

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

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WEDNESDAY

DECEMBER 3, 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 9:45 a.m. EST, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson  
CARL BLAKE, Vice-Chairperson

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD, Chairman  
ROBERT MILLER, Vice Chairman  
JOSEPH S. IMAMURA, PhD, AOC Designee

OFFICE OF ZONING STAFF PRESENT:

KEARA MEHLERT, Secretary  
PAUL YOUNG, A/V Production Specialist

OFFICE OF PLANNING DEVELOPMENT REVIEW STAFF PRESENT:

PHILIP BRADFORD  
MICHAEL JURKOVIC  
JONATHAN KIRSCHENBAUM  
JOSHUA MITCHUM  
CRYSTAL MYERS  
KAREN THOMAS

1 OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

2 SARAH BAJAJ, ESQ.

3 The transcript constitutes the minutes from the  
4 Regular Public Meeting held on December 3, 2025.  
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P-R-O-C-E-E-D-I-N-G-S

(9:40 a.m.)

BZA CHAIR HILL: Good morning, ladies and gentlemen. The Board of Zoning Adjustment's 12/3/2025 public meeting will please come to order.

My name is Fred Hill, Chairman of the District of Columbia Board of Zoning Adjustment. Today joining me are Board Members Carl Blake, as well as Commissioners Rob Miller, Joe Imamura, and Anthony Hood.

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. It is also webcast live via Webex and You Tube Live. The video of the webcast will be available on the Office of Zoning's web site 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've experiencing difficulty accessing Webex or with your telephone call in, then please call our OZ hotline number at 202-727-5471 to receive Webex log in or call in instructions.

At the conclusion of a decision meeting session I shall, in consultation with the Office of

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

9 In today's hearing session everyone who is  
10 listening on Webex or by telephone will be muted during  
11 the hearing and only persons who have signed up to  
12 participate or testify will be un-muted at the  
13 appropriate time. Please state your name and home  
14 address before providing oral testimony or your  
15 presentation. Oral presentations should be limited to  
16 a summary of your most important points. When you're  
17 finished speaking, please mute your audio so that your  
18 microphone is no longer picking up sound or background  
19 noise.

20 All persons planning to testify either in  
21 favor or in opposition should have signed up in advance.

22 They'll be called by name to testify. If this appeal,  
23 only parties are allowed to testify. By signing up to  
24 testify all participants will be under oath or  
25 affirmation as required by Y 1408.7.

1           Requests to enter evidence at the time in  
2 online virtual hearings such as written testimony or  
3 additional supporting documents other than live video,  
4 which may not be presented as part of a testimony, may  
5 be allowed pursuant to Y 103.13, providing that the  
6 person making the request to enter an exhibit explain:  
7 (A) how the proposed exhibit is relevant; (B) the good  
8 cause that justifies allowing the exhibit into the  
9 record, including an explanation of why the requester  
10 did not file the exhibit prior to the hearing pursuant  
11 to Y 206; and (C) how the proposed exhibit would not  
12 unreasonably prejudice any parties. There are no  
13 procedures for special exceptions and variances under  
14 Y 409.

15           At the conclusion of each case an individual  
16 who was unable to testify because of technical issues  
17 may file a request for leave to file a written version  
18 of the planned testimony to the record within 24 hours  
19 following the conclusion of public testimony and the  
20 hearing.

21           If additional written testimony is accepted,  
22 then parties will be allowed a reasonable time to respond  
23 as determined by the Board. The Board will then make  
24 its decision at its next meeting session, but no earlier  
25 than 48 hours after the hearing. Moreover, the Board

1 may request additional specific information to complete  
2 the record. The Board and the staff will specify at  
3 the end of the hearing exactly what is expected and the  
4 date when persons must submit the evidence to the Office  
5 of Zoning. No other information shall be accepted by  
6 the Board.

7 Finally, the District of Columbia  
8 Administrative Procedures Act requires that the public  
9 hearing on each case be held in the open before the  
10 public. However, pursuant to 405(b) and 406 of that  
11 Act the Board may, consistent with its rules of  
12 procedures and the act, enter into a closed meeting on  
13 a case for purposes of seeking legal counsel on a case  
14 pursuant to D.C. Official Code Section 2-575(b)(4),  
15 and/or deliberate on a case pursuant to D.C. Official  
16 Code Section 2-575(b)(13), but only after providing and  
17 serving public notice in the case or emergency closed  
18 meeting after taking a roll call vote.

19 Madam Secretary, do we have any preliminary  
20 matters?

21 MS. MEHLERT: Good morning, Mr. Chairman,  
22 members of the Board. Today's schedule, Application  
23 No. 21383 of HDR Holdings II, LLC has been withdrawn.

24 Also, the chairman has reviewed and granted  
25 waivers to allow late filings into the applicable case

1 records pursuant to Subtitle Y, Section 206.7, and  
2 Section 103.13. Any other late filings during the  
3 course of today's live hearing should be presented  
4 before the Board by the applicant parties or witnesses  
5 after the case is called.

6 Any other preliminary matters will be noted  
7 when the case is called.

8 BZA CHAIR HILL: Okay. Great. Thank you.

9 Let's see. I'm trying to work through some  
10 different scheduling issues. And so, there are two  
11 decision cases that I need to put off until 11:30 this  
12 morning. And those are going to be 21319 of HARVAR,  
13 LLC, and then 21307 of Henry Tam and Lan Tran. And  
14 there's also a possibility that I might even have to  
15 push off one of them until next week, but at 11:30 I  
16 know we're going to get the other Commissioner for these  
17 decisions and we can see what happens at that time.

18 I think, Commissioner Miller, are you with  
19 us for the first decision case?

20 COMMISSIONER MILLER: Yes, I believe I am.

21 BZA CHAIR HILL: Great. Good morning.  
22 Welcome.

23 COMMISSIONER MILLER: Good morning.

24 BZA CHAIR HILL: I am not at my current office,  
25 and so I only have one screen. So I'm going to be kind

1 of trying to do this.

2 But if you, Madam Secretary, could call our  
3 first decision, please?

4 MS. MEHLERT: The first case in the Board's  
5 meeting session is Application No. 21329 of Stephen  
6 Jackson. This is an application pursuant to Subtitle  
7 X, Section 901.2 for a special exception under Subtitle  
8 E, Section 204.4 and the requirements of Subtitle E,  
9 Section 204.1 to allow removal or significant alteration  
10 of a roof top architectural element original to a  
11 principal building.

12 This is for the alternation of the roof of  
13 a front porch to allow installation of a railing for  
14 a second-story deck at an existing two-story attached  
15 principal dwelling. It's located in the RF-1 Zone at  
16 1128 4th Street, NE, Square 773, Lot 73.

17 This was heard on November 5th and the Board  
18 closed the record except for submissions from the  
19 applicant, and participating are Chairman Hill, Vice  
20 Chair Blake, and Commissioner Miller.

21 BZA CHAIR HILL: Okay. Thank you. For the  
22 record we did ask for certain items from the applicant.

23 We did get those items from the applicant; however,  
24 we also got some letters of support from other members  
25 of the public. And that's not really what we asked for;



1 however, I don't mind having those items in the record  
2 unless one of my fellow Board members has an issue with  
3 it.

4 Do any of my fellow Board members have an issue  
5 with it? If so, please speak up?

6 COMMISSIONER MILLER: I have no problem with.

7 And actually I did ask for outreach to the neighbors  
8 across the street, and I think most of the letters were  
9 from the neighbors -- letters of support from the  
10 neighbors directly across the street. So the applicant  
11 responded to my request to do outreach to those  
12 neighbors, and we got that response.

13 BZA CHAIR HILL: Okay. Great. Thanks,  
14 Commissioner.

15 So, Madam Secretary, if you could -- I guess  
16 that is then something that the Board somewhat asked  
17 for, so -- or asked for, so if you could please just  
18 include all those items in the record.

19 So I struggled with this one a little bit and  
20 -- I struggled with it a lot actually, and I am at this  
21 point going to say I'm not going to be able to vote in  
22 favor of this. And the reason why I'm disappointed is  
23 that, I don't know, I just -- I don't like -- I'm  
24 disappointed I'm not going to be able to vote in favor  
25 of this.

1           And the reason why that I have is that within  
2 X 901.2, the Special Exceptions Review Standards, I  
3 didn't have any issued with that. And really my whole  
4 thing came down to X 204.4(iii), which the proposed  
5 construction as viewed from the street, alley, and other  
6 public way, shall not substantially visually intrude  
7 upon the character, scale, and pattern of houses along  
8 the street or alley frontage.

9           And we might not have all the votes for this  
10 one way or the other, but for me -- and really this was  
11 the thing. I really do appreciate the applicant, that  
12 they took the pictures the way I had asked for them  
13 because I got to see the whole row. And that whole row,  
14 nobody has the railing on the row, right?

15           And that's not to say that at another time,  
16 with another Board, with other Board members, and even  
17 whatever you all have to think actually, whether or not  
18 it meets the criteria, you could vote in favor of it.

19           I mean, again, oftentimes somebody -- the statement  
20 has been oftentimes somebody has to go first. And if  
21 somebody goes first, then slowly the row changes.

22           The ANC came forward and the ANC gave their  
23 opinion concerning this relief, and they didn't think  
24 that they met the criteria for those reasons.

25           Part of my thinking through this, I guess,

1 was that if this had come before us brand new -- I again  
2 don't know how I would have voted because it's kind of  
3 a different situation. But the fact that this was there  
4 and done kind of before coming to us, it makes it another  
5 reason why I think that -- I don't feel comfortable about  
6 it, I suppose, is what I'm mostly trying to say.

7           Also, I think that it's an easy fix for the  
8 applicant in that they do have the opportunity to put  
9 a fence there for the door there, or whatever that --  
10 that blocks the door so that they can still have access  
11 at least to the air. And then I also understand there's  
12 also ways that they might be able to use the rear of  
13 the house to have some outdoor space in the way that  
14 they would like to do it.

15           Again, for me -- I've been here now 10 years  
16 or so. And so years ago there was something where like  
17 there was a turret on one particular row and I had to  
18 vote whether that turret got removed or not. And I voted  
19 in favor of it. And then I looked back at it and just  
20 that row looked changed now. And I had difficulty with  
21 it after-the-fact. And then now I'm looking at this  
22 same thing.

23           And really the fact that the ANC, which is  
24 supposedly who the community has the best -- it's the  
25 people that most in touch with that community -- they're

1 opposed to this. And that's not to say that I won't  
2 disagree with this ANC in the future, because I have,  
3 but in this particular case I'm going to believe that  
4 they're not meeting the criteria for me to be able to  
5 vote in favor of this application.

6 So with that, I'll just kind of go around the  
7 table and see how it goes. Mr. Blake, do you have an  
8 opinion?

9 VICE CHAIR BLAKE: I do, but I'd like to defer  
10 to Commissioner Miller.

11 BZA CHAIR HILL: Commissioner Miller, do you  
12 have an opinion? Do you need a minute for your opinion?

13 COMMISSIONER MILLER: Yes, I actually think  
14 I shared it at the end of the hearing. I respectfully  
15 disagree, Mr. Chairman, with your opinions. It is  
16 somewhat of a subjective judgment as to whether  
17 something substantially intrudes upon -- visually --  
18 substantially visually intrudes upon the character,  
19 scale, and pattern of the houses in the neighborhood.  
20 It's not just change. It's substantially visually  
21 intrude.

22 And I appreciated the color photographs that  
23 Board Member Blake, and maybe you also, Mr. Chairman,  
24 requested of the whole block and then the individual  
25 houses. And because that did show that it was -- it's

1 the only one. But it also shows there's that tree, very  
2 beautiful tree right in -- almost right on front of this  
3 house. So it makes it difficult to actually see all  
4 of the railing at once.

5 In fact, one of the neighbors -- so the  
6 applicant did provide -- the visual intrusion would be  
7 most affected by people walking on the street, I guess,  
8 on the other side of the street, or on that side, or  
9 mostly from the people who are in the houses on the --  
10 directly across the street and that perspective.

11 And we got those letters of support from those  
12 neighbors, one saying they couldn't even see it. And  
13 I kind of understand that, because I was having trouble  
14 finding that house with the railing, because the  
15 railings are there. And as you said, they were put there  
16 unlawfully, which is unfortunate. But the applicant  
17 has finally come clean and is trying to after-the-fact  
18 do what should have been done in the beginning, get our  
19 approval, or review and approval or disapproval of this  
20 change to the roof of the porch essentially, adding those  
21 railings, which are -- I really see them as minimally  
22 visually intrusive.

23 They're black. They're thin. There's air  
24 in between them. And it's a change, but I don't think  
25 it's a substantial visual intrusion, especially with

1 the tree there, especially with the neighbors across  
2 the street who would be most affected, one that can't  
3 even see it. I couldn't see it. I had trouble finding  
4 it when I was looking at the color photographs, but I  
5 did find it.

6 So, and Office of Planning did reach the same  
7 conclusion that it was not a substantial visual  
8 intrusion. So it's unfortunate that it was that --  
9 whether it was misrepresentation or intentional,  
10 ignoring the Zoning Regulations and coming before us  
11 before-the-fact. And we saw that -- we did see -- I  
12 appreciate Commissioner Eckenwiler providing the permit  
13 plans that were approved, which showed not a fence, Mr.  
14 Chairman. A fence would really be intrusive.

15 But the Juliet balcony is what was approved,  
16 if that's what you're referring to, off of that second  
17 floor. And I actually think that might be -- even though  
18 that may be a matter of -- I don't know if that was  
19 matter-of-right or not, but it -- that actually looks  
20 more visually intrusive to me than what's been done  
21 there.

22 So, that's where I am. So it's unfortunate  
23 that we're not going to have three votes to go either  
24 way given yours and my positions, but that's what happens  
25 when you only have three people and you need three votes

1 to do anything, one -- either the Zoning Commission or  
2 the BZA. So that's where I am. I was prepared to  
3 support the application today.

4 BZA CHAIR HILL: Okay. Thanks, Commissioner  
5 Miller.

6 Yes, Commissioner Miller, I mean, we  
7 oftentimes have different views, and I guess I  
8 appreciate -- the word substantially is the one that  
9 again allows some flexibility as to what one thing is  
10 substantial or not. And so I mean, I can go back and  
11 look at it as well, because we're going to be split  
12 obviously at this point.

13 And then I guess, Commissioner, I'm kind of  
14 curious. If this weren't covered by the tree -- because  
15 now everybody will end up doing it, right, if this goes  
16 this way. If the tree wasn't there does that change  
17 your opinion much?

18 COMMISSIONER MILLER: I really -- and I  
19 thought of that because I couldn't see a picture of it  
20 without the tree, but I can visualize it. And he did  
21 show in the original color photograph of just the --  
22 of his house blown up, that you can see half of the  
23 railing with the tree blocking part of it. He was doing  
24 it from below, from the sidewalk.

25 The tree is a factor, but I'm not sure if it

1 wasn't there it would -- if I would have a different  
2 opinion. And I was looking at it as we -- even though  
3 it was done after-the-fact, we were looking at it as  
4 if it wasn't there. So it is kind of looking at it as  
5 anew.

6 I mean, we're not supposed to -- it's  
7 unfortunate that it was done unlawfully, that they'd  
8 come forward and done in the right way after-the-fact.

9 People have been living with it there for a couple years  
10 now, I think at least, maybe three. And there hasn't  
11 been objection, although the ANC strongly is concerned  
12 about it, ANC 6C. And I respect their opinion as well.

13 But I just happen to disagree, so I'd be  
14 interested in where Board Member Blake is, but we're  
15 not going to be -- unless you switch your -- unless one  
16 of us switches our vote. Well, let's see where Board  
17 Member Blake is.

18 BZA CHAIR HILL: Yes. No, no, no. I mean  
19 I'm not -- I just want to continue to -- because I think  
20 what might end up happening is that we're all going to  
21 take a look at it again more, or not, and then the --  
22 or wait until we get one more member. But then also  
23 -- oh, I just want to mention -- yes. No, when I --  
24 I didn't think it was Juliet balcony. That's what I  
25 meant by a fence. Like there was some railing. The



1 railing I think was just pushed right up against the  
2 face of the building. And so it was just a railing.

3 COMMISSIONER MILLER: I thought it was a  
4 Juliet balcony, but -- which you can't use really. So  
5 it is just the air.

6 BZA CHAIR HILL: Yes.

7 COMMISSIONER MILLER: So you're right about  
8 that. And it is very close. That's why you can't use  
9 it, to walk out onto it. But anyway, yes. So that's  
10 all I have to say at this point.

11 BZA CHAIR HILL: Okay. Thanks,  
12 Commissioner.

13 Mr. Blake?

14 VICE CHAIR BLAKE: Yes, just to follow on that  
15 point, I think it was a Juliet balcony. And what I found  
16 interesting about it is that the railing design was  
17 fairly similar to what ultimately took place in terms  
18 of design on the actual railings for the porch top.

19 So to me the issue doesn't really necessarily  
20 come down to that. It's more so an issue of a deck.

21 Not so much the railing, but the fact that there's a  
22 deck that comes with it. And so I kind of look at it  
23 a little -- slightly different way. But anyway, the  
24 issue that we actually have to look at is whether the  
25 metal railing on the porch top really disrupts the block

1 face and the established uniformity and the rhythm,  
2 architectural rhythm.

3 Now the standard that we have in Zoning is  
4 a little bit looser than -- well, not looser -- is a  
5 little different than that because we do look at  
6 substantially intrude, substantially being a key word,  
7 the character, scale, and pattern of houses along the  
8 street frontage. Clearly, that's where the debate is.

9 The ANC argues that the railings disrupt the  
10 block face uniformity. The OP argues that it's not  
11 substantially disruptive to the block face's character  
12 or pattern. I mean, the reality is the guard rail is  
13 similar in appearance to other guard rails on the street.

14 So in that sense it's not a disruptive feature, but  
15 the Office of Planning actually looks at this from the  
16 perspective of the neighborhood. And I think the way  
17 that the ANC looked at it was really focusing on a 31-unit  
18 block face, which is the most relevant for this analysis.

19 In the context of that block face you could  
20 ask yourself the question is this a significant  
21 aberration from the architectural design or is this kind  
22 of like a modest one? You could argue with all the other  
23 elements they have there in terms of the roof design,  
24 the other issues. You probably could argue that this  
25 is a minor part of it.

1           But at the same time I think that it does --  
2   if you look at the row, it is -- and those pictures were  
3   very, very helpful and that it gave you a sense of what  
4   really was there relative to the block. And it is a  
5   very attractive block in terms of that continuous  
6   frontage. There are some designs that differ  
7   specifically on the roof and stuff like that, but overall  
8   it is a fairly handsome block, and largely because of  
9   the uniformity. And they were all constructed at one  
10   time. Of course that's not protected by the historical  
11   community, but our requirements do substantially  
12   support that.

13           One thing that I didn't have to draw on were  
14   court precedents, court cases, court directions and  
15   principles, which was a little bit disappointing because  
16   that would have been helpful. And our case history,  
17   we do have a lot of cases about this type of thing in  
18   this area. We actually had one recently not too far  
19   away that basically had about the same issue about a  
20   porch railing.

21           The interesting thing about that though is  
22   that in looking at that the Office of Planning used the  
23   same lens for analysis, but the block itself there was  
24   a little bit more of a hodge-podge. You don't  
25   necessarily have other roof top decks, but you had

1 pop-ups, you had this, you had that. They had a lot  
2 of different things. It didn't have the same uniformity  
3 of this.

4           And where I found the Office of Planning's  
5 analysis a little flawed was the fact that it did take  
6 a general look at the neighborhood and didn't focus  
7 specifically on this 31-row house, because it really  
8 does have -- they share the same porch topology. No  
9 one has a roof top railing. It's a change. And it's  
10 a minor considering the elements, but again, it is  
11 different and does change the way it looks. And I think  
12 the issue, too, again comes back to it's not just a  
13 railing; it's a deck.

14           So all that said, I'm a little bit on the fence  
15 about it. I do think that the Office of Planning did  
16 -- analysis is spot on and consistent. I do think that  
17 if you expand your analysis to look at the neighborhood,  
18 the district as a whole, you're going to find plenty  
19 of these porch-type decks and so forth.

20           But in this particular niche, if we focus  
21 primarily on the neighborhood, the immediate  
22 neighborhood, the immediate buildings, this is an  
23 aberration. And again, I'm not sure if it reaches the  
24 standard that would warrant it.

25           But I think a comment that Commission

1 Eckenwiler made, which I'm sympathetic to, is that --  
2 he said it might be the camel's nose under the tent.

3 And I said, well, that's just -- that's a start. And  
4 he said no, but I think it could be a substantial visual  
5 intrusion on character, scale, and pattern. And I don't  
6 know that I could actually get to that point either.

7 So I'll leave it at I'm undecided.

8 BZA CHAIR HILL: Okay. So that's fine.

9 COMMISSIONER MILLER: Mr. Chairman, I  
10 appreciate Board Member Blake's observation, thoughtful  
11 as always. That triggered something I meant to say that  
12 Commissioner Eckenwiler pointed out in his testimony,  
13 that the Zoning Commission is currently considering a  
14 number of changes to the text amendments to the omnibus  
15 to the Zoning Regulations, 24 different changes, most  
16 of which are addressing actually BZA cases that have  
17 come before you where you approved all of them with ANC  
18 support and OP support. And there wasn't a controversy  
19 in the neighborhood or anywhere. And so we're trying  
20 to take those off of your plate.

21 One of them that doesn't deal with -- a porch  
22 roof top deck is not -- the porch deck is not one of  
23 them, but the one that Commissioner Eckenwiler was the  
24 deck -- the ground floor deck at the back of the house.

25 We may have even taken a preliminary vote in favor.

1 We took a vote on I think half of them. But it's going  
2 to require two votes and proposed rulemaking and  
3 comments, further comments coming in from the proposed  
4 rulemaking.

5 But one of them was this -- I think it's 200  
6 square feet of deck on the back on the ground floor,  
7 which will not count toward the building area or the  
8 lot occupancy. So those decks of that smaller size on  
9 the ground floor in the back, in the rear, as long as  
10 you're meeting the other development standards, rear  
11 yard and lot occupancy -- well, and lot occupancy, but  
12 the deck wouldn't count toward lot occupancy under our  
13 change. That would become matter-of-right.

14 And so it probably would be -- in terms of  
15 this creating a precedent for others on the block; it  
16 might, but they would all have to come before -- each  
17 one of those would have to come before the BZA. We're  
18 not changing that roof top element thing. And you'd  
19 have to make that judgment. But what we are changing  
20 is they'd have to be able to do matter-of-right and not  
21 go through a six-month somewhat expensive process coming  
22 to the BZA to do a second floor deck on the front. They  
23 could do a rear deck on the back as a matter-of-right.

24 And I think maybe -- I think a lot of the  
25 homeowners are going to appreciate that because you all

1 have approved I think in -- I think it's almost 34 cases,  
2 34 out of 34 cases with OP recommendation of approval,  
3 and ANC recommendation of approval on those decks. I  
4 may have that number wrong, but that's what I'm  
5 remembering.

6 So I think people would choose to do it, the  
7 ground floor. If they want outdoor recreation space,  
8 they're going to choose to do them on something that's  
9 permitted as a matter-of-right, not go through a BZA  
10 process on a roof top and take their chances when we  
11 have some concerns about it, and ANC has concerns about  
12 it.

13 So I'm not as concerned about the precedent  
14 because of that factor as well, and I just didn't think  
15 it was substantially visually intrusive. It does  
16 change what is a very attractive block, but as Board  
17 Member Blake said, it's not part of the Capitol Hill  
18 Historic District. Maybe it should be included. It  
19 certainly has a lot of historic features, but it's not  
20 part of the Historic District, so it doesn't get  
21 evaluated by HPRB.

22 Do we have something -- I'm trying to remember  
23 if we had something from Capitol Hill Restoration  
24 Society on this, but I think they just didn't comment  
25 one way or the other because it wasn't part of the

1 Historic District, but I was trying to remember that.  
2 Okay. That's it. I've gone on too long. Sorry.

3 BZA CHAIR HILL: No, no. That's great. I  
4 mean, Commissioner Miller, I hate to say this, like I  
5 was going to go -- I was kind of going back and forth  
6 a little bit after listening to you as to what was  
7 substantial. And now that's what I was trying to refer  
8 to. I knew that Commissioner Eckenwiler mentioned  
9 something about -- right, you're talking about all the  
10 rear and what the Zoning Commission might do. So that  
11 even might --

12 COMMISSIONER MILLER: No, no. That's on the  
13 ground floor.

14 BZA CHAIR HILL: Right. On the ground floor.  
15 On the ground floor, matter-of-right. They don't have  
16 to go through us, which now makes me want to do it even  
17 less because that means that that will be the only deck  
18 on the front, or more people would try to come get the  
19 deck. And again to Board Member Blake's position --  
20 and this is what I'm kind of -- because I'm going to  
21 think -- I mean, I don't know when we're going to get  
22 to this. I think I'm happy to think about it another  
23 week, look at everything that's in there again.

24 But again, the fact that it's a deck -- right,  
25 then you got a table out there, you got some chairs out



1 there, you got an umbrella out there maybe, I don't know.

2 Right? I don't know what the rules are about umbrellas  
3 and all that, but now -- again, that makes it different.

4 And -- I shouldn't say it makes it different. It might  
5 substantially visually intrusive upon the character,  
6 scale, and pattern.

7 COMMISSIONER MILLER: And Board Member Blake  
8 point out, too, is that it's a useable deck. Yes.

9 BZA CHAIR HILL: Yes. So I say we just think  
10 about it. And I think you were about to say something,  
11 Mr. Blake, and you can, but I just -- let's think about  
12 it another week and we'll come back. Because we're  
13 stuck right now, right? Mr. Blake doesn't know what  
14 he thinks. I shouldn't say that. Mr. Blake's on the  
15 fence. He's on the deck. He's on the railing. And  
16 Commissioner Miller is clear and I'm --

17 COMMISSIONER MILLER: But I'm thinking about  
18 a using of the deck and the people out there putting  
19 -- I don't know. I don't know what the rules are either,  
20 if you can put a grill out there.

21 BZA CHAIR HILL: Right.

22 COMMISSIONER MILLER: Have a party.

23 BZA CHAIR HILL: And good for them. I mean,  
24 I don't know. But again, the rear -- the whole thing  
25 about -- then everybody going and doing their thing in

1 the back yard makes me feel better about just not let  
2 any of it happen. Because if you start letting it happen  
3 in the front, then how do you say no to another one,  
4 right? But anyway.

5 COMMISSIONER MILLER: Okay. That would be  
6 up to you to say no.

7 BZA CHAIR HILL: I'm currently saying no now.  
8 So, all right. Okay.

9 So then, Madam Secretary, let's -- what should  
10 we do? I don't know. Let's bring it to the beginning  
11 of -- we have -- our last hearing is next week, right?

12 Right. It might be Mr. Blake's last hearing of --  
13 before we go on big time vacation, you know?

14 I mean, you're coming back, Mr. Blake, but  
15 I'm saying this might be the last one before a big  
16 holiday, right?

17 So what's the date on that one?

18 MS. MEHLERT: The 10th.

19 BZA CHAIR HILL: Okay. 12/10. Okay. We'll  
20 come back.

21 Is that okay, Commissioner Miller?

22 COMMISSIONER MILLER: Yes.

23 BZA CHAIR HILL: Okay. Great. All right.

24 Let's all take a look again and we'll come back on 12/10.

25 Thanks, Commissioner Miller.

1 COMMISSIONER MILLER: Thanks. Talk to you  
2 later.

3 BZA CHAIR HILL: Good-bye.

4 Commissioner Imamura I believe is next. Do  
5 we have Commissioner Imamura?

6 COMMISSIONER IMAMURA: I'm here.

7 BZA CHAIR HILL: Okay. There we go.

8 Okay. Let's see. Well, welcome,  
9 Commissioner.

10 COMMISSIONER IMAMURA: Thank you.

11 BZA CHAIR HILL: I have a hard stop at 3:00  
12 Eastern. I'm not in the East Coast Time Zone, but I  
13 have a hard stop at 3:00 Eastern. So let's see how this  
14 goes.

15 Madam Secretary, would you call our next item  
16 of business?

17 MS. MEHLERT: Next in the Board's meeting  
18 session is Application No. 20523-C of AMSQ LP. This  
19 is a request pursuant to Subtitle Y, Section 705.2 for  
20 a two-year time extension of the validity of the order  
21 in Application No. 20523.

22 This project approves a penthouse addition  
23 to an existing detached commercial building located in  
24 the D-3 Zone at 300 New Jersey Avenue NW and 51 Louisiana  
25 Avenue NW, Square 631, Lots 808 and 809.

1           BZA CHAIR HILL:   Okay.   Thank you.

2           All right.   I had a chance to review the  
3 record.   I have reviewed the applicant's statement as  
4 to why they need the time extension.   I have looked at  
5 the Office of Planning's report, which is in support,  
6 as well as I have the ANC 6E -- I don't know whether  
7 the 6C gave a report or not yet.   But I will agree with  
8 the applicant's statement and the time extension.

9           And, Commissioner -- I'm sorry, Board Member  
10 Blake, do you have anything you'd like to add?

11          VICE CHAIR BLAKE:   Mr. Chair, I agree with  
12 you and the office.   I'm in support of the time  
13 extension.

14          BZA CHAIR HILL:   Thank you.

15          Commissioner Imamura?

16          COMMISSIONER IMAMURA:   I'm also in agreement.

17          BZA CHAIR HILL:   Okay.   I'm going to make a  
18 motion to approve Application No. 20523-C as captioned  
19 and read by the Secretary for the validity to October  
20 22nd, 2027, and ask for a second, Mr. Blake.

21          VICE CHAIR BLAKE:   Second.

22          BZA CHAIR HILL:   Motion being made and  
23 seconded, Madam Secretary, take a roll call, please?

24          MS. MEHLERT:   Please respond to the Chair's  
25 motion to approve the time extension.   Chairman Hill?

1 BZA CHAIR HILL: Yes.

2 MS. MEHLERT: Vice Chair Blake?

3 VICE CHAIR BLAKE: Yes.

4 MS. MEHLERT: And, Dr. Imamura?

5 COMMISSIONER IMAMURA: Yes.

6 MS. MEHLERT: Staff would report the vote is  
7 3 to 0 to 2 to approve Application No. 20523-C on the  
8 motion made by Chairman Hill and seconded by Vice Chair  
9 Blake.

10 BZA CHAIR HILL: Thank you. Madam Secretary,  
11 would you call our next one, please?

12 MS. MEHLERT: Next is Application No. 21001-A  
13 of 921 6th Street, LLC. This is a request pursuant to  
14 Subtitle Y, Section 705.2 for a two-year time extension  
15 of the validity of the order in Application No. 21001.

16 This was for a new 13-story building with a  
17 restaurant in habitable penthouse space. It's located  
18 in the D-4-R Zone at 917 to 921 6th Street NW, Square  
19 484, Lot 30.

20 BZA CHAIR HILL: Thank you. Okay. As with  
21 the previous one, I had an opportunity to review the  
22 record and the applicant's statement in Exhibits 2C and  
23 2D. Also the Office of Planning's report as well as  
24 the ANC. Both the Office of Planning and the ANC are  
25 in support. I would agree with the applicant's

1 statements that they've made in terms of why the time  
2 extension is necessary and will be voting in favor of  
3 this application.

4 Mr. Blake, do you have anything you'd like  
5 to add?

6 VICE CHAIR BLAKE: Mr. Chair, I do. I think  
7 I agree with your analysis and I'll be in support.

8 BZA CHAIR HILL: Thank you.  
9 Commissioner Imamura?

10 COMMISSIONER IMAMURA: I'm also in agreement.

11 BZA CHAIR HILL: Thank you. I'm going to make  
12 a motion to approve Application No. 21001-A as captioned  
13 and read by the Secretary for the validity to December  
14 18th, 2027, and ask for a second, Mr. Blake.

15 VICE CHAIR BLAKE: Second.

16 BZA CHAIR HILL: Motion being made and  
17 seconded, Madam Secretary, take a roll call?

18 MS. MEHLERT: Please respond to the Chair's  
19 motion to approve the time extension. Chairman Hill?

20 VICE CHAIR BLAKE: Yes.

21 MS. MEHLERT: Vice Chair Blake?

22 VICE CHAIR BLAKE: Yes.

23 MS. MEHLERT: And, Dr. Imamura?

24 COMMISSIONER IMAMURA: Yes.

25 MS. MEHLERT: Staff would record the vote as

1 3 to 0 to 2 to approve Application No. 21001-A on the  
2 motion made by Chairman Hill and seconded by Vice Chair  
3 Blake.

4 BZA CHAIR HILL: Okay. Great. Thank you.

5 Madam Secretary, call our next one, please?

6 MS. MEHLERT: The next is an advanced party  
7 status -- or not an advanced, just a party status request  
8 in Application No. 21381 of Institute of Caribbean  
9 Studies. This is a self-certified application pursuant  
10 to Subtitle X, Section 901.2 for a special exception  
11 under Subtitle J, Section 5200, from the transition  
12 setback requirements of Subtitle J, Section 210, and  
13 pursuant to Subtitle X, Section 1002 for use a variance  
14 in Subtitle U, Section 801 to allow new residential use.

15 This is for a third-story and three-story rear  
16 addition to an existing two-story row building for use  
17 as office on the first floor and dwelling units on the  
18 second and third floors. It's located in the PDR-1 Zone  
19 at 1106 3rd Street NE, Square 0748, Lots 72 and 824.

20 And before the railing right now is a request for party  
21 status in opposition from Fred Irby.

22 BZA CHAIR HILL: Okay. Great. Thank you.

23 So normally what I've done in the past with  
24 these is that if we do have a party status request that  
25 we're trying to process the same day as the application,

1 I do the party status request first and then go through  
2 what that means. And then we put this application at  
3 the end of the day.

4 In this particular case I'd like to discuss  
5 with my Board the party status issue. I think in this  
6 particular case again I don't think they meet the  
7 criteria. I think that they're a little bit too far  
8 down. They're four doors down from where the project  
9 is taking place and I think that they're more in line  
10 with the general public than being immediately affected.

11 They, the applicant, in opposition, brings  
12 up issues concerning solar panels. This is an  
13 application where the height is matter-of-right. So  
14 they're not going up any higher than they can anyway.

15 However, if the solar -- the solar panel issue is  
16 something that we can discuss during the case in the  
17 hearing itself. And that also the person who is  
18 applying for party status, they can come testify during  
19 the public hearing portion of the hearing just as anyone  
20 else. So we'll still be able to hear from them.

21 So my position, I'm going to be voting against  
22 party status for this particular case.

23 Mr. Blake, can I get your opinion?

24 VICE CHAIR BLAKE: Sure, Mr. Chair. I  
25 actually agree with what you're saying. I think this



1 is the only person that -- this is a PDR-1 Zone, so it's  
2 -- typically there aren't a whole lot of residential  
3 folks there. This person's in a relatively decent  
4 proximity, but like you said, I don't think it  
5 necessarily is so close that they would be so adversely  
6 impacted by the activity. If it were something a little  
7 bit more oriented with using the alley, the street, a  
8 lot of congestion and people I could certainly justify  
9 it.

10 But again, I don't think that -- I agree with  
11 your analysis that it doesn't necessarily warrant party  
12 status in this case because the general public will --  
13 the impact will not necessarily be that much greater  
14 than the general public. So I'm in support.

15 BZA CHAIR HILL: Thank you.

16 Dr. Imamura?

17 COMMISSIONER IMAMURA: I'm in agreement.  
18 Thank you, Mr. Chairman, with you and Vice Chair Blake.

19 I don't think the individual is uniquely impacted any  
20 more certainly than others that are four doors down.

21 And so I'm not inclined to support party status.

22 BZA CHAIR HILL: Okay. Great. Thank you for  
23 your feedback. I'm going to make a motion to deny party  
24 status to Fred Irby in Exhibit 22. I think it's in  
25 Exhibit 2 and ask for a second, Mr. Blake.

1 VICE CHAIR BLAKE: Second.

2 BZA CHAIR HILL: Motion being made and  
3 seconded, Madam Secretary, will you take a roll call,  
4 please?

5 MS. MEHLERT: Please respond to the Chair's  
6 motion to deny party status in opposition to Fred Irby.  
7 Chairman Hill?

8 BZA CHAIR HILL: Yes.

9 MS. MEHLERT: Vice Chair Blake?

10 VICE CHAIR BLAKE: Yes.

11 MS. MEHLERT: And, Dr. Imamura?

12 COMMISSIONER IMAMURA: Yes, to deny.

13 MS. MEHLERT: Staff would record the vote as  
14 3 to 0 to 2 to deny party status in opposition in  
15 Application No. 21381 on the motion made by Chairman  
16 Hill and seconded by Vice Chair Blake.

17 BZA CHAIR HILL: Okay. Madam Secretary, and  
18 if you could put that now at the end of the day? Okay.  
19 And if you could please call our next item of business?

20 (Whereupon, the above-entitled matter went  
21 off the record at 10:26 a.m. and resumed at 11:36 a.m.)

22 BZA CHAIR HILL: All right. Madam Secretary,  
23 could you call us back in for our decision session again  
24 and call our decision case?

25 MS. MEHLERT: The board is back from a quick

1 break and is returning to its meeting session. The next  
2 case is application number 21319 of 1332 HARVAR, LLC.

3 This is a self-certified application pursuant to  
4 Subtitle X, Section 1002 for an area variance from the  
5 minimum lot area requirement of Subtitle U Section  
6 301.5(b) to allow one additional dwelling unit in an  
7 existing three unit apartment house. It's located in  
8 the RF 1 zone at 1332 Harvard Street Northwest, square  
9 2855, lot 66. This case was heard on July 23rd,  
10 September 24th, and October 22nd, and the decision  
11 meetings on October 29th and November 12th and November  
12 19th were postponed. Participating are Chairman Hill,  
13 Vice Chair Blake, and Chairman Hood.

14 BZA CHAIR HILL: Okay. Thank you. Okay to  
15 begin with, thank you very much, Chairman Hood and Mr.  
16 Blake, for all of the hard work you've done on this case.

17 I know that this has been a lot of just thought from  
18 each of us, and I appreciate that Mr. Blake has  
19 volunteered to begin and start the process of the  
20 discussion. And, Mr. Blake, whenever you're ready.

21 VICE CHAIR BLAKE: Okay. Thank you, Mr.  
22 Chair. I want to first say this deliberation is going  
23 to take a little longer than usual. And I want to --  
24 please accept my apologies in advance.

25 BZA CHAIR HILL: Mr. Blake, I just want to

1 let you know. Please take your time.

2 VICE CHAIR BLAKE: Okay. Oh, don't you  
3 worry. I will on your instruction. Anyway, we've had  
4 a lot of discussion about a lot of things in recent cases.

5 The 900 square rule has been one of those topics we've  
6 had. Now, in looking at these things, I looked at a  
7 lot and in trying to gather my thoughts on this, and  
8 I determined a couple things. You know, the record in  
9 this case is very extensive, includes numerous citations  
10 of legal precedents, prior cases.

11 And I want to, first of all, I do want to thank  
12 the applicant for providing that information. I  
13 reviewed all, including the transcripts from the summary  
14 orders. Having done that, I'd like to share a few  
15 thoughts. First of all, the facts of each case really  
16 do differ. While so many -- while prior cases may share  
17 similar fact patterns, they may not be directly  
18 comparable. Another thing is that the decision that  
19 the board approves any application does not necessarily  
20 mean that the board agree with all the arguments made  
21 by the applicant, the Office of Planning, or the ANC.

22 Every nuance of a case can't be covered in  
23 a 30, 60, or 90 second deliberation statement. There  
24 are a lot of things that just fall through the cracks.

25 Absent a full order, stating findings of fact and

1 conclusions of law from prior cases are really of limited  
2 utility because there's so many other factors going on,  
3 and we really don't capture them necessarily in  
4 testimony or in the documents in front of us necessarily.

5 The other thing I want to talk about was, was the fact  
6 that we've also -- I just want to thank the Office of  
7 Planning, as well as the applicant, for providing an  
8 overview of the 900 square foot rule, this legislative  
9 history, and the evolution of the Office of Planning's  
10 interpretation.

11 Clearly, there are potential changes in policy  
12 underlying the 900 square foot rule. When I look back  
13 at ZR 58, ZR 14 -- ZC 14, ZR 16 and the 2020 Comprehensive  
14 Plan, it's pretty clear that the District's public  
15 policy objectives have evolved over the years, not just  
16 regarding to the 900 square foot rule, but in general.

17 Having said that, the regulations may not fully have  
18 kept pace with the evolution in policy, but the board  
19 doesn't set the policy. The board cannot amend  
20 regulations, including failing to give effect to their  
21 plain meaning. The pending text amendment may address  
22 some of these issues.

23 But for now, the board has to work with the  
24 requirements as they currently exist and are spelled  
25 out in ZR 16, as amended. So having said those two

1 things, I want to go on and talk about the merits of  
2 this case. In this case, the applicant is seeking area  
3 variance from Subtitles U Sections 301.5(b) and (c),  
4 the 900 square foot rule to permit four dwelling units  
5 in a purpose built apartment building with three legally  
6 authorized units on an interior lot with 2543 square  
7 feet of lot area. This equates to about 632 square feet  
8 per unit, which is about 30 percent, a 30 percent  
9 deviation from the requirement, and the board is  
10 authorized to grant this requested relief by way of an  
11 area variance.

12           So for an area variance, the applicant must  
13 prove that the -- due to the attributes of a specific  
14 piece of property, strict application of the zoning  
15 regulations would not result in -- particular and  
16 exceptional practical difficulties, and practical  
17 difficulties mean strict compliance is burdensome but  
18 not impossible. So the applicant must show that the  
19 relief can be granted without substantial detriment to  
20 the public good and without substantially impairing the  
21 intent, purpose, and integrity of the zoning plan.

22           So, turning to the first prong. The applicant  
23 contends that the property faces an extraordinary  
24 situation due to a layered ownership history, good faith  
25 reliance on its predecessors, and the building's

1 existing configuration. They argue that the strict  
2 application would create practical difficulties,  
3 including significant cost, tenant displacement, and  
4 inefficient use of space. The applicant provided  
5 financial statements of the cost to comply with the  
6 reconfiguration -- reconfiguring the units. I want to  
7 thank you because I do financials. And the logic is  
8 consistent with many of the principles that Gilmartin  
9 -- of Gilmartin, but it's weakened by two case specific  
10 factors.

11           The first one is the doctrine of  
12 self-creation. This is a nuance which I really struggle  
13 with. So the D.C. Court of Appeals has long held that  
14 an applicant may not rely on hardships of their own  
15 making. The existence of an illegal or unpermitted use  
16 cannot itself establish an exceptional or extraordinary  
17 condition. The financial consequences of correcting  
18 an illegal configuration, including demolition costs,  
19 difficulty merging units, loss of rent, or disruption  
20 -- disruption to tenants do not constitute practical  
21 difficulty.

22           So the applicant argues the basement  
23 conversion predates current ownership and was  
24 undertaken in good faith by prior owner managing  
25 partner. But the record shows the current owner or

1 predecessor agent had a direct role in creating this  
2 unit. The basement conversion was started by a prior  
3 owner and completed by the managing partner of the  
4 ownership group, which purchased the unit in 2008. The  
5 current ownership group derives from the 2008 group,  
6 and bought out the managing member in 2020. But there's  
7 been -- there has not been a technical transfer of  
8 ownership. Public records show that it's still owned  
9 by the 2008 entity.

10 Even if we accept that the applicant did not  
11 personally create the fourth unit, owners relied on  
12 assurances from others that proper permits were secured.

13 But there is no zoning history suggesting officials  
14 ever authorized four units. The applicant, by  
15 purchasing the unit, the applicant is on notice of public  
16 zoning issues before buying the property and could have  
17 discovered this issue. The applicant did not attempt  
18 to confirm that all four units were authorized by the  
19 C of O. The applicant claims a lack of knowledge until  
20 2022. Well, that should not have been the first time  
21 the stakeholders learned the basement unit was not  
22 approved or that it was -- it should not have been quite  
23 a surprise.

24 Again, there's no zoning history to suggest  
25 any authorization of the fourth unit. This is not an



1 inherited condition. At least partially,  
2 self-creation exists. And I say that because he didn't  
3 create the whole thing, but they definitely finished  
4 it, and as you -- if you -- if you participated and you  
5 -- you did create or increase the violation. So no  
6 significant evidence supports the assertion that it  
7 wasn't. So self-creation is not fatal for an area  
8 variance, but it does affect how we evaluate the relief.

9 The bottom line of self-creation analysis is this.

10 An illegal or unpermitted use cannot itself be an  
11 exceptional condition. The fourth unit is an illegal  
12 unit. No BZA approval, no payments, no dated C of O.

13 The cost of correcting and removing the  
14 illegal configuration are not practical difficulties.

15 The loss of rent from the unlawful created dwelling  
16 is not a practical difficulty. Therefore, a property  
17 owner cannot rely on an illegally created dwelling unit  
18 or cost difficulty of removing it to justify a variance.

19 So, based on core principles, I can accept -- cannot  
20 accept the applicant's argument for the first prong.

21 So we switch the analysis to a de novo  
22 approach, and the court instructs the BZA to distinguish  
23 the physical structural property inherent burdens that  
24 can support a variance from the burdens that -- caused  
25 solely by violations that cannot support variance.

1 Following that de novo analysis, I believe, is  
2 appropriate, and under the de novo review, again, the  
3 board evaluates the variance that the conditions were  
4 being proposed today independent of who created it.  
5 The focus is strictly on inherent physical  
6 characteristics, age, structural layout, lot  
7 constraints, internal reconfiguration elements. This  
8 avoids the self-creation doctrine entirely.

9           The question becomes given the building as  
10 it is, as exists, with strict application imposed,  
11 property based, practical difficult -- practical  
12 difficulty, and I do believe it does. As for the first  
13 prong, the property based exceptional condition, this  
14 building's characteristics create an exceptional  
15 situation. A 1903 purpose built apartment house form,  
16 four stacked full floor plates, a basement partially  
17 at grade and structurally suited for a dwelling, common  
18 mechanical chases and load paths limiting  
19 configuration, and a small lot size resulting in a land  
20 deficiency that -- inherent to the property. For the  
21 practical difficulty, strict compliance would force the  
22 combination of basement with floors, upper floors,  
23 creating oversize and inefficient units. Alternatives  
24 that include leaving less than 25% of the building  
25 unutilized. Removing one floor plate will require

1 demolition of kitchens and baths, removal of partitions,  
2 rerouting mechanical lines, restructuring other units.

3           These burdens arise from age, structure, and  
4 design, not financial consequences, so practical  
5 difficulty is property based. A four plate for -- a  
6 four plate building cannot easily be reduced to a three  
7 functional units. The property size, form, and  
8 configuration do support the first prong. So first and  
9 second prong.

10           Moving to the no detriment to neighbors,  
11 public good. The relief does not alter the size,  
12 height, or external appearance. It adds a single family  
13 sized unit in a dense, rich -- transit rich area. There  
14 are no adverse effects on light, air, privacy, noise,  
15 traffic, or parking. The block includes many apartment  
16 houses. This use -- this use fits the neighborhood  
17 character. The ANC -- I would also note the ANC 1A  
18 reports -- reported out that it was a long standing  
19 existing. There'd be no disruptions and an absence of  
20 complaints.

21           As it relates to harmony with the zone plan,  
22 the RF-1 expressly permits purpose built apartment  
23 buildings. This is such a building. The building  
24 predates the 900 square foot requirement, and the  
25 purpose of the 900 square foot requirement is density

1 management and rowhouse protection, not a prohibition  
2 on all multiunit conversions. Meeting the variance  
3 prongs and granting relief is in harmony with the zoning  
4 plan. Allowing one unit within an existing building  
5 consistent with the neighborhood residential form is  
6 harmonious.

7 Now I want to just look at the Office of  
8 Planning's report. I agree with the Office of  
9 Planning's recommendation for approval, but I do so for  
10 different reasons. The Office of Planning based  
11 exceptional condition on a series of owners over the  
12 past 17 years, renovation creating fourth unit, and the  
13 existence of a unit before 2020, claiming that the  
14 current owners had no role, no knowledge. I disagree.

15 Multiple owners is not an exceptional condition. An  
16 unpermitted fourth unit cannot justify a variance.  
17 Failure to obtain a C of O pre purchase is negligence,  
18 not difficulty, and the applicant did not play a role  
19 in creation of an illegal unit.

20 With regard to the ANC 1A written report, I'll  
21 give great weight to ANC 1A. I was persuaded by the  
22 advice about neighborhood character and infrastructure.

23 However, the ANC did not provide advice on the other  
24 variance prongs. Having said that, my -- I will be  
25 voting in favor of the application. Thank you, Mr.

1 Chair.

2 BZA CHAIR HILL: Thank you, Mr. Blake, and  
3 thank you very much for all of the work that you've done  
4 on this. Yeah, I mean, I think that how you got to the  
5 de novo way of looking at this and that, you know, the  
6 self-creation issue, that being a hardship, the  
7 financial issue based on the self-creation. I can  
8 understand how you got to where you got to concerning  
9 if we were looking at this fresh and that the exception  
10 was, again, the way the building was purpose built in  
11 1903 and that if they were going to actually turn it  
12 into three units they would have to restructure the  
13 building, I think, in a -- in a way that would be  
14 practically difficult.

15 And the age, structure, and the design, again,  
16 of the building and the floor -- the floor plate, as  
17 you mentioned, the four, number four, four plates. The  
18 other prongs of the test in terms of the ANC was in  
19 support in terms of the public good and then detriment  
20 to the zone plan, I also can agree with your analysis.

21 I also struggled with this because really, you know,  
22 the square footage has been, you know, kind of a weird  
23 -- it's not a weird thing, has been something that we've  
24 been struggling with because if it seems as though if  
25 the community is in favor, if the Office of Planning

1 has been in favor, and if it hasn't been much of a big  
2 variance from the -- or like from the 900 square feet,  
3 I mean, 30 percent is kind of a big deviation, actually,  
4 I think, but still 635 square feet versus the 900 square  
5 feet, you know, I think I can get behind.

6           What I was trying to say is that, again, just  
7 because the Office of Planning and the ANC is in favor  
8 of it does not necessarily mean that the board thinks  
9 that it's something that should be granted. However,  
10 I would love for there to be some way that this gets  
11 taken up at the Zoning Commission level because the  
12 Zoning Commissioner is here -- I mean, the Chairman is  
13 here, but some way that this 900 square feet issue can  
14 be resolved in that so much, it was like, you know, if  
15 the building envelope doesn't get changed, if, if, you  
16 know, they -- there's some kind -- whatever the deviation  
17 is that is allowed by special exception or maybe that  
18 additional unit is subject to IZ requirements or when  
19 the -- you know, when the IZ requirements kick in.

20 Because if this were the fourth unit in another  
21 situation, this might have been -- needed to be an IZ  
22 unit. And so that's something that I also kind of  
23 struggled with.

24           But I do appreciate everything you said. I  
25 mean, you went back and read into the record, into the

1 cases, into the, you know, the different criteria to  
2 get to where you got to, Gilmartin. I mean, I really,  
3 again, appreciate everything that you did, Mr. Blake.

4 And I'm going to be also voting in favor of this  
5 application, primarily based on the discussion that you  
6 put forward. May I ask for the Chairman's thoughts?

7 ZC CHAIR HOOD: Yes. First of all, let me  
8 thank both of you, Board Member Blake especially, for  
9 your due diligence. Hadn't heard the word de novo in  
10 a while, but your due diligence really showed that you  
11 put a lot of effort, and I know that you do this in every  
12 case, a lot of work and time into navigating how the  
13 BZA -- exactly what the BZA is doing. And the Chairman,  
14 Chairman Hill, the same way for you as well.

15 I grapple with this. I listened to what you  
16 both have said. I will be voting in favor because I  
17 looked -- I tried to connect the dots, and I definitely  
18 did not do them as eloquent as Board Member Blake or  
19 you, Mr. Chairman, but I also -- I took a different  
20 approach, and I appreciate the Office of Planning, and  
21 I appreciate the applicant. And I appreciate how people  
22 thought what the intentions were of the Zoning  
23 Commission at the time. It just so happens I happen  
24 to have been around and been on 14 11. And, you know,  
25 I know, you know, you said it, that I'm here, but I've

1 -- what I've learned over the years is, even though  
2 you're chairman of the Zoning Commission, you only have  
3 one vote. And sometimes -- and sometimes it doesn't  
4 go exactly how you would like it to go. You have to  
5 compromise.

6 But I think my problem with this whole case,  
7 and with these 900 foot case -- same thing with the 10  
8 foot setback. And so I've been talking about this a  
9 lot at the Zoning Commission level, is that if things  
10 need to be a -- if it's a policy issue, something has  
11 shifted. The policy does not -- the policy is not set  
12 and then skips over the Zoning Commission and goes to  
13 the BZA for the BZA to work with. The policy is set,  
14 and those regulations, I think as one of my colleagues  
15 already mentioned, needs to come into compliance with  
16 -- the regulations need to come into the compliance of  
17 the policy.

18 So therefore it'll be easier for the Zoning  
19 Commission and for the residents to be able to make their  
20 cases and do what needs to be done. It's too much.

21 It's -- I'm not going to say fluff because it's not fluff.

22 It's too much regulatory -- regulations in the way of  
23 what we're trying to achieve. You don't put the policy  
24 to the -- to the BZA, which you all have already stated.

25 The policy should be when it's -- if there is a shift,



1 the shift needs to happen at the Zoning Commission level,  
2 which then comes to the BZA, and the BZA then gives those  
3 variances and those are different issues, but -- I mean  
4 different allowances.

5 And I also saw what people keep -- they came  
6 up and said, well the BZA, this is what you've done in  
7 the past. It's a case by case analysis. It's not --  
8 it's not because it was done, as I think Board Member  
9 Blake has mentioned, just because it was done previously  
10 one way, there was some other things that went into that,  
11 that decision making as opposed to the discovery in  
12 another case. So we need to get away from saying, oh,  
13 did -- they did it ten times. So this, now they can  
14 do it 11 times. No, that doesn't fall with me. It goes  
15 to what -- it's not a -- it's a new case. It's a new  
16 case.

17 So I will be voting in favor. But I try to  
18 connect all the dots. And after listening to Board  
19 Member Blake and you, Mr. Chairman, I'll be voting in  
20 favor. But again, we cannot -- and then I would  
21 encourage the Office of Planning, and I've always said  
22 this, if something changes, bring it back to the  
23 Commission so we can adopt the rules. And I know it's  
24 easier said than done, because I know they have a lot  
25 of work to do. I respect the work that they do because

1 they have a lot of work to do, a lot of people they have  
2 to address.

3 But let's try to keep the Zoning Commission  
4 -- zoning regulations in place to make everybody's life  
5 a little easier and cut out all the zigzags and trying  
6 to get to a specific ruling on the case. That's all  
7 I have to say, Mr. Chairman. Again, the policy doesn't  
8 come right to the BZA. The policy issues need to come  
9 to the Zoning Commission as soon as possible. And I've  
10 always said this. Then that way it makes you all's job  
11 a little easier in how you decipher and how you apply  
12 for a case. But in this situation, application number  
13 21319, I will be voting in favor as well.

14 Thank you, Mr. Chairman, thank you, Board  
15 Member Blake, for all you all have done on this. Thank  
16 you.

17 BZA CHAIR HILL: Thank you, Chairman Hood.  
18 Okay. I'm going to make a motion then to approve  
19 application number 21319 as captioned and read by the  
20 secretary and ask for a second. Mr. Blake?

21 VICE CHAIR BLAKE: Second.

22 BZA CHAIR HILL: Motion made and seconded.  
23 Madam secretary, take a roll call, please.

24 MS. MEHLERT: Please respond to the motion  
25 to approve the application. Chairman Hill?

1 BZA CHAIR HILL: Yes.

2 MS. MEHLERT: Vice Chair Blake?

3 VICE CHAIR BLAKE: Yes.

4 MS. MEHLERT: Chairman Hood?

5 ZC CHAIR HOOD: Yes.

6 MS. MEHLERT: Staff would record the vote as  
7 three to zero to two to approve application number 21319  
8 on the motion made by Chairman Hill and seconded by Vice  
9 Chair Blake.

10 BZA CHAIR HILL: Okay, great. Thank you.  
11 I do think that I'm going to need one more week before  
12 I'm able to come to a conclusion on 21307, Madam  
13 Secretary and members of the board. So if y'all don't  
14 mind, if we can just do that decision first thing next  
15 week. If Chairman Hood, if you're available and if that  
16 sounds good to you Vice Chair Blake. Chairman Hood,  
17 are you available?

18 ZC CHAIR HOOD: Yes, I'll make myself  
19 available next week.

20 BZA CHAIR HILL: Okay. Vice Chair Blake is  
21 that all right with you?

22 VICE CHAIR BLAKE: That sounds fine, sir.

23 BZA CHAIR HILL: Okay, great. All right.  
24 Then, madam secretary, let's move the 21307 to next  
25 week's decision, and we'll do that first thing so that

1 Chairman Hood can move on with his day.

2 MS. MEHLERT: Got it.

3 BZA CHAIR HILL: Okay. Chairman Hood, thank  
4 you for your time today. Hope you have a nice afternoon.

5 ZC CHAIR HOOD: Okay. Thank you. Y'all have  
6 a great rest of the day.

7 BZA CHAIR HILL: Thank you. All right, give  
8 me one second here. Why don't we, you know, just take  
9 a quick three minute break to shift around. Or  
10 actually, I need to take a break. Never mind. Right.

11 We might take a break at the end of this thing when  
12 it's all done. So if you want to bring -- unless y'all  
13 need a break. Mr. -- I mean, Madam Secretary, if you  
14 want to bring in our other case again, that we stopped  
15 in the middle of.

16 (Whereupon, the above-entitled matter went  
17 off the record at 12:00 p.m.)

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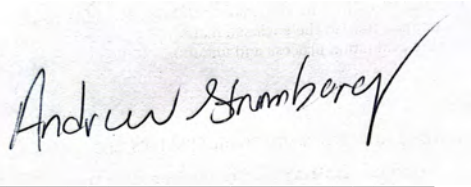
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## 1 C E R T I F I C A T E

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

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