

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY

NOVEMBER 19, 2025

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The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened via Video Teleconference, pursuant to notice at 10:00 a.m. EST, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
CARL BLAKE, Vice-Chairperson
CHRISHAUN S. SMITH, NCPC Designee

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson
ROBERT MILLER, Vice-Chairperson
GWEN WRIGHT, District Resident Appointee
JOSEPH S. IMAMURA, PhD, AOC Designee
TAMMY STIDHAM, NPS Designee

OFFICE OF ZONING STAFF PRESENT:

KEARA MEHLERT, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist
TRACEY W. ROSE, Sr. Zoning Specialist
ESTHER BUSHMAN, General Counsel
ELLA ACKERMAN, Zoning Specialist
MARK HAMALA, Zoning Specialist
KEARA MEHLERT, Zoning Specialist

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MICHAEL SAKINEJAD, Zoning Data Coordinator
PAUL YOUNG, A/V Production Specialist

OFFICE OF PLANNING DEVELOPMENT REVIEW STAFF PRESENT:

JOEL LAWSON, Associate Director
RON BARRON
SHEPARD BEAMON
PHILIP BRADFORD
MAXINE BROWN-ROBERTS
MATTHEW JESICK
MICHAEL JURKOVIC
JONATHAN KIRSCHENBAUM
JOSHUA MITCHUM
CRYSTAL MYERS
KAREN THOMAS

OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

SARAH BAJAJ, ESQ.
COMETRIA COOPER, ESQ.
CARISSA DEMARE, ESQ.
DENNIS LIU, ESQ.
HILLARY LOVICK, ESQ.
MARY NAGELHOUT, ESQ.
RYAN NICHOLAS, ESQ.
CHRISTOPHER PENA, ESQ.
JACOB RITTING, ESQ.
MAXIMILIAN TONDRO, ESQ.

The transcript constitutes the minutes from
the Regular Public Meeting held on November 19, 2025.

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

(2:29 p.m.)

CHAIRPERSON HILL: Good morning, ladies and gentlemen. The Board of Zoning Adjustment's 11/19/2025 public hearing will please come to order. My name is Fred Hill, Chairman of the District of Columbia Board of Zoning Adjustment. Today's Board Members that are joining me are Vice Chair Carl Blake, Zoning Commissioners Glen Wright and Zoning Commissioner Vice Chair Rob Miller. Today's meeting and hearing agenda are available on the Office of Zoning's website.

Please be advised that this proceeding is being recorded by a court reporter and is also webcast live via Webex and YouTube Live. The video of the webcast will be available on the Office of Zoning's website after today's hearing. Accordingly, everyone who is listening on Webex or by telephone will be muted during the hearing.

Also, please be advised that we do not take any public testimony at our decision meeting sessions. If you're experiencing difficulty accessing Webex or with your telephone call-in, then please call our OZ hotline number at 202-727-5471. It's also listed on the screen.

At the conclusion of a decision meeting session, I shall, in consultation with the Office of Zoning, determine whether a full or summary order may be issued. A full order

1 is required when the decision it contains is adverse to a
2 party, including an affected ANC. A full order may also be
3 needed if the Board's decision differs from the Office of
4 Planning's recommendation. Although the Board favors these
5 over summary orders whenever possible, an applicant may not
6 request the Board to issue such an order.

7 In today's hearing session, everyone who is
8 listening on Webex or by telephone will be muted during the
9 hearing, and only persons that have signed up to participate
10 or testify will be unmuted at the appropriate time. Please
11 state your name and home address before providing oral
12 testimony or your presentation.

13 Oral presentations should be limited to a summary
14 of your most important points. When you're finished
15 speaking, please mute your audio so that your microphone is
16 no longer picking up sound or background noise.

17 All persons planning to testify either in favor
18 or in opposition should have signed up in advance, but will
19 be called by name to testify. If this is an appeal, only
20 parties are allowed to testify. By signing up to testify,
21 all participants completed the oath or affirmation as
22 required by Subtitle Y § 408.7.

23 Requests to enter evidence at the time of an
24 online virtual hearing, such as written testimony or
25 additional supporting documents, other than live video, which

1 may not be presented as part of the testimony, may be allowed
2 pursuant to Y § 103.13. The order for special, I'm sorry.
3 The order of procedures for special exceptions and variances
4 are pursuant to Y § 409.

5 At the conclusion of each case, an individual who
6 was unable to testify because of technical issues may file
7 a request for leave to file a written version of the planned
8 testimony to the record within 24 hours following the
9 conclusion of the public testimony hearing.

10 If additional written testimony is accepted, then
11 the parties will be allowed a reasonable time to respond as
12 determined by the Board. The Board will then make its -- I'm
13 sorry. The Board will then make its decision at its next
14 meeting session, but no earlier than 48 hours after the
15 hearing. Moreover, the Board may request additional specific
16 information to complete the record.

17 The Board and staff will specify at the end of the
18 hearing exactly what is expected and the dates when persons
19 must submit the evidence to the Office of Zoning. No other
20 information shall be accepted by the Board.

21 Finally, the District of Columbia Administrative
22 Procedures Act requires that a public hearing on each case
23 be held in the open before the public. However, pursuant to
24 405(b) and 406 of that Act, the Board may, consistent with
25 its rules and procedures and the Act, enter into a closed

1 meeting on a case for the purposes of seeking legal counsel
2 on a case pursuant to D.C. Official Code Section 2-575(b)(4)
3 and/or deliberate on a case pursuant to D.C. Official Code
4 2-575(b)(13), but only after providing the public notice, and
5 in the case of an emergency closed meeting, after taking a
6 roll call vote. Madam Secretary, do we have any preliminary
7 matters?

8 MEMBER BLAKE: I know I do.

9 MS. MEHLERT: Good morning. Did you want to do
10 that now or --

11 CHAIRPERSON HILL: You tell me yours first. Go
12 ahead and tell me yours first.

13 MS. MEHLERT: Okay. Regarding today's schedule,
14 application number 21387 of Harold and Danielle Bulger, which
15 was scheduled for expedited review, has been administratively
16 rescheduled to January 21st, 2026.

17 Application Number 21377 of Hampton East Owner,
18 LLC has been postponed till February 4th, 2026. And
19 Application Number 21346 of Daniela Serrano Pavon has been
20 postponed to February 25th, 2026.

21 Also, the Chairman has reviewed and granted
22 waivers to allow late filings into the applicant case records
23 pursuant to Subtitle Y § 206.7 and § 103.13. Any other late
24 filings during the course of today's live hearing should be
25 presented before the Board by the applicant, parties or

1 witnesses after the case is called. After the case is
2 called. Any other specific preliminary matters will be noted
3 when the case is called.

4 CHAIRPERSON HILL: Okay, thank you. So there are
5 two cases that are set for our decision session and that's
6 Application 21319 of 133, I'm sorry, 1332 HARVAR, LLC. And
7 also 21307 of Henry Tam and Lan Tran. Both of those were
8 going to be for a decision meeting today, however, one of our
9 participants had a conflict and was unable to attend today
10 and so I'm going to have to reschedule that for a time when,
11 well, the next available date is going to be December 3rd.
12 So, Madam Secretary, if you can put this on the decision
13 calendar for December 3rd. And then if you can let all of
14 our Board Members know that that's the date that we're going
15 to do this, okay?

16 MS. MEHLERT: Sounds good.

17 CHAIRPERSON HILL: Okay.

18 (Pause.)

19 CHAIRPERSON HILL: Okay, and with that, I guess
20 you can call our first order of business.

21 MS. MEHLERT: Okay. First in the Board's meeting
22 session is Application Number 21360 of M & Potomac Streets
23 Associates. As amended, this is a self-certified application
24 pursuant to Subtitle X § 1002 for area variances from the lot
25 area requirements of Subtitle D § 202.1. The lot occupancy

1 requirements of Subtitle D § 210.1, the rear yard
2 requirements of Subtitle D § 207.1, and the side yard
3 requirements of Subtitle D § 1104.1.

4 This is for a principal dwelling and a new
5 detached building located in the R-3/GT zone at Prospect
6 Street Northwest, Square 1206, Lot 832. This hearing began
7 on October 29th and the record was closed except for
8 information that was requested from the Applicant.

9 And participated were Chairman Hill, Vice Chair
10 Blake and Commissioner Wright. And then as a preliminary
11 matter, as part of their response in Exhibit 43, the party
12 in opposition submitted requests for dismissal and to strike
13 the Applicant's November 5th filing.

14 CHAIRPERSON HILL: Okay. All right, a couple of
15 things. First of all, welcome Commissioner Wright. Then the
16 next is, in terms of the preliminary matters for the
17 dismissal or to strike the record, I'm going to deny those
18 because I'd like to have, again, a full record when I think
19 we're here next. And I'm going to explain that in one
20 second.

21 And I don't think there is cause for a dismissal.
22 So I'm going to deny those requests, unless my Board Members
23 have anything to say. And if so, please speak up. Okay.

24 All right, so the next is, they changed the
25 application, as we kind of spoke about. And they're asking

1 for, they're going from special, from a special exception and
2 area variances to four now, to four variances. So they're
3 increasing the relief. So since they're increasing the
4 relief they're going to have to go back out again. And we're
5 going to have to get a report from the Office of Planning on
6 that relief. So I'm going to send them back out to go ahead
7 and work with the Office of Planning.

8 I don't think there is a need for them to go back
9 to the ANC. Obviously the ANC is going to be notified about
10 this change. And they'll have an opportunity to respond if
11 they like, but the project hasn't changed and so I doubt that
12 their opinion will change. But if they want to, they can go
13 ahead and do that.

14 Then after that, I guess I just kind of point out
15 to the Applicant, like I've looked at this and so I'm a
16 little, how should I say this? I'm suspect as to how this
17 might go, right?

18 So, you know, it may go one way, it may go the
19 other. We have three people here and so everybody is going
20 to have to agree. So I'm kind of throwing the Applicant out
21 there letting them know that like, I -- in Chairman Hoods
22 promise land. There is no promise land out there. You know,
23 I don't want to put you on promise land, that's what the
24 Chairman likes to say.

25 However, you've gone down this road this road this

1 far, it's one more step and who knows where you might get.
2 But I'm kind of throwing that out there to make a very good
3 argument for the relief that you're requesting.

4 With that, I'm going to walk around the table and
5 see if anybody has anything to add. And then I'm going to
6 ask the Secretary to let us know when you might be able to
7 come back here for a continued hearing on the new relief.
8 Vice Chair Blake, do you have anything you'd like to add?

9 MEMBER BLAKE: Mr. Chair, I do not. I think that
10 you covered the issues. I do think that this is a little bit
11 challenging because it's such a very small lot. But we
12 should definitely go through trying to figure out exactly how
13 the Applicant meets the burden. And I would like to see the
14 additional explanation from the Office of Planning on the two
15 additional matters. I'm good otherwise.

16 CHAIRPERSON HILL: Okay, thank you. Commissioner
17 Wright?

18 COMMISSIONER WRIGHT: No, I don't have anything
19 to add.

20 CHAIRPERSON HILL: Okay, great. Thank you. So
21 again, as Vice Chair Blake just mentioned, you know, we'll
22 need a revised burden of proof from the Applicant. I'm not
23 terribly sure whether they went that deep into the record
24 with that because I know that they were going to come back
25 for a continued hearing on this information. And, Madam

1 Secretary, when can we come back?

2 MS. MEHLERT: At this point, since there is only
3 two hearings in December, the December 10th hearing is fairly
4 busy. I would recommend the next date is January 21st.

5 CHAIRPERSON HILL: January 21st. Okay, is that,
6 that's our first day back, right?

7 MS. MEHLERT: Correct.

8 CHAIRPERSON HILL: Okay. How many things are on
9 there?

10 MS. MEHLERT: There are five hearing cases. Plus
11 --

12 CHAIRPERSON HILL: Okay, so --

13 MS. MEHLERT: Sorry. Plus --

14 CHAIRPERSON HILL: Plus, go ahead?

15 MS. MEHLERT: Plus four or five, top, meeting
16 cases and consent items.

17 CHAIRPERSON HILL: Okay. What's the 28th look
18 like?

19 MS. MEHLERT: 28th you have four cases and an
20 appeal, and two meeting cases.

21 CHAIRPERSON HILL: And then February 4th?

22 MS. MEHLERT: You have six cases. Hearing cases.

23 CHAIRPERSON HILL: All right, I'm sorry, the 21st
24 you said we had four cases and then a bunch of decisions?

25 MS. MEHLERT: Five. Five hearing cases on the

1 21st.

2 CHAIRPERSON HILL: Okay. Commissioner Wright, are
3 you around on the 21st?

4 COMMISSIONER WRIGHT: Yes. I'm available on that
5 date.

6 CHAIRPERSON HILL: Okay, great. All right, let's
7 put it then for 1/21. Then I guess if the Applicant has any
8 questions they can reach out to the Office of Zoning to see
9 what might help the process. Okay, Commissioner Wright, I
10 think that's it for you today, right?

11 (No audible response.)

12 CHAIRPERSON HILL: Okay, you have a nice day.

13 COMMISSIONER WRIGHT: Thank you. Have a good day.

14 CHAIRPERSON HILL: Thank you. Give me a second,
15 Madam Secretary.

16 (Pause.)

17 CHAIRPERSON HILL: Okay. All right, great. Okay,
18 you can call our next item of business, Madam Secretary.

19 MS. MEHLERT: Next in the Board's meeting session
20 is Application Number 21333 of Parasol Tree Holdings, LLC.
21 This is a self-certified application pursuant to Subtitle X
22 § 901.22 for a special exception under Subtitle E § 5201 from
23 the lot occupancy requirements of Subtitle E § 210.1, and
24 pursuant to Subtitle X §1002 for a use variance from Subtitle
25 U § 301, to allow an office use.

1 This is for a new office use on the first floor
2 of an existing two-story attached building and three-story
3 rear addition for residential use. Project is located in the
4 RF-1/cap zone at 409 East Capitol Street SE, Square 0817, Lot
5 0812. And this hearing began on September 10th, and
6 concluded on November 5th. Participating were Chairman Hill,
7 Vice Chair Blake and Commissioner Miller.

8 CHAIRPERSON HILL: Great, thank you. All right,
9 everybody so a couple of things. One, I think we should
10 bifurcate this vote and decision on the two items of relief
11 that are being requested. One being the special exception
12 and the other being the use variance. If it's okay I'd like
13 to start with the use variance discussion.

14 And since Vice Chair Blake started this hearing,
15 as I said, I have read in but I started the second part of
16 it, I'd ask him to go ahead and start the discussion on this
17 use variance, and then we'll talk about the special
18 exception, and we'll take two votes. Vice Chair Blake, if
19 you wouldn't mind starting us off?

20 MEMBER BLAKE: Sure. Thank you, Mr. Chair. And
21 I actually would, well me start with the use variance. The
22 Applicant is seeking a use variance to allow office space.
23 Let -- yes. To allow office use on the first floor of this
24 building, which is a residential. Which -- let me get my
25 notes. If I change my screen and I change, give me two

1 seconds.

2 CHAIRPERSON HILL: Take your time.

3 MEMBER BLAKE: The Applicant is seeking a use
4 variance to allow office use. The standard for use variance
5 that was very exceptionally high. And the Applicant must
6 demonstrate that the property is affected by exceptional
7 condition, the strict application of the regulations would
8 not lead to undue hardship.

9 And critically the way we're looking at it, the
10 building cannot reasonably be used for a permitted
11 residential use. I struggled with the first prong of the
12 test. That based on the record reports, I don't believe that
13 the Applicant has met the burden of proof for the first prong
14 of the test.

15 The Applicant has characterized the application
16 as an attempt to legalize the existing office use by
17 permitting a change from one conforming, nonconforming use
18 of a dry cleaners to another, an office. This is not the
19 case, this is a conversion from one nonconforming -- this is
20 not a conversion from one nonconforming use to another, but
21 rather a request for a use variance for a non-residential
22 use.

23 The Applicants are seeking a use variance. When
24 you look at the first element of the prong, the exceptional
25 condition, the Applicant argues that the confluence of

1 factors, including the longstanding commercial use, building
2 design and historical status contribute to an exceptional
3 condition. However, because the nonconforming use has
4 expired, the intent was demonstrated by the owners deliberate
5 switch of use to the office and time has elapsed. The
6 establishments unlawful use was also terminated for
7 nonconforming rights.

8 So because of this there are no vested rights that
9 carry over from the legal nonconforming and nonresidential
10 use is currently conveyed at this property. So as I look at
11 this I think that the use history is irrelevant in that,
12 unless there is an element of structures configuration that
13 resulted from the prior nonconforming use.

14 So in looking at this I'm focusing on the
15 condition, configuration and design of the premises,
16 including its historical status of the property. But then
17 again I'm not, and I can accept that as an exceptional
18 condition, but I'm not convinced that the Applicant has
19 demonstrated exceptional condition exists as there are a lot
20 of buildings in Capitol Hill with similar confining
21 characteristics.

22 So let's look at the second element of the first
23 prong, which is the more significant issue for me in this
24 evaluation. In reviewing the record I could not find
25 substantial evidence supporting the Applicant's claim that

1 the property can't be configured for a reasonable residential
2 use.

3 Looking at cost. The Applicant argues that the
4 first floor configuration, store front glazing and store
5 constraints make residential conversion infeasible. The
6 record contains no objective evidence that the cost
7 associated with such a renovation would be substantially
8 greater than an ordinary renovation.

9 Looking at the structure. There is no structural,
10 no evidence supporting a claim that such a conversion would
11 be structurally impossible. Or that the structure cannot,
12 without typical renovation, be adapted into a compliant
13 dwelling consistent with the purpose and intent of the RF.

14 So historical. While it's presumed that the
15 historic designation places some limits on the facade
16 authorization, there is no evidence in HPRB would prohibit
17 the necessary authorization for the first level or that HPRB
18 would not permit removal, resizing or framing of the
19 storefront window. And I look at the HPRB report, Exhibit
20 40d, and it really does focus on the rear yard addition. It
21 really makes no mention of the first floor facade.

22 So when I look at that, I have a tough time
23 meeting the first prong of the test. I think the second and
24 third prong, certainly the third prong I can see justified
25 based on the way the community has received it. But if you

1 can't meet the first prong you don't, this would in fact be
2 at odds with the zone integrity and the regulation. So for
3 that reason, as I begin this analysis, I have some issues
4 with the use variance.

5 CHAIRPERSON HILL: Okay, thank you. I'd also like
6 to say I, again, was not there for the first hearing but I
7 was there for the second hearing. And I can, and I read into
8 the first hearing, but being there I'm so, I can see why, I
9 can see -- again, I can see HPRB zoned by necessarily things
10 changing around them. And I'm sorry that the, the neighbors
11 are not all in alignment as to how this may or may not move
12 forward.

13 However, in terms of your discussion, Mr. Blake,
14 I appreciate it, and I'm going to agree with what you had put
15 forward in that I don't think that they are meeting the first
16 prong either concerning the use variance. And also since
17 that nonconformity has lapsed, it would be something even
18 more difficult for me to get behind. So I'm not in favor of
19 that use variance.

20 Vice Chair Miller, do you have anything you'd like
21 to add?

22 COMMISSIONER MILLER: Thank you, Mr. Chairman.
23 And thank you, Board Member Blake, for you analysis. And
24 yours as well, Chairman Hill.

25 I tend to agree with Board Member Blake's

1 analysis. Initially at the first hearing, when I was hearing
2 mostly about the impact of the rear addition from the
3 adjacent neighbor and didn't seem to have that much objection
4 to what had been historical commercial use on the first
5 floor, I was somewhat inclined at that point to allow for the
6 use variance. However, between the first hearing and the
7 second hearing we got more submissions about what, when the,
8 as you said Chairman Hill, the use, nonconforming use lapsed,
9 and in fact the illegal use of the last commercial office use
10 in there, the design.

11 So I think, you know, with the years of
12 abandonment of that use variance, we're looking at it anew.
13 And although a lot of Capitol Hill buildings have first floor
14 commercial uses with residential above, a lot of Capitol Hill
15 buildings also have first floor historical commercial use
16 buildings that have been converted to residential use. And
17 so even though there is a store like window there for
18 commercial use and was built originally a hundred years ago,
19 whatever it was, decades ago, I think it was a hundred years
20 ago for commercial use on the first floor, that use was
21 abandoned. And I think the Capitol Hill residential row
22 house zone, I don't see why, I'm not convinced that in a
23 matter-of-right where exempt to use can be facilitated there
24 without any hardship. Particular hardship. So I wasn't
25 persuaded that there is a particular hardship. And that

1 first prong, as Board Member Blake said.

2 So, you know, this is a very desirable
3 neighborhood. I think there is residential people who would
4 want to be in that first floor and can figure out how to do
5 that. So with that I'm not going to support. I agree with
6 you that I'm not going to support the application for a use
7 variance in this case.

8 CHAIRPERSON HILL: Okay, thank you. I'm going to
9 go ahead and make the motion then pursuant to Subtitle X,
10 1002 for a use variance from Subtitle U, 301 to allow office
11 use, I am going to make a motion to deny that in Application
12 Number 21333 and ask for a second, Mr. Blake?

13 MEMBER BLAKE: Second.

14 CHAIRPERSON HILL: Motion made with second. Madam
15 Secretary, take roll call please.

16 MS. MEHLERT: Please respond to the Chair's motion
17 to deny the use variance request. Chairman Hill?

18 CHAIRPERSON HILL: Yes.

19 MS. MEHLERT: Vice Chair Blake?

20 MEMBER BLAKE: Yes.

21 MS. MEHLERT: Commissioner Miller?

22 COMMISSIONER MILLER: Yes to deny.

23 MS. MEHLERT: Staff vote is 3-0-2 to deny the use
24 variance in Application Number 21333 on the motion made by
25 Chairman Hill and seconded by Vice Chair Blake.

1 CHAIRPERSON HILL: Thank you. Okay, now we get
2 to the special exception from the lot occupancy requirements.
3 And again, Vice Chair Blake, if you would not mind starting
4 off our discussion?

5 MEMBER BLAKE: Thank you, Mr. Chair. In this
6 self-certified application the Applicant is seeking special
7 exception from the lot occupant requirement of Subtitle E §
8 210.1 to construct the three-story rear addition for
9 residential use. The Applicant is seeking to increase lot
10 occupancy from 48.5 percent to 70 percent to the maximum of
11 60 percent permitted by a matter-of-right and up to 70
12 percent as a special exception.

13 This structure is a residential building and is
14 residential zone. That is not to say the use isn't
15 irrelevant, but since the nonconforming use has expired no
16 residential use is currently permitted at the property. As
17 such this address -- I do believe this request can be granted
18 pursuant to Subtitle E § 5201, and their general standards
19 of Subtitle X § 901.2.

20 Now this is really for the benefit for the public.
21 A special exception is a permitted departure from a matter-
22 of-right standard provided certain conditions are met. The
23 Applicant must show with substantial evidence that the
24 project will not cause an undo, adverse impact on neighbor
25 and property value. I underlined undo adverse impact. Every

1 project has some impact, whether it's through shadow,
2 visibility or change. But the regulations don't define undo
3 in numerical terms. It simply means that the impacts are
4 excessive, unreasonable or inconsistent with what's expected
5 in the zone.

6 Ultimately it's the Board task to waive the nature
7 and degree of those impacts against the purpose of the zoning
8 district and any proposed mitigation. There is no strict
9 threshold, there is a qualitative judgment based on context,
10 scale and reasonable.

11 In reviewing the application for special
12 exceptions under the zoning regulations, the Board discretion
13 is limited though to determining whether the proposed
14 exception satisfies the relevant zoning requirement. It's
15 directly -- if these differences are satisfied, the Board
16 ordinarily must grant the application.

17 So many issues were raised by the party's in
18 opposition. I'm only going to focus on the ones that fall
19 under the Board's prevue. This request, as I said, can be
20 granted pursuant to Subtitle E § 5201 and the general
21 standards of X § 901.2. Especially the general standards
22 really require that the relief is in harmony with purpose and
23 intent of the zoning regulations, the maps. And that the
24 relief doesn't adversely affect neighboring property.

25 The additional criteria, E § 5201, specified that

1 the Applicant must show that light and air to the neighbors
2 are not unduly affected, the privacy of neighbors are not
3 unduly compromised and there is no substantial visual
4 intrusion as seen from the public way. So, neighbors in this
5 case expressed apprehension about the conditions received,
6 mass, the potential loss of morning light, and the possible
7 overlook into their rear yards. Those concerns are real and
8 understandable in the Historic Capitol Hill context. But our
9 task is to weigh them against evidence required by the
10 regulations. And the record here is, I think, very clear.

11 Starting with the first test, the E § 5201, first
12 condition, E § 5201(a) on light and air. The Applicant
13 submitted a full year sun and shade study. I agree with the
14 Office of Planning's assessment of the shade study which
15 included the additional, the addition produces a minimal
16 incremental shadow. The addition extends only ten feet
17 beyond the building of 411's rear wall and aligns with 405.
18 Otherwise the mass of the building is in the matter-of-rights
19 standard and the rear yard continues to exceed the required
20 rear yard which will conserve adequate air flow. From this
21 it's reasonable to conclude that the light and air to
22 neighboring properties will not be unduly affected.

23 With regard to 5201(b) privacy. Several
24 neighbors, as well as the party in opposition expressed
25 sincere concern about the potential adverse effect from

1 privacy of neighboring property. Specifically there were
2 concerns that the rear windows in the overlooked yards
3 compromises privacy. The proposed plan showed that the
4 addition has no side windows and the deck faces forward,
5 north, toward East Capitol Street and away from the
6 neighbor's rear yards. So based on the planned fenestration
7 and the orientation of the deck, there should be no direct
8 views into the adjacent buildings or rear yards. These
9 factors indicate that the proposed additions would not have
10 a great impact on privacy and a matter-of-right addition.
11 So I conclude from that that the privacy of use and enjoyment
12 would not be unduly compromised by the proposed addition.

13 I would just say that before I go onto the next
14 part, on visual intrusion, the party's in opposition had some
15 concerns as to whether the plans that they had seen were
16 complete and if they were able to get a full flavor of what
17 the Applicant was doing. We did review those. And I do
18 think I was comfortable with what I saw, so I do think there
19 is a level of communication that didn't necessarily take
20 place to make sure that the Applicant made the neighbors well
21 aware exactly what the dimensions and building would be and
22 how they could work to deal with some mitigating issues if
23 they felt there were some issues that needed to be addressed.

24 And now I'm going to turn to E § 5201(c) visual
25 intrusion. Those in opposition expressed concerns that the

1 addition would be an eye sore and visually overwhelming. The
2 sight line diagrams provided by the Applicant demonstrated
3 that the third-story is not visible from the street on
4 account there was substantial front setback. But
5 importantly, I also know the HPRB found the design compatible
6 with the character and scale of the block. Concerning these
7 factors I don't believe that the proposed addition, together
8 with the original building as views from the street, should
9 substantially visually intrude upon the character, scale and
10 pattern of houses along the street.

11 Finally, under X § 901.2. I find the project
12 remains in harmony with the intent of the RF-1 cap zone. It
13 adds modest housing, it does not adversely affect neighboring
14 properties in a manner that rises to an undo level.

15 The Board is required to give great weight to the
16 issues concerned raised by the ANC. I reviewed the written
17 recommendations for the written reports of ANC 6A and ANC 6C.
18 The written reports from ANC 6A raises several for concerns.
19 First, the addition lot occupancy is too aggressive for the
20 block. Second, the massing may adversely affect the
21 neighboring light, air and privacy. And third, approving the
22 special exception could set a precedence for overbuilding in
23 the Capitol Hill's RF-1 cap concept.

24 These are legitimate planning concerns and I
25 appreciate the ANC's attentiveness to the neighborhood

1 character. However, the technical evidence in the record,
2 which I have viewed, reviewed in analysis of conditions E §
3 5201 addressed the general concern as expressed by ANC
4 6A. ANC 6A. So I'm not persuaded by the ANC's
5 recommendation.

6 The report of ANC 6C states concern with regard
7 to the special exception and is in support of the requested
8 relief. So with that in mind I would be, not be in support
9 of the -- I would be in support of the special exception.
10 I would be in support of the special exception. Mr. Chair,
11 that's all I have for that.

12 CHAIRPERSON HILL: Thank you, Mr. Blake. Yes, as
13 I mentioned before, I, it's always disappointing when all the
14 neighbors aren't happy about a project that might be coming
15 up about them. And as you mentioned, that, you know, and by
16 the way, I appreciate Mr. Blake, all that you just went
17 through.

18 The undo adverse impact. You know, again, there
19 would be some impact. And whether or not I think there would
20 be undo adverse impact is just one of three opinions. But
21 that I think that the visibility is not something that I will
22 be concerned about as to the fact that there are no side
23 windows as well. And as you mentioned, the balcony is faced
24 in the way, in the direction that they do.

25 I also think that they're not asking for relief

1 from the ten foot rule, they're building within that matter-
2 of-right envelope. However, they do need the lot occupancy
3 relief. And I think as per also the analysis the Office of
4 Planning has provided, as well as the analysis that you, Mr.
5 Blake, have just provided, I will be voting in favor of the
6 special exception. For those items that you went through,
7 as was the Office of Planning. Vice Chair Miller?

8 COMMISSIONER MILLER: Thank you, Mr. Chairman.
9 While I appreciate the comprehensive analysis, as always,
10 that Board Member Blake has given, on both the use variance
11 and what we're talking about now, the special exception for
12 the lot occupancy, I cannot support the special exception
13 today. The ANC, I think you said 6A but it's 6B. I think
14 Board Member Blake had echoed concern of the neighbor that,
15 the neighbors enjoyment of their own backyard would be
16 reduced by the presence of the Applicant's rear expansion.

17 We had the adjacent neighbors', Frank Snelling and
18 Mary Landrews (phonetic), extensive testimony that their use
19 and enjoyment and visual intrusion would be, would
20 substantially adversely affect the use of enjoyment that they
21 have. We also had similar testimony from a neighbor in the
22 rear. And, you know, it's going, the existing lot occupancy
23 is 48 percent of what's there now. Sixty percent is matter-
24 of-right. At 60 percent matter-of-right lot occupancy would
25 be a good addition. You could put another unit in there.

1 More residential use. And consistent with the RF Capitol
2 Hill zone.

3 But to go from 48 percent to 70 percent, even
4 though permitted as a special exception, we then have to take
5 into account adverse impact. This is a large addition to a
6 48 percent lot occupancy house. They could go to 60 percent
7 as a matter-of-right and still get a lot more residential use
8 there than they currently have. And I think there might have
9 been an earlier proposal that was a smaller, slightly smaller
10 addition.

11 Which I think the HPRB staff originally
12 considered. And I think that HPRB staff report, there has
13 been a, I think a motion before that proceeding by the party
14 in opposition in this case to reconsider reopening that case.

15 So I cannot support the special exception because
16 I think it does substantially adversely affect the neighbors
17 use and enjoyment of their property. And we have the ANC 6B
18 concurrence with that. The affected, one of the affected
19 ANCs. So I'm sorry that we don't have three votes here today
20 to do anything, unless you want to agree with, unless I agree
21 with you, or if you want to turn around and agree with me to
22 deny it. So there we are.

23 CHAIRPERSON HILL: Okay, Vice Chair Miller. Okay,
24 thank you, Vice Chair Miller, thank you for your opinion and
25 your analysis. Let's see, I'm going to see what happens

1 here. I think I know what's going to happen here. So I am
2 going to make a motion to approve Application Number 21333
3 with regard to, pursuant to X § 901.2 for a special exception
4 under E § 5201 from the lot occupancy requirements of E §
5 210.1 from a maximum permit of 60 percent to 70 percent
6 proposed from the 48.5 percent existing lot occupancy and ask
7 for a second, Mr. Blake?

8 MEMBER BLAKE: Second.

9 CHAIRPERSON HILL: Motion made and seconded.
10 Madam Secretary, would you take a roll call?

11 MS. MEHLERT: Please respond to the Chair's motion
12 to approve the special exception on the lot occupancy
13 requirements. Chairman Hill?

14 CHAIRPERSON HILL: Yes.

15 MS. MEHLERT: Vice Chair Blake?

16 MEMBER BLAKE: Yes.

17 MS. MEHLERT: Commissioner Miller?

18 COMMISSIONER MILLER: No.

19 MS. MEHLERT: Staff would record the vote as 2-1-2
20 on the motion made by Chairman Hill, and seconded by Vice
21 Chair Blake. The motion fails due to lack of majority.

22 CHAIRPERSON HILL: Okay, great. Thank you, Madam
23 Secretary. So I guess what we'll go ahead and do is, I know
24 that there is a couple of people that should be coming online
25 for us, meaning the Board, relatively soon. And so, Madam

1 Secretary, I will just wait to see when we get somebody
2 before we can schedule this again. And it will take time
3 because, let's see. It will take time because we have to get
4 somebody. Then that person is going to have to review this
5 entire record, which is extensive, and then we will try and
6 have a, we might even have a continued hearing so that the
7 person who is here might have any questions if they might
8 need answered, answered, and then we will end up taking a
9 vote.

10 So, Madam Secretary, I guess I'm just going to put
11 it on hold is all I can say, correct?

12 MS. MEHLERT: That's fine. Well you can follow-up
13 with the Applicant.

14 CHAIRPERSON HILL: Okay, great. And I do want to
15 say that, you know, this is always a difficult thing for all
16 of us and I do appreciate the analysis that we have all done
17 today.

18 (Whereupon, the above-entitled matter went off the
19 record at 3:17 p.m.)
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C E R T I F I C A T E

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2 This is to certify that the foregoing transcript was duly
3 recorded and accurately transcribed under my direction;
4 further, that said transcript is a true and accurate record
5 of the proceedings; and that I am neither counsel for,
6 related to, nor employed by any of the parties to this action
7 in which this matter was taken; and further that I am not a
8 relative nor an employee of any of the parties nor counsel
9 employed by the parties, and I am not financially or
10 otherwise interested in the outcome of the action.

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16 Neal R. Gross

17 Court Reporter