

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 10, 2025

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The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened via videoconference, pursuant to notice at 9:30 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 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
PAUL YOUNG, A/V Production Specialist

1 OFFICE OF PLANNING DEVELOPMENT REVIEW STAFF PRESENT:

2 SHEPARD BEAMON
3 PHILIP BRADFORD
4 MATTHEW JESICK
5 JOSHUA MITCHUM
6 CRYSTAL MYERS
7 KAREN THOMAS

8 OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

9 SARAH BAJAJ, ESQ.
10 CARISSA DEMARE, ESQ.
11 CHLOE SELLERS, ESQ.
12 JORDANE WONG, ESQ.

13 The transcript constitutes the minutes from the
14 Regular Public Meeting held on December 10, 2025.

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

2 (9:37 a.m.)

3 BZA CHAIR HILL: Thank you. Good morning,
4 ladies and gentlemen, to the Board of Zoning Adjustment.
5 Today is the December 10, 2025, and the public hearing
6 will please come to order. My name is Fred Hill,
7 Chairman of the District of Columbia Board of Zoning
8 Adjustment. Joining me today are everybody, Gwen
9 Wright, Tammy Stidham, Joe Imamura, Carl Blake, Rob
10 Miller, Anthony Hood. All the Zoning people here today.

11 Today's meeting and hearing agenda are
12 available on the Office of Zoning's website. Please
13 be advised that this proceeding is being recorded by
14 a court reporter and is also webcast live via Webex and
15 YouTube Live. Video of the webcast will be available
16 on the Office of Zoning's website after today's hearing.

17 Accordingly, everyone who is listening on
18 Webex by telephone will be muted or by video will be
19 muted during hearing. Also, please be advised that we
20 do not take any public testimony at our decision meeting
21 session. If you are experiencing difficulty accessing
22 Webex, excuse me, or with your telephone call in and
23 please call our OZ hotline number (202) 727-5471 to
24 receive Webex log-in or call-in instructions.

25 At the conclusion of the decision meeting

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

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

21 All persons planning to testify either in
22 favor or in opposition should have signed up in advance.
23 They will be called by name to testify. If this is
24 an appeal only parties are allowed to testify. By
25 signing up to testify all participants completed the

1 oath or affirmation as required by Subtitle Y, 408.7.

2 Requests to enter evidence at the time of an
3 online virtual hearing, essentially written testimony
4 or additional supporting documents other than live
5 video, which may not be presented as part of the
6 testimony, may be allowed pursuant to Y, 103.13,
7 provided that the person making the request to enter
8 an exhibit explain a) how the proposed exhibit is
9 relevant, b) the good cause justifies allowing the
10 exhibit into the record, including explanation of why
11 the requester did not file the exhibit prior to the
12 hearing pursuant to Y, 206, and how the proposed exhibit
13 would not unreasonably prejudice any party.

14 The order of procedures for special exceptions
15 that are variances are pursuant to Y, 409. For an appeal
16 it is pursuant to Y, 507. At the conclusion of each
17 case an individual who is unable to testify because of
18 technical issues may file a request for leave to file
19 a written version of their planned testimony to the
20 record within 24 hours following the conclusion of a
21 public testimony hearing.

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

1 than 48 hours after the hearing.

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

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

21 MS. MEHLERT: Good morning, Mr. Chairman,
22 Members of the Board. There are no changes to the
23 schedule today. I will note any specific preliminary
24 matters when the case is called.

25 BZA CHAIR HILL: Okay. Thank you. I'm glad

1 that I read through everything, but I think we're still
2 waiting for a Board Member, and so with that, we will
3 wait.

4 (Whereupon, the above-entitled matter went
5 off the record at 9:41 a.m. and resumed at 9:46 a.m.)

6 BZA CHAIR HILL: Okay. Mr. Blake, are you
7 there?

8 VICE CHAIRPERSON BLAKE: I believe I am.

9 BZA CHAIR HILL: Okay, great. Can you hear
10 me?

11 VICE CHAIRPERSON BLAKE: I can. Can you hear
12 me?

13 BZA CHAIR HILL: Yes.

14 VICE CHAIRPERSON BLAKE: Okay. Well there
15 you go. Thank you.

16 BZA CHAIR HILL: Just for the record, there
17 has been a lot of technical issues today and what I have
18 been instructed on a couple of things is that, first
19 of all, the technical issues have caused these different
20 things to, you know, for in terms of a delay, that's
21 why we are a little late, and I have also been asked
22 that like the Commissioners, the whole Commission is
23 here today, and, you know, the Commissioners, if you
24 can turn on your camera when it's your turn, otherwise,
25 go ahead and turn your camera off just so it doesn't

1 look like there's more than we are supposed to have.

2 And then, I don't know, the first one -- Oh,
3 yeah, Chairman Hood is the first one up, okay. So if
4 we want to just bring in Chairman Hood. Okay, great.

5 And then, Madam Secretary, do we have any preliminary
6 matters again?

7 MS. MEHLERT: So there was there was a late
8 filing that was allowed into the record for a hearing
9 case, so I can just read that that section about the
10 late filing.

11 BZA CHAIR HILL: Okay, great.

12 MS. MEHLERT: So the Chairman has reviewed
13 and granted a waiver to allow late filings into the
14 applicable case record pursuant to Subtitle Y, Section
15 206.7 and Section 103.13. Any other late filings during
16 the course of today's live hearing should be presented
17 before the Board by the applicant, parties, or witnesses
18 after the case is called.

19 BZA CHAIR HILL: Okay. And I'm not sure who
20 is on that one. Let's see. Okay. That one is -- Madam
21 Secretary, who is the Commissioner on 21381.

22 MS. MEHLERT: That's Dr. Imamura.

23 BZA CHAIR HILL: Okay. And is that the only
24 one for Dr. Imamura?

25 MS. MEHLERT: Correct.

1 BZA CHAIR HILL: Okay. Chairman Hood, can
2 I excuse you for one second and can we bring in Dr.
3 Imamura?

4 ZC CHAIR HOOD: With pleasure, yes. Good
5 morning.

6 BZA CHAIR HILL: Thank you. Good morning.
7 Hi, Dr. Imamura.

8 COMMISSIONER IMAMURA: Good morning.

9 BZA CHAIR HILL: Do you need to announce this
10 case in order to talk about it, madam Secretary, or no?

11 MS. MEHLERT: I think it would be best to read
12 it.

13 BZA CHAIR HILL: Okay. Why don't you read
14 it and then announce what -- And then we'll talk about
15 what we are about to do.

16 MS. MEHLERT: Okay. This is the Board's
17 Hearing, or, sorry, Meeting session. It is Application
18 Number 21381 of Institute of Caribbean Studies. This
19 is a self-certified application pursuant to Subtitle
20 X, Section 901.2, for a special exception under Subtitle
21 J, Section 5200, and the transition setback requirements
22 of Subtitle J, Section 210, and pursuant to Subtitle
23 X, Section 1002, for a use variance from subtitle use
24 Section 801 to allow a new residential use.

25 This is for a third story and 3-story rear

1 addition to an existing two-story row building for use
2 as an office on the first floor and two dwelling units
3 on the second and third floors. It is located in the
4 PDR-1 Zone at 1106 3rd Street, Northeast, Square 0748,
5 Lots 72 and 824.

6 This was heard last week on December 3rd.
7 The Board requested additional information from the
8 applicant. and closed the record. Participating are
9 Chairman Hill, Vice Chair Blake and Dr. Imamura. I will
10 note that the applicant did submit a letter in Exhibit
11 32, however, asked for additional time to gather the
12 supplemental information requested by the Board and to
13 postpone the decision.

14 BZA CHAIR HILL: Right. Thank you so much.
15 So there was information that the Board had asked for
16 and they have submitted a letter asking for a
17 postponement of the decision so they can complete their
18 requested information. It sounds reasonable to me in
19 terms of the letter that they have submitted.

20 If the Board is comfortable then we'll go ahead
21 and push this decision off to another time wherein we
22 can get the information that has been requested. Is
23 that fine with the Board?

24 VICE CHAIRPERSON BLAKE: Yeah.

25 COMMISSIONER IMAMURA: I'm amenable.

1 BZA CHAIR HILL: Okay, great. I got a yes
2 from both Board Members. Madam Secretary, when could
3 we come back? I don't think -- The 21st is too jammed
4 up already. And then, also, they seem to be trying to
5 get that -- Let me see what. They had a letter from
6 DHCD. So can you recommend a date when we would come
7 back for a decision?

8 MS. MEHLERT: I recommend February 4th.

9 BZA CHAIR HILL: Okay. Dr. Imamura, will
10 that work for you?

11 COMMISSIONER IMAMURA: Yes, February 4th
12 would be fine.

13 BZA CHAIR HILL: Okay, great. 02/26 decision
14 unless we have something else in the record. With that,
15 Dr. Imamura, have a happy holiday and see you in the
16 new year. Have a happy new year.

17 COMMISSIONER IMAMURA: All right. Thank you
18 all. Happy holidays and happy new year. Thank you all.

19 BZA CHAIR HILL: Great. Thank you. Okay.
20 Now we can get Chairman Hood again if that's all right.
21 Great. Thank you, Chairman Hood, you reminded me to
22 say good morning to people. Good morning. Madam
23 Secretary, you can call our next item of business,
24 please.

25 MS. MEHLERT: Next in the Board's Meeting

1 session is Application Number 21307 of Henry Tam and
2 Lam Tram. This is a self-certified application
3 pursuant to Subtitle X, Section 901.2, for a special
4 exception under Subtitle U, Section 320.2, to allow the
5 conversion of an existing residential building to a
6 3-unit apartment house and pursuant to Subtitle X, 1002,
7 for an area variance from the minimum lot area
8 requirement of subtitle use Section 320.2(c) to allow
9 conversion to an apartment house use with less than 900
10 square feet of land area per each existing and new unit
11 and pursuant to Subtitle X, Section 91.2, for a special
12 exception under Subtitle C, Section 703.2, from the
13 minimum vehicle requirements of Subtitle C, Section
14 701.5.

15 This is the conversion of an existing
16 residential building to a three unit apartment house.

17 It is located in the RF-1 Zone at 725 Hobart Place,
18 Northwest, Square 2888, Lot 197. This was heard on July
19 23rd, September 24th, October 22nd, and the decision
20 meetings on October 29th, November 12th, November 19th,
21 and December 3rd were postponed. Participating are
22 Chairman Hill, Vice Chair Blake and Chairman Hood.

23 BZA CHAIR HILL: Thank you. Thank you.
24 Okay. Again, we have been kind of thinking about this
25 case for some time and, again, Mr. Blake has been kind

1 enough to agree to start us off.

2 VICE CHAIRPERSON BLAKE: Okay. Thank you,
3 Mr. Chair. I want to first explain, this is going to
4 be a little longer than normal, but I have actually made
5 it fairly concise, I think.

6 First of all, I would like to thank the
7 Applicant and the Office of Planning for putting
8 together the information that they have. This is a
9 fairly significant record. We had asked for additional
10 information about the 900 square foot rule, its history,
11 and just to get a sense of the intent.

12 We also took a look at a lot of precedent cases
13 that were presented. We also looked at a number of
14 cases, specifically the applicant did, in terms of, you
15 know, cases that they had seen before and how we had
16 applied the 900 square foot rule.

17 I talked about this before, but I will just
18 mention it again. In reviewing those documents I went
19 through the cases, the court cases, and I also went
20 through the legally established full orders, and I also
21 took a look at a lot of the summary orders and the
22 transcripts from them, and part of that was part of the
23 evidence that was submitted.

24 I found some very interesting information.
25 I think that what I walked away with was a couple

1 conclusions. First of all, prior BZA cases provide
2 limited guidance on this application and any other
3 application. Each zoning case turns on specific facts
4 and the Board's approval of relief in a prior case does
5 not mean the Board agreed with all the arguments
6 presented by the Applicant or with the analysis offered
7 by the Office of Planning or the ANC.

8 When you look at deliberations -- We make
9 deliberation statements at the end of each case. These
10 are often constrained to 30 maybe 90 seconds, but these
11 deliberation statements rarely capture the full
12 reasoning underlying a decision, so without a written
13 order that includes findings of facts and conclusions
14 of law prior cases must not be treated with, you know,
15 the parking spaces have to be treated with caution when
16 assessing their relevance to a pending matter.

17 Now the other thing we talked about, again,
18 was the policy. The zoning policy related to
19 conversions and unit density has evolved over the years.

20 We can look at ZR 58, ZC 14, ZR 16, the 2021
21 Comprehensive Plan, these policies changes have really
22 changed to reflect the District's priorities around
23 housing density, neighborhood character and stuff like
24 that, but rather that's the case or not the whole
25 controlling regulatory text for us is ZR 16 and the

1 Board's role in applying it, not reinterpreting or
2 amending the language of the zoning regulations. Any
3 modifications to policy or standards must occur through
4 rulemaking, not variance adjudication.

5 So it is important that, you know, sometimes
6 the regulations don't keep up with the policy, but it's
7 not the BZA's responsibility to make that, to bridge
8 that gap. So having said all that, I want to now look
9 at the merits of the case.

10 The Applicant here seeks an approval to
11 legalize an existing third dwelling unit in a 3-story
12 row building located in the R1 zone where two principal
13 dwelling units are permitted as a matter of right. The
14 building is currently configured and occupied as three
15 units, but it has no certificate of occupancy
16 authorizing a third unit.

17 The Applicants purchased the property between
18 2018 and 2020 when it was already being used and
19 advertised as a 3-unit building. The requested relief
20 before us today is a special exception under Subtitle
21 U, Section 320.2, for the conversion to three units,
22 area variance under Section U, 320.2(c), relief from
23 the 900 square foot per unit rule, and a parking special
24 exception of Subtitle C, Section 703.2, as they will
25 not be providing parking on the site.

1 So my decision today will focus primarily on
2 the variance relief, because it really is dispositive,
3 of the conversion request, so I'll begin with the easier
4 component, the parking relief, and then turn to variance
5 request under Subtitle X. So on the parking relief,
6 I agree with the Office of Planning that the Applicant
7 satisfied the criteria for the relief from parking.

8 The property lacks alley access. The
9 physical configuration of the lot makes on-site parking
10 infeasible and the neighborhood is well served by
11 transit, so for those reasons I support the requested
12 parking special exception.

13 Turning to conversion relief under Subtitle
14 U, Section 320.2. Conversion to three units is
15 permitted by special exception if the Applicant meets
16 all of the criteria in Subtitle 320.2(a) through (c).

17 The Applicant satisfies subsection (a) and (b),
18 however, subsection (c) requires that the building have
19 900 square feet of land area per dwelling unit. Here,
20 the property contains 1688 square feet, providing only
21 562 square feet per unit. Thus, the Applicant requires
22 a variance from the 900 square foot rule in order to
23 obtain conversion relief.

24 This leads us to the core of the case whether
25 the Applicant meets the three prong standard on an area

1 variance. So if we look at the area variance, to grant
2 the area variance the Board must first, the property
3 must first be affected by an exceptional situation and
4 strict application of the regulation should cause a
5 practical difficulty and granting the relief should not
6 result in a substantial detriment to the public good
7 or substantially impair the zone plan.

8 So when we look at the first plan, the
9 exceptional condition, the Applicant asserts that an
10 exceptional condition exists because the lot is small.

11 The building contains three separate units and the
12 configuration predates the Applicant's ownership.
13 However, the record establishes that the third unit was
14 unlawfully created.

15 The structure was permitted and approved as
16 a two unit flat in connection with BZA Case Number 18754
17 and the subsequent construction deviated from the
18 approved plans. No certificate of occupancy -- Note
19 there is no certificate of occupancy authorizing a third
20 dwelling and the Office of Planning's review of the
21 permitting history supports this conclusion.

22 So D.C. Court of Appeals cases, including
23 Bernstein, Capitol Hill Restoration Society, Lange,
24 Gilmartin, Roth all established certain principles
25 which we have -- I've kind of calling it, we are calling

1 it as the current, or the doctrine of self-creation and
2 really the doctrine of self-creation holds that the
3 property owner may not claim an exceptional condition
4 or a practical difficulty when the hardship is a direct
5 result of the owner's own actions or choices or the
6 actions of a prior owner in the same chain of ownership.

7 An illegal construction or unlawful occupancy
8 cannot adhere in the property for purposes of variance.

9 So even if the legal configuration becomes physically
10 integrated into the building it does not transform into
11 a legitimate property based practical difficulty.

12 So the Applicant here argues that the
13 violation was inherited and therefore not self-created.

14 The Applicant did not inherit the building in the legal
15 sense nor did the Applicant inherit the property's
16 configuration. The Applicant intentionally bought the
17 property without taking necessary steps to make an
18 informed purchase and avoid unintentionally acquiring
19 a zoning violation.

20 So all that is because the self-creation
21 doctrine applies equally to prior owners within the same
22 chain of title. A purchaser cannot avoid the doctrine
23 by asserting lack of knowledge. In R1 Zone only two
24 dwellings are permitted as a matter of right. The
25 presence of a third unit should have prompted inquiry

1 and whether the use was legally authorized and the
2 Applicant purchased the property without confirming
3 that a C of O, that a valid C of O existed for the three
4 units.

5 Now this is an important aspect of this
6 application because the practical difficulty acquiring
7 a building without a zoning violation was a direct result
8 of the Applicant's inaction, lack of due diligence, not
9 due to the strict application of zoning regulations.

10 So let's look at the existing condition. The Board
11 of Zoning adjustment previously granted special
12 exception relief for this property, as I said, under
13 case 18754 in May 2014.

14 The materials provided at the time indicated
15 the property would remain a 2-unit flat and a proposed
16 third story addition. Building permits were applied
17 for and issued in 2014 with the final inspection
18 certificate of occupancy issued in 2015.

19 Now the previous owner either built the
20 addition approved by the BZA differently from the
21 approved plans or made un-permitted changes. In either
22 case, the unit configuration existing at the property
23 was created without BZA approval and it cannot be treated
24 as an exceptional condition under the variance test even
25 as now structurally embedded, subdivided, and

1 separately immediate or actively occupied.

2 So what the courts have instructed us to look,
3 for the BZA to distinguish between physical property
4 burdens, physical, structural and property inherent
5 burdens which can support a variance, and from burdens
6 caused solely by violations which can't support a
7 variance.

8 So following that a de novo analysis is
9 appropriate and under a de novo approach the Board
10 evaluates the variance as if its conditions were being
11 proposed today, independent of who created it. The
12 focus is strictly on the inherent characteristics of
13 the property, the age, structural layout, law
14 constraints, and the internal configuration limits.

15 This avoids the self-creation doctrine
16 entirely. The question really becomes given the
17 building as it exists, which strict application impose
18 a property-based practical difficulty, applying the
19 principles of the self-creation doctrine the third unit
20 unlawfully created a violation. The current ownership
21 of the violation, the current ownership of the violation
22 was purchased with the property.

23 The unlawfully created third unit cannot be
24 treated as an exceptional condition and the cost of
25 removing or undoing the illegal work nor the loss of

1 rent from the un-permitted unit cannot constitute a
2 practical difficulty. So based on the record the
3 property is a 3-story row house constructed in 1939.

4 It sits on a small 1688 square foot interior RF-1 lot,
5 which is significantly below the 2700 square foot lot
6 required for the 3-unit conversion. The structure
7 contains three fully separate dwelling units, each with
8 independent kitchens, bathroom, bedrooms, and
9 entrances. The floor plans and photos show complete
10 separation.

11 Now a de novo analysis may acknowledge the
12 internal layout, but you cannot treat the illegal third
13 unit as an exceptional condition, again, Bernstein,
14 Capitol Hill Restoration, and Roth support that. So
15 focusing on the physical, structural, and property
16 inherent of the characteristic lot and the building,
17 the property is simply a 3-story row house on a 1688
18 square foot lot.

19 This is a common condition and is not different
20 from numerous other properties in the neighborhood.
21 It's a small lot. It's well below the minimum for the
22 RF-1 zone, but it's actually larger than the adjacent
23 lots at 717 and 727, both of which have row houses with
24 comparable, if not smaller, footprints. There's
25 nothing exceptional or extraordinary and for that reason

1 I conclude that the first prong has not been met.

2 Turning to the second prong, the practical
3 difficulty. Practical difficulty must arise from an
4 inherent physical characteristic of the property, not
5 from the owner's decision, and a legal conversion, a
6 legal configuration, again, or the cost of remedying
7 violations.

8 So the Applicant argues here that removing
9 the third unit would cause tenant displacement,
10 significant financial loss, and disruption of the
11 building's internal layout. While these concerns are
12 understandable, they arise from the illegal third unit
13 and not from the, and from the Applicant's decision
14 to purchase the property without ensuring the legality
15 of the configuration, so under binding case law such
16 circumstances cannot constitute a practical difficulty.

17 So from a structural perspective the Applicant
18 has not demonstrated that reconfiguring the property
19 into two units isn't feasible. There is no evidence
20 that the lawful physical layout, absent illegal work,
21 prevents a compliant 2-unit configuration nor is there
22 evidence that the building's narrowness, depth, or
23 structural elements create a burden sufficient to
24 justify a 37% deviation from the 900 square foot rule
25 requirement, so from this perspective I see the

1 Applicant has not met the second prong of practical
2 difficulty.

3 Turning to the third prong, this is the
4 detriment to public good and the impairment of the zone
5 plan. I acknowledge here that the granting of relief
6 would not materially harm the adjacent property. The
7 Applicant proposes no interior construction and there
8 is no evidence of an adverse impact on light, air,
9 privacy, noise, traffic, or parking.

10 I think ANC 1E raised no concerns and there
11 is no neighborhood opposition. However, the zone plan
12 permits conversion to three units only when the variance
13 test is met. The 900 square foot rule regulates density
14 in RF-1, and the requested 37% deviation represents a
15 meaningful increase in the density beyond the hope this
16 is what the zone anticipates. So because the Applicant
17 has not met the first two prongs the relief is not in
18 harmony with the zone plan.

19 Now one of the things that we have to do in
20 looking at these cases is to look at the Office of
21 Planning's recommendation, for which we give great
22 weight, and to also the ANC's recommendation, written
23 reports. Turning to Office of Planning, I want to say
24 I agree with the Office of Planning's conclusion on the
25 parking relief, but I reached a very different

1 conclusion on the variance.

2 OP's analysis relied in part on the presence
3 of existing illegal unit and the difficulty of removing
4 it and, again, under the D.C. Court of Appeals precedent
5 these factors cannot support an area variance. OP also
6 applied the standard under Subtitle U, Section 301.5(b),
7 which pertains to apartment houses lawfully constructed
8 prior to 1981. This is -- It doesn't really matter here
9 because the substantive analysis really is similar, so
10 it doesn't change any of the conclusions that the
11 Applicant has made or that have not met the variance
12 test.

13 Turning to the work of ANC 1E, I do give great
14 weight to ANC 1E's report which recommended approval
15 and raised no concerns. However, the ANC did not
16 address the exceptional condition of practical
17 difficulty prongs and because my analysis really turns
18 on those prongs I am not persuaded by the ANC's
19 recommendation.

20 So really to summarize, I support the parking
21 relief. I do not support the variance from Subtitle
22 U, 320.2(c), and because the variance is necessary to
23 approve the conversion I cannot support the special
24 exception for conversion under Subtitle U, 320.2. So
25 for these reasons I will vote to deny the area variance

1 and consequently the conversion relief. That's
2 generally it, Mr. Chairman, I can add if you like.

3 BZA CHAIR HILL: Thank you, Mr. Blake. If
4 you hear anything or have left out anything that you
5 wanted to discuss please let me know.

6 VICE CHAIRPERSON BLAKE: There's plenty, but
7 we'll let it go.

8 BZA CHAIR HILL: Okay, all right. Okay.
9 Well I appreciate all the time you took to review this
10 and I know that we all have been struggling with this
11 as well as the other cases with the 900 square foot case.

12 I mean I'm basically just going to agree with
13 what you said. I mean in looking at this, even in a
14 de novo way, that the evidence did not show how the
15 structural change was really going to be that difficult.

16 Going from three to two units is kind of something that
17 I heard you speak about that I am also going to reiterate.

18 Again, the self-creation that you spoke about,
19 I agree with that. It is unfortunate that the owner
20 didn't know and I do appreciate that they are not
21 professional developers, but didn't know to check the
22 certificate of occupancy prior to buying the property.

23 As I just mentioned, I would also agree with you in
24 your discussion concerning the parking relief and how
25 they are meeting that criteria.

1 So I will also be voting yes for the parking
2 relief and no for the area variance and the special
3 exception for the conversion because you need the area
4 variance in order to do the special, the conversion.

5 Chairman Hood, do you have anything you would like to
6 add.

7 ZC CHAIR HOOD: Again, Mr. Chairman, I will
8 say I appreciate all the work that Board Member Blake
9 and you, Mr. Chairman, that we have put into these cases.

10 You know, I resonate with hearing the Applicant when
11 they presented in front of us about what the Board did
12 previously and, again, I know, Board Member Blake
13 expanded very diligently on how that works.

14 Each case stands on his own. I've always had
15 some issues with the 900 square foot rule, even though
16 I know that it's waivable, but in this case I think that
17 the case has been laid out to -- I, too, support the
18 direction that the Board is going on this, but I think
19 from my standpoint and looking at the Office of
20 Planning's report, I may add a little extra though, but
21 just saying it in a different way from what Board Member
22 Smith did, the Office of Planning, the policy does not
23 bypass the Zoning Commission and go to the Board of
24 Zoning to change.

25 If the policy has shifted, and I've asked the

1 Office of Planning this numerous times, it needs to come
2 to the Zoning Commission to be able to deliberate and
3 make these things conducive if that's the way things
4 are shifted. Policy is not decided here and I think
5 that that goes loud and clear for this case and the
6 previous one, and actually for all of them.

7 So I would employ, and I've done this before,
8 I have asked the Office of Planning if there is
9 something that is sitting in the way things are shifting,
10 our opinion is moving, please come back to the Zoning
11 Commission and let us deal with, which would make the
12 job a lot easier.

13 Again, I want to commend our Board Member
14 Blake. I agree with everything that has been mentioned,
15 his analysis, his detailed background, his discovery,
16 and there is quite a bit that has been put into this
17 and I think this particular case record will now set
18 the precedent for how some of this is brought to the
19 Board, which would help until the Zoning Commission at
20 some time is able to deal with it from a regulatory
21 standpoint and work with the Office of Planning if
22 something has shifted. So thank you, Mr. Chairman.
23 I don't have anything to add. Thank you.

24 BZA CHAIR HILL: Thank you. All right. I
25 am going to make a motion. I am going to bifurcate all

1 this. I am going to make a motion to approve under
2 Subtitle X, 901.2, for special exception under Subtitle
3 C, 703.2, from the minimum vehicle parking requirements
4 of Subtitle C, 701.5, one vehicle parking space
5 required. None proposed. And ask for a second, Mr.
6 Blake.

7 VICE CHAIRPERSON BLAKE: Second.

8 BZA CHAIR HILL: Madam Secretary, can you take
9 a vote on that motion?

10 MS. MEHLERT: Please respond to the Chair's
11 motion to approve the parking special exception relief.
12 Chairman Hill.

13 BZA CHAIR HILL: Yes.

14 MS. MEHLERT: Vice Chair Blake.

15 VICE CHAIRPERSON BLAKE: Yes.

16 MS. MEHLERT: Chairman Hood.

17 ZC CHAIR HOOD: Yes.

18 MS. MEHLERT: Staff would record the vote as
19 three to zero to two to approve special exception under
20 Subtitle C, Section 703.2 in Application Number 21307
21 on the motion made by Chairman Hill and seconded by Vice
22 Chair Blake.

23 BZA CHAIR HILL: Thank you. Then I'm going
24 to make a motion to deny pursuant to Subtitle X, 1002,
25 for an area variance for the minimum lot area

1 requirements of Subtitle U, 320.2(c) to allow a
2 conversion to apartment house use with less than 900
3 square feet of land area per each existing and new unit,
4 562 square feet for three units proposed, and I am making
5 a motion in denial of that request and asking for a
6 second, Mr. Blake.

7 VICE CHAIRPERSON BLAKE: Second.

8 BZA CHAIR HILL: Motion made and a second.

9 Madam Secretary, take the roll call, please.

10 MS. MEHLERT: Please respond to the Chair's
11 motion to deny the area variance from Subtitle U, Section
12 320.2(c). Chairman Hill.

13 BZA CHAIR HILL: Yes.

14 MS. MEHLERT: Vice Chair Blake.

15 VICE CHAIRPERSON BLAKE: Yes.

16 MS. MEHLERT: Chairman Hill. Hood, sorry.

17 ZC CHAIR HOOD: Yes. Well we're good
18 friends, so you can call me Hill. Yes.

19 (Laughter.)

20 MS. MEHLERT: Staff would record the vote as
21 three to zero to two to deny the area variance from
22 Subtitle U, Section 320.2(c) in Application 21307 on
23 the motion made by Chairman Hill and seconded by Vice
24 Chair Blake.

25 BZA CHAIR HILL: Thank you. All right. I

1 am going to make one more motion to deny pursuant to
2 Subtitle X, 901.2, for a special exception under
3 Subtitle U, 320.2, to allow the conversion of an existing
4 residential building to a 3-unit apartment house and
5 ask for a second, Mr. Blake.

6 VICE CHAIRPERSON BLAKE: Second.

7 BZA CHAIR HILL: motion made and a second.
8 Madam Secretary, take the roll call, please.

9 MS. MEHLERT: Please respond to the Chair's
10 motion to deny the special exception under Subtitle U,
11 Section 320.2. Chairman Hill.

12 BZA CHAIR HILL: Yes.

13 MS. MEHLERT: Vice Chair Blake.

14 VICE CHAIRPERSON BLAKE: Yes.

15 MS. MEHLERT: Chairman Hood.

16 ZC CHAIR HOOD: Yes.

17 MS. MEHLERT: Staff would record the vote as
18 three to zero to two to deny the special exception under
19 Subtitle U, Section 320.2, in Application Number 21307
20 on the motion made by Chairman Hill and seconded by Vice
21 Chair Blake.

22 BZA CHAIR HILL: Thank you. Chairman Hood,
23 is that all with you today?

24 ZC CHAIR HOOD: That's it for me. You all
25 have a great day. Thank you.

1 BZA CHAIR HILL: Thank you. You have a happy
2 new year.

3 ZC CHAIR HOOD: All right. So I may see you
4 all before then, I'm not sure, I don't know.

5 BZA CHAIR HILL: I don't think so.

6 ZC CHAIR HOOD: Oh, okay, good. Well you all
7 have a happy holiday.

8 BZA CHAIR HILL: Thank you, you too. All
9 right. Okay, give me a minute.

10 (Pause.)

11 BZA CHAIR HILL: Okay. Thank you. Madam
12 Secretary, if you can call our next one, please.

13 MS. MEHLERT: Yes. I believe the next case
14 is with Commissioner Miller.

15 BZA CHAIR HILL: Yes. Thank you.

16 MS. MEHLERT: This is still in the Board's
17 Meeting session. It is Application Number 21329 of
18 Stephen Jackson. This is an application pursuant to
19 Subtitle X, Section 901.2, for a special exception under
20 Subtitle E, Section 204.4, and the requirements of
21 Subtitle E, Section 204.1, to allow removal or
22 significant alteration of a rooftop architectural
23 element original to a principle building.

24 It is for the alteration of the roof of a front
25 porch to allow installation of a railing for a second

1 story deck at an existing 2-story attached to 2-story
2 principle dwelling. It is located in the RF-1 zone at
3 1128 4th Street, Northeast, Square 773, Lot 73.

4 This was heard on November 5th. The Board
5 began deliberations at last week's public meeting on
6 December 3rd. Participating are Chairman Hill, Vice
7 Chair Blake, and Commissioner Miller, and as a
8 preliminary matter there is a revised request from the
9 Applicant to re-open the record.

10 BZA CHAIR HILL: Okay. Thank you. In terms
11 of the re-opening of the record, I'm kind of speaking
12 to myself, the Board Members here, there was no
13 additional information that I needed. I just needed
14 another week to kind of think about things and if we
15 had allowed the additional information then we would
16 have had to allow time for the ANC to respond.

17 The ANC also, I believe, submitted something
18 into the record to deny the re-opening of the record,
19 which as I understand it is not something that we take
20 under consideration anyway, it's really the Board's
21 decision whether we open or re-open the record.

22 So really I would be in denial of re-opening
23 the record and admitting anything into the record and,
24 also, therefore, the other request is moot. And would
25 you agree with that, Mr. Blake?

1 VICE CHAIRPERSON BLAKE: I do, Mr. Chair.
2 I don't think that it is necessary to re-open the record
3 to examine this at this point. I think there is ample
4 information in the record, it's a very full record,
5 actually, and I am comfortable with that.

6 BZA CHAIR HILL: Thank you. Commissioner
7 Miller, your thoughts?

8 (Pause.)

9 BZA CHAIR HILL: I think you're still on mute.
10 There we go.

11 COMMISSIONER MILLER: Yeah. I'm not sure
12 what the problem was there, I had to hold it down for
13 several seconds. I have no -- I have no objection.
14 I was prepared to vote on that date and I am prepared
15 to vote today.

16 BZA CHAIR HILL: Okay, but I'm sorry,
17 Commissioner, just for the record, you are saying you
18 are in agreement not to re-open the record, correct?

19 COMMISSIONER MILLER: I would have done
20 whatever the majority of the Board wanted to do is what
21 I'm saying, so, yes, I am in agreement not to re-open
22 the record.

23 BZA CHAIR HILL: Okay, great. Madam
24 Secretary, do I need to take a vote on that?

25 MS. MEHLERT: You don't have to. I mean you

1 can do it by consensus.

2 BZA CHAIR HILL: Okay, great. All right.
3 And, Commissioner Miller, you are kind of cutting in
4 and out. We'll see how it goes, but I think it will
5 work. So back to the deliberation, where I was getting
6 stuck was really on E, 204.4(a)(2), or, I'm sorry,
7 (a)(3), the proposed construction as viewed from the
8 street, alley, and other public way shall not
9 substantially visually intrude upon the character,
10 scale and pattern of houses along the street or alley
11 frontage.

12 I appreciate that the word here is
13 "substantially" and what one considers substantial.
14 I have had many cases before us where I have not thought
15 that something was substantial in terms of how it
16 visually intruded upon the character, scale, and pattern
17 of houses along the street. Frontage is the part that
18 I am again continuing to focus on.

19 I understand what the Office of Planning has
20 put forward and I rarely am in difference in terms of
21 what the Office of Planning has proposed. I continue
22 to have the same thoughts that I had last week, and so
23 I think we may end up being stuck here until the next
24 person comes before the Board, and I think there's
25 another NCPC person and another, and a couple of people

1 from the public that will be joining us, and so we can
2 always, you know, push this off until someone does come
3 forward to be able to split or get three votes, I guess.

4 Again, for me, and I do appreciate the
5 Applicant and what the Applicant has done and is was
6 trying to also do in terms of re-opening the record to
7 continue the delivery or making the case, but I don't
8 think there was anything necessarily new. I mean for
9 me it really is just that that whole block does not have
10 this type of railing that I am considering to be
11 substantial.

12 I realized that, you know, by right you could
13 do a third story, you can change the way that whole row
14 is going to end up looking, and I understand it's also
15 not in a historic neighborhood, but whatever you can
16 do by matter of right I think you should do by a matter
17 of right. I mean that's why things do come before us.

18 We are also supposed to give great weight to
19 the ANC and the ANC in this particular case voted
20 unanimously not to approve, and so the part that I get
21 stuck on, again, a little bit is that supposedly the
22 ANCs, you know, they vote for their SMD and then they
23 vote for their area as well. You vote for your SMD and
24 then that becomes your ANC. In this case even the even
25 the SMD voted in favor of this, so therefore, I am getting

1 more information from people that are supposedly there,
2 and I do appreciate that there were also letters in the
3 record having people in support, but I'm kind of, you
4 know, I am giving great way to the ANC, and so that's
5 why I am kind of leaning this way.

6 As I mentioned before, it's kind of -- It's
7 understandable how I can see people voting the other
8 way. I just can't in this particular case get away from
9 that railing in regards to the rest of the street
10 frontage, so I'm still a no. Mr. Blake, do you have
11 anything you would like to add?

12 VICE CHAIRPERSON BLAKE: Yeah. Mr. Chair,
13 you know, the last time we met I was not in, I was kind
14 of in between. I wasn't sure if I was going to go one
15 way or the other. I reviewed the documents very
16 carefully in the case record and I am actually more in
17 the camp to support the application than not.

18 I think that the credible argument has been
19 made as to why this railing is not visually intrusive
20 and to the extent that, you know, we can certainly
21 continue to review this further, but I do think that
22 in the context of the block, in the context of, you know,
23 RF-1, and in the context of row houses, I do think that
24 a railing in itself, looking at the railing itself, its
25 configuration and its impact, aside from how it might

1 be used, is in fact not visually intrusive, so for that
2 reason I would be actually in support of this
3 application.

4 BZA CHAIR HILL: Thank you, Mr. Blake.
5 Commissioner Miller.

6 (Pause.)

7 COMMISSIONER MILLER: Yeah. I don't know if
8 you can hear me or not, but --

9 BZA CHAIR HILL: Yeah, we can hear you.

10 COMMISSIONER MILLER: Okay. I might go out.
11 Yeah, I agree with Vice Chair Blake. (Audio
12 interference) conclusion as I said last week. I do not
13 think that this modest railing on the ground floor of
14 this house and other houses is -- I don't think this
15 modest railing substantially visually intrudes upon the
16 pattern, scale or character of the neighborhood.

17 As I pointed out last week, I couldn't even
18 -- When there was looking at the photos I couldn't (audio
19 interference) first find a true blocking view from the
20 other side of the street or when you're walking on that,
21 and maybe that's on that side of the street as well.

22 You know, the people there on that block have been
23 living with this illegal, unfortunately illegal, and
24 apparently nobody has complained.

25 We have letters in the record supporting it

1 from the adjacent neighbors and at my request finding
2 out what the neighbors across the street felt and they
3 supported it. One of them said they couldn't even see
4 it. So I think it's a modest, it's a modest change,
5 but (audio interference) change and it is unfortunate
6 it would change votes, so that's where we are.

7 BZA CHAIR HILL: Okay, great. Thank you.
8 I pretty much heard all of the discussion that you had,
9 Commissioner Miller, and you're still where you were,
10 and I appreciate all of the discussion that has happened,
11 and we'll just wait for another member. So, let's see,
12 Madam Secretary, I don't know, I think we did this with
13 another case. Now there is one more case where we are
14 waiting for another member. We just have to wait,
15 correct?

16 MS. MEHLERT: Yes. Yes, probably sometime
17 in the new year.

18 BZA CHAIR HILL: Okay. Okay, great. So
19 we'll see what happens when a new member arrives. And
20 there you go. Okay. Commissioner Miller, is that the
21 end for you today?

22 (No audible response.)

23 BZA CHAIR HILL: Madam Secretary, is that the
24 end for Commissioner Miller today?

25 MS. MEHLERT: Yes.

1 BZA CHAIR HILL: Okay. Commissioner Miller,
2 you have a happy --

3 COMMISSIONER MILLER: That's the end. Thank
4 you. You, too, happy holidays.

5 BZA CHAIR HILL: Okay, great. Commissioner
6 Miller is done. Okay, that's right there. Okay.

7 (Whereupon, the above-entitled matter went
8 off the record at 10:29 a.m.)

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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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18 Eric Mollen

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