on BZA 20768. The proposal meets  
21 requirements to grant a special exception for the side yard.  
22 Regarding this law, the floodplain area is on the rear portion  
23 of the lot and from the information provided to address the  
24 special exception and the statement from DDOE, OP recommends  
25 approval of the requested special exception. Thank you, Madam

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1 Chairman. And I'm available for questions.

2 BZA VICE CHAIR JOHN: Thank you. So as I understand  
3 it, Ms. Maxine Brown-Roberts, the property is not, how do I  
4 say this? There's less of the property on the floodplain for  
5 this property than the previous one.

6 MS. BROWN-ROBERTS: Yes. On the other one, the  
7 entire lot was within a floodplain area. In this case, only  
8 a rear portion of the property. And it seems as if from where  
9 the house is located on the lot, it seems as if it may only  
10 be the open porch at the rear, that may be within the floodplain  
11 area. It seems as if the house is outside of the floodplain  
12 area, but it's still pretty close.

13 BZA VICE CHAIR JOHN: Okay, thank you. Does any  
14 board member have a question? Okay, Mr. Seck, do you have any  
15 questions for the Office of Planning?

16 MR. SECK: No, Vice Chair John. Thank you.

17 BZA VICE CHAIR JOHN: Thank you. Mr. Young, is there  
18 anyone signed up to testify? Okay. So I assume that the board  
19 would like to pursue the same, let me back up a minute and state  
20 that the ANC has provided a letter acknowledging that Mr. Seck  
21 presented to them in May and it's similar to one submitted in  
22 the previous case, 20768.

23 So I'm assuming that the board would like to proceed  
24 in the same manner, which is to continue this case for a limited  
25 scope hearing to allow the applicant to make a full

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1 presentation to the ANC and hopefully that will happen on the  
2 same timeline as the previous case, 20768. Does the board have  
3 any objections to that proposal? I don't see any hands raised.  
4 Okay, so hearing no objections, Ms. Mehlert, let's continue  
5 this for a limited scope hearing on July 24th.

6 MEMBER MEHLERT: With the same deadlines as the  
7 previous case, 20768?

8 BZA VICE CHAIR JOHN: Yes. And the Office of Zoning  
9 will reach out to the additional agencies and we'll do that  
10 coordination again. Okay, so thank you everyone. Thank you,  
11 Mr. Seck. Ms. Gomez.

12 MR. SECK: Thank you.

13 BZA VICE CHAIR JOHN: Great. Okay, so it is 11:47  
14 a.m. and the chairman is not back. So my recommendation is  
15 we adjourn for lunch. I believe the chairman is on application  
16 21119 and 20823. And I don't believe I'm on those cases. Let  
17 me confirm.

18 So my suggestion is that we break now for lunch and  
19 return at 12:30 p.m., 12:45 p.m. How about 12:45 p.m.? Oh,  
20 that's too long. 12:30 p.m. Does that work for everyone?  
21 Okay, I don't see any objections. So let's do 12:30 p.m. and  
22 the chairman should be back. Thank you all. Thank you, Ms.  
23 Mehlert.

24 (Whereupon, the above-entitled matter went off the  
25 record at 11:48 a.m. and resumed at 12:35 p.m.)

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1                   BZA CHAIR HILL:   Okay, I am going to try to do this  
2                   also with great efficiency.   Okay, if Madam Secretary, you  
3                   want to call us back and then get us our next one.   I don't  
4                   know if -- oh, sorry, Mr. Miller, you're on still with us,  
5                   right?

6                   ZC VICE CHAIR MILLER:   Yeah, for the appeal.   I think  
7                   the next two, Commissioner Imamura is the member.

8                   BZA CHAIR HILL:   Yep, and I have some different  
9                   information on that now.   So why don't, Madam Secretary, could  
10                  you call the appeal decision first?

11                  MEMBER MEHLERT:   Sure.   The board has returned from  
12                  its lunch recess and the next case in the meeting session is  
13                  appeal number 21082, of Wardman Hotel Strategy Team by M.  
14                  Ramachandran and R. Wallenberg.   This is an appeal pursuant  
15                  to Subtitle X, Section 1100, challenging decisions made on  
16                  October 23rd and 26th, 2023 by the Department of Building  
17                  Zoning Administrator to issue building permits number  
18                  B230-7474 and B230-5655.

19                  This project is located in the RA-2, RA-4 zones at  
20                  2650 Woodley Road NW and 2601 Calvert Street NW, square 2132,  
21                  lots 855   and 856.

22                  The board heard the merits of the appeal on May 15th  
23                  and requested closing statements from parties and closed the  
24                  record.   Participating are Chairman Hill, Vice Chair John, Mr.  
25                  Blake and Commissioner Miller.   And as a preliminary matter,

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1 the property owner has filed a Motion to Strike the appellant's  
2 written rebuttal that was submitted in Exhibit 39. You're  
3 muted, Mr. Chairman.

4 BZA CHAIR HILL: Sorry. So I've thought about this  
5 a little bit and had an opportunity to consult with OZLD, and  
6 what I would propose now is that, I mean, I was ready to  
7 deliberate on this, and I think maybe most of us were.  
8 However, I think that out of an abundance of caution,  
9 considering what seems to have been possible confusion in the  
10 record, the board had asked, I thought we were going to ask  
11 for written conclusions. And it is understandable how those  
12 comments that I made might have been construed as we were going  
13 to have rebuttal and written conclusions, and it's really not  
14 possible to have rebuttal and written conclusions. I don't  
15 necessarily think that the written conclusions of the  
16 appellant were rebuttal per se, but in, again, an effort to  
17 be cautious and fair to everyone, I think what we should do  
18 is reopen the record so that the intervener and DOB could  
19 respond to whatever are whatever they consider to be rebuttal  
20 from the appellant, and then they can also provide a  
21 conclusion. But I want to come back and we'll have a limited  
22 scope hearing just on the rebuttal. And so then we'll have  
23 a limited scope hearing just on the rebuttal, and then we'll  
24 go ahead and this will be then complete.

25 And I learned something that I will not be ending the

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1 appeal sooner. I was trying to be judicious with our time and  
2 it ended up not working out. So what I would propose is that  
3 again, the intervener and DOB, if they have some response to  
4 what they consider to be rebuttal, to go ahead and make their  
5 comments. And then we'll come back and we'll basically do it  
6 all again live. But we'll have rebuttal. We'll have  
7 questions for rebuttal. Then we'll have conclusions. But it  
8 will only be really on the merits, not things that are outside  
9 of our control, our influence, meaning that it's just the  
10 meaningful connection and the building height measuring point  
11 is what I think are the things around the table. I'm going  
12 to see what everybody else has to think about that. And I'm  
13 going to start with Mr. Smith.

14 MEMBER SMITH: I would agree.

15 BZA CHAIR HILL: Okay. There you go. Then, Mr.  
16 Blake?

17 MEMBER BLAKE: Yeah, I would agree to do that under  
18 an abundance of caution. I think that it's a prudent way to  
19 approach it. And so I just, yeah. That's it.

20 BZA CHAIR HILL: Vice Chair John?

21 BZA VICE CHAIR JOHN: Mr. Chairman.

22 BZA CHAIR HILL: Commissioner Miller?

23 ZC VICE CHAIR MILLER: Thank you, Mr. Chairman. I  
24 also am in agreement, I think the opposition, the Wardman Hotel  
25 Strategy Team, that there wasn't any new information provided

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1 in their statement, in their submission, which is listed as  
2 a rebuttal and closing statement. But I think I agree with  
3 you that in abundance of caution, the property owner intervener  
4 and DOB should have an opportunity to respond to that rebuttal  
5 and ask any questions of the opposition. So I'm prepared to  
6 go with the way that you're suggesting, Mr. Chairman.

7 BZA CHAIR HILL: Thank you, Madam Secretary --

8 BZA VICE CHAIR JOHN: Mr. Chairman, before you move  
9 on, may I ask for some clarification? So will the property  
10 owner and DOB be able to submit written response to the rebuttal  
11 portion of the statement that the appellant submitted?  
12 Because it's titled, it's in two sections. One section is  
13 styled as a rebuttal, and then the last section is described  
14 as closing statement.

15 So my recommendation to you is to allow written  
16 responses only to the rebuttal portion, which is the first  
17 part. And then the limited scope hearing could allow parties  
18 to respond to the rebuttal, and then each party would have an  
19 opportunity to submit oral closing arguments.

20 BZA CHAIR HILL: That sounds very concise to me. And  
21 so let's do that. So that the DOB and intervener will be able  
22 to respond to only the part that says rebuttal, and then we're  
23 going to have a hearing, just limited scope on this rebuttal  
24 issue, and then we'll have oral conclusions. Perfect.

25 Madam Secretary, what is our, I hate to even put it

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1 on next Wednesday, but what does next Wednesday look like or  
2 I guess the 26th?

3 BZA VICE CHAIR JOHN: Mr. Chairman, the 26th might  
4 not be a good day.

5 BZA CHAIR HILL: Oh, right. Okay. What does the  
6 12th look like?

7 MEMBER MEHLERT: The 12th is going to be probably a  
8 pretty busy day. You've got an appeal as well as -- status  
9 case.

10 BZA CHAIR HILL: Okay, so the 26th is not good. And  
11 then we are on for the 3rd of July?

12 MEMBER MEHLERT: Correct.

13 BZA CHAIR HILL: Okay, what's the 3rd of July look  
14 like?

15 MEMBER MEHLERT: The third. You have seven hearing  
16 cases and two decision cases or meeting cases.

17 BZA CHAIR HILL: Okay, let's put it on the 3rd of  
18 July. Commissioner Miller, are you around?

19 ZC VICE CHAIR MILLER: Yes.

20 BZA CHAIR HILL: Okay. So let's put it on for the  
21 3rd of July and I guess you could ask for the -- do you have  
22 a suggested date, Madam Secretary, for the responses?

23 MEMBER MEHLERT: So for responses to? So the only  
24 thing that you're requesting are responses to the appellant's  
25 rebuttal, correct?

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1 BZA CHAIR HILL: Correct.

2 MEMBER MEHLERT: Okay. They could submit by the  
3 21st, 20th or 21st?

4 BZA CHAIR HILL: My whole system just went wonky. I  
5 don't know if that happened to you guys or not.

6 MEMBER MEHLERT: Yeah, that was weird.

7 BZA CHAIR HILL: So you were starting to say they can  
8 submit by --

9 MEMBER MEHLERT: Yeah, I was going to suggest they  
10 could submit by June 21st or June 20th.

11 BZA CHAIR HILL: I think June 21st is fine.

12 MEMBER MEHLERT: And just to clarify, you also would  
13 allow a response, but the ANC is also a permitted response in  
14 this situation if they choose.

15 BZA CHAIR HILL: If they choose, exactly.

16 MEMBER MEHLERT: Okay.

17 BZA CHAIR HILL: Okay, great. Commissioner Miller,  
18 we will see you then on July 3rd.

19 ZC VICE CHAIR MILLER: Okay, thank you.

20 BZA CHAIR HILL: Thank you. Okay, you can call our  
21 next one.

22 BZA VICE CHAIR JOHN: Mr. Chairman, I'm not on this  
23 case.

24 BZA CHAIR HILL: Are you on the one after that?

25 BZA VICE CHAIR JOHN: I don't think so.

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1 BZA CHAIR HILL: Oh, okay. Then thanks for your  
2 service today for the city of the District of Columbia.

3 BZA VICE CHAIR JOHN: You're most welcome.

4 BZA CHAIR HILL: Bye.

5 BZA VICE CHAIR JOHN: Bye.

6 BZA CHAIR HILL: Okay. All right. I'm ready when  
7 you are.

8 MEMBER MEHLERT: Okay. The next application is case  
9 number 21119 of Vikramaditya Railan and Veena Railan. This  
10 is a self-certified application pursuant to Subtitle X,  
11 Section 901.2 for special exceptions under Subtitle U, Section  
12 421 to allow new residential development, and under Subtitle  
13 C, Section 714.3 from the screening requirements for service  
14 parking of Subtitle C, Section 714.2. This is to create two  
15 additional dwelling units in an existing core unit apartment  
16 house with third story and three-story rear additions to the  
17 existing two-story semi-detached building. It's located in  
18 the RA-1 zone at 2232 40th Street NW, square 1317, lot 15.

19 The board heard this case, on May 22nd, at the  
20 hearing, the board granted party status and opposition to Marla  
21 Leftwich or her testimony, requested confusions and closed the  
22 record. Participating on Chairman Hall, Mr. Blake, Mr. Smith  
23 and Dr. Imamura. And as a preliminary matter, there is a  
24 pending Motion to Strike Exhibit 26 from the record which was  
25 submitted by the party in opposition, Marla Leftwich.

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1                   BZA CHAIR HILL:   Okay.   So in terms of the Motion to  
2                   Strike Exhibit 26, I mean, that's the applicant's response to  
3                   the party status request.   So I would think that the applicant  
4                   should have an opportunity and does have an opportunity to  
5                   respond to a party status request.   So I would be denying that  
6                   Motion to Strike.   Mr. Smith, what do you have to say about  
7                   that?

8                   MEMBER SMITH:   I agree with what you stated.   That  
9                   is the applicant's response to the party in opposition and they  
10                  should have the ability to speak.   And I think they would  
11                  probably recommend to, in order to keep the record full, not  
12                  to strike it.   So I will also vote with you in that to not to  
13                  strike the 25th.

14                 BZA CHAIR HILL:   Thank you, Mr. Blake.

15                 MEMBER BLAKE:    I agree.

16                 BZA CHAIR HILL:   Okay, I'm going to make a motion just  
17                  to be clear on this.   I'm going to make a motion to deny the  
18                  Request to Strike Exhibit 26 and ask for a second.   Mr. Blake?

19                 MEMBER BLAKE:    Second.

20                 BZA CHAIR HILL:   Madam Secretary, take a roll call,  
21                  please.

22                 MEMBER MEHLERT:   Respond to the chair's motion to  
23                  deny the party and opposition's Motion to Strike.   Chairman  
24                  Hill?

25                 BZA CHAIR HILL:   Yes.

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1 MEMBER MEHLERT: Mr. Smith?

2 MEMBER SMITH: Yes.

3 MEMBER MEHLERT: Mr. Blake?

4 MEMBER BLAKE: Yes.

5 MEMBER MEHLERT: Staff would record the vote of three  
6 to zero to two to deny the Motion to Strike on the motion made  
7 by Chairman Hill and seconded by Mr. Blake.

8 BZA CHAIR HILL: Okay. So in terms of what is before  
9 us, primarily what was before us, I think was kind of the  
10 screening requirements and then also the U-421, which is to  
11 allow a new residential development. I still think that the  
12 Zoning Commission hopefully can kind of tie U-421 to more  
13 specific things as to why we are seeing any new development  
14 or in this particular case, because I do think that it meets  
15 all of the zoning criteria for this particular development in  
16 this zone.

17 And then after that it speaks to, for some of that,  
18 I guess, kind of the U-421 could be again, light and air,  
19 privacy concerns. But I do think that they are meeting the  
20 criteria under that for us to grant it.

21 However, I think that the party in opposition who has  
22 brought up some concerns about primarily what seems to be the  
23 entrance location, the applicant has put in a new revised site  
24 plan, which is something that I was going to speak about.  
25 Regardless of whether they had this or not, I thought that a

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1 fence on that side, considering it really is just kind of a  
2 walkway and not necessarily a place where people are going to  
3 be hanging out to get in and out of that building. But the  
4 fence is something that would create privacy for that portion  
5 of that side of the property. So I would be in favor of this  
6 new site plan that includes the fence that is in Exhibit 34a.

7 And in terms of the parking screening special  
8 exception, I thought that it was a pretty nominal request.  
9 They're providing four parking spaces. And the screening, I  
10 think, is addressed very well also in the Office of Planning's  
11 report. So I'm going to be voting in favor of this application  
12 with the site plan that is in Exhibit 34a. And I will look  
13 to my other fellow colleagues to help color this vector. Mr.  
14 Smith, do you have anything you'd like to add?

15 MEMBER SMITH: Sure, I'll add my statements. So  
16 what we're tasked with reviewing before us today is two special  
17 exceptions, as you stated. One is for screening around the  
18 service parking lot, which the applicant is requesting relief  
19 for a permeable surface driveway, just to put that out there,  
20 because I think that there were some concerns about runoff.  
21 So what the applicant is proposing is to construct a permeable  
22 surface driveway in order to capture some of that rainwater  
23 runoff that would otherwise end up in the alley or into the  
24 adjacent property owner's yard. So this is the design in order  
25 to mitigate some of those runoff concerns. And the other one

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1 is for a new development that will result in the expansion of  
2 the existing four unit apartment home into a six unit  
3 apartment.

4 The criteria that we are tasked with using to evaluate  
5 the request for the new development are U-421 and the general  
6 special exception requirements. The tools of U-421 are  
7 predominantly related to submittal requirements related to  
8 schools, street impacts and other impacts to the civic space.  
9 A critical tool in that evaluation is U-421.3, which requires  
10 the Office of Planning to evaluate a project related to light,  
11 air, parking and landscape, which the Office of Planning  
12 provides a staff report notating the evaluation that they  
13 conducted in that regard.

14 The property in question meets the minimum side yard  
15 requirement. The side yard requirement is intended to protect  
16 open space and also to allow for light and air. Because they  
17 meet that minimum requirement, the preponderance is that there  
18 is no impact related to light, air or reduction in open space  
19 in the neighborhood. It is also important to note that zoning  
20 regulations do not necessarily directly speak to privacy,  
21 which is again, highly subjective. The other requirements  
22 under this section require the applicant to again to submit  
23 site and building plans to also plan and to evaluate the  
24 application, which they have thoroughly done.

25 Another set of criteria for the evaluation is the

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1       general special exceptions standards under Subtitle X 901 that  
2       deal with general session stands. The first criteria is  
3       whether a project will be in harmony with the general purpose  
4       and intent of the zoning regulations of the RA-1 zone. If the  
5       RA-1 zone's intent is to permit urban residential development  
6       of moderate density dwelling units, including multifamily.  
7       The proposed development meets that intent. The second  
8       criteria is a question on if the property would adversely  
9       affect neighboring properties. The party in opposition  
10      raised a couple points, so I'll go through those particular  
11      points.

12               Concerns was raised about water damage on the  
13      property. So as I stated, as part of their application  
14      proposing permeable surface, a permeable surface driveway for  
15      those parking spaces. So that is intended to mitigate any  
16      water runoff or any water damage that may occur. And again,  
17      water damage, as we stated before in previous cases, is not  
18      necessarily directly a zoning consideration that a board is  
19      empowered to consider. This application will be reviewed by  
20      the Department of Buildings as part of the building permit  
21      process and there will be a review conducted at that particular  
22      time on effects of water runoff and the party in opposition  
23      will have the opportunity to raise any concerns to Department  
24      of Buildings at that particular time.

25               The second point raised by the party in opposition

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1 during her testimony concerned the side interest to the  
2 property and any disruptive noise. The applicant, as you  
3 stated, Chairman Hill, is amenable to constructing a privacy  
4 fence along the property line between the subject property and  
5 the party in opposition's property to mitigate any concerns  
6 that may be related to privacy. This is an interest, as you  
7 stated, it shouldn't be too much loitering that is occurring,  
8 but that fits with address, I believe, some concerns that  
9 relate to privacy in this very urban setting of this particular  
10 neighborhood.

11 The third concern raised was about compromising  
12 property value due to additional units. Again, this is  
13 relative and is not something that is considered or is the  
14 purview of this particular board or any land use board for that  
15 matter, that I can imagine within the District or any  
16 jurisdiction. So it's not something that is necessarily  
17 quantifiable. So that's not something that we're necessarily  
18 empowered to consider as a board.

19 The last concern that was raised was about a lack of  
20 green space. Again, returning back to those setback  
21 requirements. The property meets the minimum side and rear  
22 yard setback requirements, which are intended to protect not  
23 only the health and safety from fire, but also to protect and  
24 provide for effective open space on the property. And the  
25 applicant's proposal again meets all of those setback

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1 requirements.

2 So with that based on the testimony provided by the  
3 applicant and also the applicant providing for an amendment  
4 to the site plans to show the proposed fence in Exhibit 34a,  
5 I believe that applicant has sufficiently met the criteria that  
6 there would not be an adverse impact on the neighboring  
7 property as a result of this type of development.

8 Lastly again, the board is empowered to require  
9 special exceptions to mitigate these impacts, which we, I  
10 believe, are effectively doing by requiring a six foot privacy  
11 fence between the side yards of the subject property and the  
12 party in opposition.

13 So with that, the OP staff report great weight noting  
14 that the ANC is in support of this application and I will also  
15 vote in support of both these special exceptions as well.

16 BZA CHAIR HILL: Thank you. Thank you so much Mr.  
17 Smith. Mr. Blake?

18 MEMBER BLAKE: Yeah. Thank you Mr. Smith. That was  
19 an excellent review of the case and the issues before us. I  
20 agree with your analysis and that also presented by you Mr.  
21 Chairman. The side yard setback is eight and a half feet. The  
22 requirement is eight feet and seventeen feet presumably  
23 between the two buildings. That's a reasonable separation.  
24 You've got a four and a quarter foot walkway which from my  
25 understand may actually be a permeable pavers which also would

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1 have with a water runoff issue. And that area will only lead  
2 to a single door that serves only two apartments. It's not  
3 an area that's really sufficient for residents to linger or  
4 enjoy activity for passive leisure activities. So I don't  
5 necessarily think there's going to be a lot of activity there  
6 coming and going. People won't be moving out every day and  
7 moving in every day. It's a reasonable amount. Bells won't  
8 be ringing outside, they will ring it inside.

9 So I do think that it's a reasonable, the privacy  
10 issue could be a factor. And I do think that the six foot  
11 privacy fence that's proposed which will come from the front  
12 of the building to the complete rear, will provide a fair amount  
13 of additional protection to mitigate some of the potential  
14 impact there. And I would be comfortable supporting this  
15 application with that provision. So I'll be voting in favor  
16 of the application.

17 Oh I'm sorry. Shall I say as far as the parking  
18 screen is concerned, I do agree that the screening, it would  
19 not be adversely impact the -- it's in the rear. The portion  
20 that's going to be open is the rear of the yard to the alley  
21 to the west, which is appropriate, which allow the cars to come  
22 and go and provide them with reasonable access. It's very  
23 consistent with what has happened elsewhere along the alley.  
24 So it won't be, I think, visually intrusive as well. So again,  
25 the issue there is how it impacts the pedestrian traffic and

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1       it does not. I don't think it would. It provides a good  
2       turning radius and everything for the cars there. And as you  
3       said, it adds for the additional parking spaces.

4               So all that said again, Office of Planning does not  
5       recommend any special treatments for parking or anything like  
6       that. Now, I agree with that. I'll be voting in favor of the  
7       application.

8               BZA CHAIR HILL: Thank you, Mr. Blake. All right,  
9       I'm going to make a motion to approve application number 21119  
10      as captioned and read by the secretary, including the revised  
11      site plan in 34a and ask for a second. Mr. Blake?

12              MEMBER BLAKE: Second.

13              BZA CHAIR HILL: Motion made and seconded. Madam  
14      Secretary, would you take a roll call, please?

15              MEMBER MEHLERT: Please respond to the chair's  
16      motion to approve the application, including the revised site  
17      plan in Exhibit 34a. Chairman Hill?

18              BZA CHAIR HILL: Yes.

19              MEMBER MEHLERT: Mr. Smith?

20              MEMBER SMITH: Yes.

21              MEMBER BLAKE: Mr. Blake?

22              MEMBER BLAKE: Yes.

23              MEMBER MEHLERT: And there is an absentee ballot from  
24      Dr. Imamura whose vote is to approve the application such  
25      conditions as the board may impose. Staff would record the

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1 vote as four to zero to one to approve application 201119 on  
2 the motion made by Chairman Hill and seconded by Mr. Blake,  
3 with one board member not participating.

4 BZA CHAIR HILL: Thank you. If you could call our  
5 next case when you get a chance.

6 MEMBER MEHLERT: Next is the board's final decision  
7 case, final case. It's application number 20823a of 5433  
8 Georgia Ave LLC. This is a self-certified application  
9 pursuant to Subtitle X, Section 901.2 for a special exception  
10 under Subtitle C, 1506.1, one from the penthouse setback  
11 requirements of Subtitle C, Section 1504.1, and a request  
12 pursuant to Subtitle Y, Section 704 for a modification of  
13 significance of the order in application number 20823 issued  
14 on December 21, 2022, to modify previously approved plans,  
15 including changing the uses of the first floor from partially  
16 residential to entirely commercial, and decreasing the number  
17 of dwellings units in the building to twenty-one. The project  
18 is located in the MU-4 zone at 5427 Georgia Avenue NW, square  
19 2996, lot 63.

20 The board heard the merits of this case on May 22nd  
21 and closed the record. The board requested information from  
22 the zoning administrator regarding the penthouse walls as well  
23 as the Office of Planning. Participating are Chairman Hill,  
24 Mr. Blake, Mr. Smith, and Dr. Imamura and I will note that the  
25 Office of Planning submitted a supplemental report this

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1 morning as a reminder.

2 BZA CHAIR HILL: Okay, thank you. All right. We  
3 took a lot of testimony about this and I think we could have  
4 had a deliberation at the last hearing, but we were waiting  
5 to hear from Department of Buildings. And we did not hear back  
6 from the Department of Buildings, and we did hear a  
7 supplemental report from the Office of Planning. I very much  
8 appreciate the report that the Office of Planning has  
9 submitted. And I actually really appreciate the extent to  
10 which they are opining on this and clarifying how specific this  
11 application is to their analysis. Again, meaning to say, this  
12 is not something that we would be doing necessarily in the  
13 future, not having the opportunity to really clearly hear from  
14 the Department of Buildings. But I don't want to hold this  
15 project up because I think it makes sense in terms of what  
16 they're asking for with regards to the regulations.

17 If I go and see, they were speaking about the  
18 residential use to office use. They're still keeping the same  
19 number of parking spaces. The community had weighed in on the  
20 change and seems as though they were also comfortable with the  
21 change in use there. The east/west facing walls for the  
22 penthouse, I understand why that is also in need and I am going  
23 to be voting in favor of this application. Mr. Smith, do you  
24 have anything to add?

25 MEMBER SMITH: I have nothing to add, Chairman Hill.

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1 I agree with your assessment of this case and will support it  
2 as well.

3 BZA CHAIR HILL: Thank you, Mr. Blake.

4 MEMBER BLAKE: Yes, Mr. Chairman. I agree with your  
5 assessment as well. I appreciate the insights from the Office  
6 of Planning in this supplemental report. It was very helpful  
7 to help clarify the issue. I think out of an abundance of  
8 caution, we should approach and approve it. It's unclear  
9 whether you need or don't need approval, but in this case I  
10 think it makes sense. But it doesn't really clarify what it  
11 is. But all that said. Yes, I believe the application should  
12 be approved and I will be voting in favor.

13 BZA CHAIR HILL: Thank you. I'm going to make a  
14 motion to approve application number 20823a as captioned by  
15 the secretary and ask for a second. Mr. Blake?

16 MEMBER BLAKE: Second.

17 BZA CHAIR HILL: Motion made and seconded. Madam  
18 Secretary, take a roll call please.

19 MEMBER MEHLERT: Please respond to the chair's  
20 motion to approve the application. Chairman Hill?

21 BZA CHAIR HILL: Yes.

22 MEMBER MEHLERT: Mr. Smith?

23 MEMBER SMITH: Yes.

24 MEMBER MEHLERT: Mr. Blake?

25 MEMBER BLAKE: Yes.

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1                   MEMBER MEHLERT:   And there's an absentee ballot from  
2                   Dr. Imamura whose vote is to approve the application such  
3                   conditions as the board may impose.   Staff would record the  
4                   vote is four to zero to one to approve application 20823a on  
5                   the motion made by Chairman Hill and seconded by Mr. Blake with  
6                   one board member not participating.

7                   BZA CHAIR HILL:   Thank you.   Y'all, thank you so much  
8                   for today.   There was a lot of in and out things that I was  
9                   involved in, and I appreciate all of your support.   I hope you  
10                  all have a lovely day.   We are adjourned.

11                  (Whereupon, the above-entitled matter went off the  
12                  record at 1:08 p.m.)  
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C E R T I F I C A T E

This is to certify that the foregoing transcript


In the matter of: Public Hearing

Before: DC BZA

Date: 06-05-24

Place: teleconference

was duly recorded and accurately transcribed under  
my direction; further, that said transcript is a  
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