

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
MARCH 11, 2026

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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 9:30 a.m. EDT, Carl H. Blake, Vice-Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

CARL BLAKE, Vice-Chairperson
BRITTNEY DRAKEFORD, NCPC Designee

ZONING COMMISSION MEMBERS PRESENT:

ROBERT MILLER, Vice-Chairperson
GWEN WRIGHT, District Resident Appointee

OFFICE OF ZONING STAFF PRESENT:

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

OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

SARAH BAJAJ, ESQ.
CARISSA DEMARE, ESQ.
JORDANE WONG, ESQ.

The transcript constitutes the minutes from the Regular Public Meeting held on March 11, 2026.

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

2 9:34 a.m.

3 VICE CHAIRPERSON BLAKE: Good morning,
4 ladies and gentlemen. The Board of Zoning
5 Adjustment's March 11, 2026 public hearing will
6 please come to order. My name is Carl Blake, Vice
7 Chair of the District of Columbia Board of Zoning
8 Adjustment. I'll be the presiding officer for
9 today's meeting.

10 Joining me today are Board Members Brittney
11 Drakeford, representing National Capital Planning
12 Commission, and Zoning Commissioners Gwen Wright and
13 Rob Miller. Today's meeting sessions are available
14 on Office of Zoning's website. Please be advised
15 that this proceeding is being recorded by a court
16 reporter and is also webcast live via Webex and
17 YouTube Live.

18 A video of this webcast will be available
19 on the Office of Zoning's website after today's
20 hearing. Accordingly, everyone who is listening on
21 Webex or via telephone will be muted during the
22 hearing. If you experience difficulty accessing
23 Webex or with your telephone call in, then please
24 call our OZ hotline number at 202-727-5471 to
25 receive Webex login or call-in instructions.

1 Today we will only conduct a decision
2 meeting session. Please be advised that we do not
3 take any public testimony at our decision meeting
4 sessions. At the conclusion of a decision meeting
5 session, the chair will, in consultation with the
6 Office of Zoning, determine whether a full or
7 summary order may be issued.

8 A full order is required when the decision
9 it contains is adverse to a party, including an
10 affected ANC. A full order may also be needed if
11 the Board's decision differs from the Office of
12 Planning's recommendation. Although the Board
13 favors the use of summary orders whenever possible,
14 an applicant may not request the Board to issue such
15 an order.

16 The order of procedure for the special
17 exceptions and variances are pursuant to Subtitle Y,
18 Section 409. The procedure for appeals are pursuant
19 to Subtitle Y, Section 507. Time constraints shall
20 be maintained pursuant to Subtitle Y, Section 8.2
21 and 8.3.

22 Finally, the District of Columbia
23 Administrative Procedure Act requires that the
24 public hearing on such a case be held in the public
25 -- open before the public. However, pursuant to

1 Sections 405(b) and 406 of that act, the Board may,
2 consistent with its rules of procedure and the act,
3 enter into a closed meeting for purposes of seeking
4 legal counsel on a case pursuant to D.C. Official
5 Code Section 2-575(b)(4) and/or deliberating on a
6 case pursuant to D.C. Official Code Section 2-
7 575(b)(13), but only after providing the necessary
8 public notice, and in the case of an emergency
9 closed meeting, after taking a roll call vote.
10 Madam Secretary, do you have any preliminary
11 matters?

12 MS. MEHLERT: Good morning, members of the
13 Board. There are no preliminary matters for today.

14 I will just note for the record that all the
15 applications that were originally scheduled for a
16 hearing today have been administratively rescheduled
17 to a later hearing date which will be found on the
18 calendar on the Office of Zoning website as well as
19 the specific case records in IZIS.

20 VICE CHAIRPERSON BLAKE: Okay, great.
21 Would you please call our first meeting session
22 item?

23 MS. MEHLERT: Yes. The first item in the
24 Board's meeting session is expedited review,
25 Application No. 21432 of Hasan Dossal. This is a

1 self-certified application pursuant to Subtitle X,
2 Section 901.2 for a special exception under Subtitle
3 D, Section 5201, from the side yard requirements of
4 Subtitle D, Section 208.2. This is for a one-story
5 side addition to an existing two-story detached
6 principal dwelling replacing an existing one-story
7 covered porch. It's located in the R-1A/WH zone at
8 2900 Glover Drive, Northwest, Square 1620, Lot 77.

9 VICE CHAIRPERSON BLAKE: Thank you very
10 much. As the Secretary stated, the applicant
11 proposes to enclose an existing one-story covered
12 rear porch of a detached single family dwelling
13 located in the RA-1/WH. That's the Wesley Heights
14 residential house zone.

15 The addition will basically facilitate a
16 modest expansion of the kitchen area. But the
17 enclosure itself will remain within the existing
18 footprint. And the roof line would not change the
19 building's height, lot occupancy, or massing.

20 The existing enclosed rear porch sits at
21 the northwest corner of the building, but just 7.1
22 feet from the side property line. So in this self-
23 certified application, the applicant is seeking a
24 special exception from the 8 foot side yard
25 requirement of Subtitle D, Section 208.2. Now the

1 Board is authorized to grant the requested relief
2 pursuant to the general special exception standards
3 of X 901.2 and the residential addition requirements
4 of Subtitle D 5201.

5 So under these provisions, the Board must
6 find that the addition will not have a substantially
7 adverse effect on light and air, privacy, or the
8 character of the neighborhood and that the granting
9 of relief will be in harmony with the intent of the
10 zoning regulations and will not adversely affect
11 neighboring property. Now I've reviewed the case
12 record. And I believe there is sufficient evidence
13 supporting the Board's approval of the requested
14 relief.

15 With regard to 5201, light and air, the
16 enclosure would remain within the existing footprint
17 and the roof line would not change the building's
18 height, light, lot occupancy, or massing, as I said.

19 Since there will be no expansion to the structure,
20 light and air conditions remain essentially the
21 same. With regard to privacy, there are no windows
22 or doors proposed, fence facing the adjacent
23 property, and their existing landscape provides a
24 degree of screening. So there should be no undue
25 effects on privacy.

1 The project can barely be seen from the
2 street, and the design complements the existing
3 structure. So it's not likely to be visually
4 intrusive. So the project should not tend to have
5 an adverse impact on neighboring properties.

6 And because the project allows a reasonable
7 opportunity for owners to expand their house without
8 increasing building footprint or reducing open space
9 or density, I believe the project is in harmony with
10 the zoning regulations in this RA-1/WH zone. I
11 agree with the analysis provided by the Office of
12 Planning and give great weight to the Office of
13 Planning recommendation for approval. I also give
14 great weight to the written report of ANC 3D which
15 is in support and states no issues or concerns.

16 I'll also note that DDOT is in support of
17 the project. I'll also note there's a letter in the
18 record signed by neighbors in support. And there's
19 no community opposition reflected in the record. So
20 I'll be voting in support of this application.
21 Commissioner, what are your thoughts?

22 COMMISSIONER MILLER: Thank you, Mr.
23 Chairman. As usual, you have given a thorough
24 analysis of all the -- of the relief that's being
25 requested and how it meets the criteria, how this

1 application meets the criteria in the regulations.
2 So the only thing I would note is that it's in the
3 R1-A/Wesley Heights neighborhood, low density
4 residential district, just for the record. It's not
5 RA-1, which -- it's confusing, but it's R1-A. So I
6 agree with everything you said. And I am prepared
7 to support this application.

8 VICE CHAIRPERSON BLAKE: Thank you. Okay.
9 Board Member Drakeford.

10 MEMBER DRAKEFORD: Yes, I would also agree
11 with the comments that you provided, Chair Blake. I
12 believe that the record indicates that this is a
13 minor architectural enclosure of an existing
14 footprint and is generally consistent with the
15 Wesley Heights overlay which was designed to
16 preserve the park-like setting and low density
17 character of the neighborhood. I also just want to
18 note that while the record indicates that there's no
19 objection from DDOT, I would also just emphasize the
20 importance of the applicant's commitment to
21 coordinate with the Ward 3 arborist, with 3 heritage
22 and just to continue to coordinate with the Ward 3
23 arborist. And with that, I'm prepared to support.

24 VICE CHAIRPERSON BLAKE: All right. Thank
25 you very much, Board Member Drakeford. And again,

1 thank you very much, Commissioner, for addressing
2 that zoning misstatement. Okay. And I'll like to
3 make a motion to approve Application No. 21432 as
4 captioned and read by the Secretary and ask for a
5 second. Board Member Drakeford.

6 MEMBER DRAKEFORD: I second.

7 VICE CHAIRPERSON BLAKE: Okay. Madam
8 Secretary, a motion has been made and seconded.
9 Will you please conduct the roll call vote?

10 MS. MEHLERT: Please respond to the Chair's
11 motion to approve the application. Chairman Blake.

12 VICE CHAIRPERSON BLAKE: Yes.

13 MS. MEHLERT: Board Member Drakeford.

14 MEMBER DRAKEFORD: Yes.

15 MS. MEHLERT: And Commissioner Miller.

16 COMMISSIONER MILLER: Yes.

17 MS. MEHLERT: Staff will record the vote as
18 3 to 0 to 2 to approve Application No. 21432 on the
19 motion made by Chairman Blake and seconded by Board
20 Member Drakeford. You're on mute, Mr. Chair.

21 VICE CHAIRPERSON BLAKE: Thank you.
22 Commissioner, you're still on for next one. So
23 Madam Secretary, will you please call our next
24 meeting session?

25 MS. MEHLERT: Next is Application 21400 of

1 Aidan Montessori School. As amended, this is a
2 self-certified application pursuant to Subtitle X,
3 Section 1002, for an area variance for the lot
4 occupancy requirements, Subtitle D, Section 210.1
5 and under Subtitle X, Section 901.2 for a special
6 exception under Subtitle U, Section 203.1(m) to
7 allow expansion of an existing private school use.
8 This is for a two-story front addition to an
9 existing four-story building for use as a private
10 school.

11 It's located in the R-3 zone at 2700 27th
12 Street, Northwest, Square 2109, Lot 92. This was
13 heard on February 25th, where the Board deliberated
14 and moved to approve the application. And this is
15 before the Board today to potentially resume
16 deliberations and discuss enrollment cap and
17 participate -- Chair Blake, Board Member Drakeford,
18 and Commissioner Miller.

19 VICE CHAIRPERSON BLAKE: Thank you. As the
20 Secretary pointed out, on February 25th, the Board
21 did complete its hearing and deliberated on this
22 case and voted 3 to 0 to approve the application.
23 However, when I made the motion at the conclusion of
24 our deliberation, I did not include a condition that
25 was proposed by the applicant to establish a new cap

1 on enrollment of 180 students.

2 So today -- at this point we have the
3 opportunity to revisit that condition. If the Board
4 members are in agreement, we can do that. We can
5 have discussion on it and potentially reopen the
6 case and revote to include the condition. So I'm
7 going to ask Commissioner Miller, what are your
8 thoughts on that?

9 COMMISSIONER MILLER: Thank you, Mr.
10 Chairman. Yes, I support resuming deliberations,
11 rescinding the prior vote, and voting again, with
12 the condition of reducing the enrollment cap from
13 the 1963 zoning order of 240 to 180 which is what
14 the applicant represented to the ANC, I think about
15 20 years ago and the hearing offered to go with that
16 180 enrollment cap since they're only at 147 now and
17 don't intend to expand beyond 180, if they even get
18 there. So I'm prepared to move forward with
19 whatever procedure we need to do. I guess it's to
20 rescind the prior vote and vote on a new motion by
21 you, hopefully, with the -- to approve with the
22 condition of the 180 enrollment cap. So thank you.

23 VICE CHAIRPERSON BLAKE: Thank you. Board
24 Member Drakeford, your thoughts?

25 MEMBER DRAKEFORD: Yes, I would also agree

1 with Commissioner Miller. I know this certainly was
2 the intention of the Board at our previous meeting.

3 And it also is -- would have been, I guess,
4 discussed and negotiated between the applicant and
5 the ANC's also support of -- including that -- doing
6 whichever procedure we need to do to ensure that we
7 have the record reflect the intentions of the Board.

8 VICE CHAIRPERSON BLAKE: Okay. Thank you
9 very much. I appreciate that. And I too am in
10 support of the condition. But I want to first take
11 a second to address an issue here.

12 The applicant submitted an email exchange
13 with the Zoning Administrator in support of the
14 applicant's contention that a special exception was
15 not needed for the proposed building expansion
16 because the previously approved special exception
17 use had vested and had not expired. I want to point
18 out a few things with regard to that. First of all,
19 the Board, not the ZA, has the ultimate authority to
20 interpret the zoning regulations.

21 It is true that the special exception
22 approved in 1960 was vested and is not expired. The
23 email said that the use is not changing. But an
24 addition to a building containing a special
25 exception use isn't changed for what was approved in

1 the previous application, the same use, private
2 school use, but not the same as the proposed that
3 the Board approved before.

4 The prior approval was not unlimited, but
5 it was based on the use of an existing building
6 which in effect limited the GFA, gross floor area,
7 that could be devoted to a private school use at the
8 property. The planned addition would increase the
9 gross floor area by 8 percent. That's 1 or 2
10 percent presented by the Zoning Administrator's
11 flexibility.

12 The Board has held that approval of an
13 application to allow a special exception use limits
14 the approved use to the parameters stated in the
15 application, even if the Board does not adopt the
16 conditions stating those limits explicitly because
17 the parameters stated in the application form the
18 basis for the Board's consideration of potential
19 adverse impacts. Now I would cite the BZ Order No.
20 16970 as an example. In that case, the prior
21 approval of an application that requested a special
22 exception to allow a child development center for
23 120 students, 28 staff, limited enrollment, staffing
24 to 120 and 28.

25 Even though the prior order did not include

1 conditions limiting enrolment staffing, parameters
2 stated in the application was central to the Board's
3 decision to approve the application. For this same
4 reason, the Board has consistently considered
5 applications for special exceptions to allow
6 expansions of existing buildings or to allow a new
7 building for use by existing private schools. In
8 this case, the proposed expansion requires an area
9 variance for lot occupancy and a special exception
10 to allow the expansion of an existing private school
11 use because the addition would not be devoted to a
12 matter of right use.

13 Moving to the proposed conditions. I'll
14 also point out that in this application, the
15 proposed amended condition adapted in the '63
16 special exception. Now the applicant did not state
17 a rationale for the Board's adaption of any
18 condition of approval with respect to the variance.

19 The Board certainly is not willing to
20 modify its previously approved special exception
21 except in the context of a new special exception
22 application. I believe that point was made clear at
23 the March 4th hearing. I will reference to comments
24 I made during deliberations on February 25th in
25 stating why I believe the applicant has met the

1 burden of proof for the area of variance and special
2 exception.

3 In those deliberations, I indicated my
4 support for the enrollment cap of 180 students now
5 proposed by the applicant and intended to include it
6 in the motion. I recognize there is an agreement
7 with the ANC. But the Board does not enforce
8 private or historic agreements.

9 And the alleged breach of such agreements
10 falls outside the Board's authority and does not
11 control the zoning analysis. That said, I am
12 comfortable supporting the adoption of the cap
13 proposed by the applicant as a way of mitigating
14 potential adverse impacts associated with the cap of
15 240 that was proposed in 1963 in Order No. 7184.
16 With that, I think we're in agreement.

17 And I would like to make a motion to
18 rescind the vote taken on this application on
19 February 25th and instead make a motion to approve
20 the area variance, the special exception requested
21 in the amended application, No. 21400, including
22 condition enrollment cap of 180 students to reduce
23 the potential neighborhood impacts and to ensure
24 compatibility with surrounding uses and ask for a
25 second. Board Member Drakeford.

1 MEMBER DRAKEFORD: I second.

2 VICE CHAIRPERSON BLAKE: Okay. Madam
3 Secretary, a motion has been made and seconded.
4 Will you please conduct the roll call vote?

5 MS. MEHLERT: Please respond to the chair's
6 motion to rescind the February 25th vote and approve
7 the application with the 180 enrollment cap
8 condition. Chairman Blake.

9 VICE CHAIRPERSON BLAKE: Yes.

10 MS. MEHLERT: Board Member Drakeford.

11 MEMBER DRAKEFORD: Yes.

12 MS. MEHLERT: And Vice Chair Miller.

13 COMMISSIONER MILLER: Yes.

14 MS. MEHLERT: Staff recorded the vote as 3
15 to 0 to 2 to rescind the February 25th vote and
16 approve Application No. 21400 with the condition on
17 the motion made by Chairman Blake and seconded by
18 Board Member Drakeford.

19 VICE CHAIRPERSON BLAKE: Okay. Thank you,
20 Madam Secretary. Commissioner Miller, I think
21 that's it for you today. Thank you very much.

22 COMMISSIONER MILLER: That is it for me
23 today. I have a question for you. Is this your
24 last BZA meeting? I know you didn't want me to
25 bring that up, but I brought it up.

1 (Simultaneous speaking.)

2 COMMISSIONER MILLER: It is?

3 VICE CHAIRPERSON BLAKE: Perhaps.

4 COMMISSIONER MILLER: Perhaps? Okay.

5 Well, because it perhaps may be your last meeting, I
6 just wanted to thank you for all of your public
7 service to the District of Columbia. You've always
8 been very professional, thorough, comprehensive in
9 your -- and patient in your discussions with the
10 public and the witnesses and the applicant and us.
11 So if we won't be seeing you on this Zoom meeting,
12 Webex meeting format, I will wish you well and
13 whatever your future endeavors are and hope to see
14 you in other capacities. So thank you.

15 VICE CHAIRPERSON BLAKE: Thank you. Thank
16 you, Commissioner. Thank you very much. I
17 appreciate that.

18 COMMISSIONER MILLER: And with that, I'll
19 leave.

20 VICE CHAIRPERSON BLAKE: All right. Thank
21 you very much. Okay. We're going to start. Let's
22 see. Commissioner Wright is here, so we'll call our
23 next --

24 MEMBER DRAKEFORD: Sorry.

25 VICE CHAIRPERSON BLAKE: -- meeting.

1 MEMBER DRAKEFORD: Chair Blake, can I have
2 a --

3 VICE CHAIRPERSON BLAKE: Yes.

4 MEMBER DRAKEFORD: -- short five-minute
5 break?

6 VICE CHAIRPERSON BLAKE: Sure, absolutely.
7 Let's take a -- let's see. It is -- resume at
8 9:05.

9 MEMBER DRAKEFORD: Okay. Thank you.

10 VICE CHAIRPERSON BLAKE: 10:05, 10:05.
11 Thanks.

12 (Whereupon, the above-entitled matter went
13 off the record at 9:55 a.m. and resumed at 10:08
14 a.m.)

15 VICE CHAIRPERSON BLAKE: Okay. Madam
16 Secretary, please call us back in.

17 MS. MEHLERT: The Board is returning from a
18 break back to its meeting session. The next case on
19 the agenda is Appeal No. 21314 of Burleith Citizens
20 Association. This is an appeal pursuant to Subtitle
21 X, Section 100, a decision made on February 14th,
22 2025 by the Department of Buildings' Zoning
23 Administrator to issue Building Permit B2308807.

24 This permit allowed four new lighting
25 poles, each 80 feet in height, installed at a public

1 recreation facility. It's located in the R-3/GT
2 zone at 1700 38th Street, Northwest, Square 1307,
3 Lot 859. The hearing was completed on February 25th
4 and scheduled for a decision. And participating are
5 Chair Blake, Board Member Drakeford, and
6 Commissioner Wright.

7 VICE CHAIRPERSON BLAKE: Okay, great.
8 Thank you very much, Madam Secretary. Welcome
9 again, Commissioner Wright. I'll kind of just lay
10 out this situation. This appeal concerns the zoning
11 definition of structure, which is stated in Subtitle
12 B, Section 100.2.

13 And specifically whether the definition
14 encompasses the light poles for which the Department
15 of Building issued a building permit for the
16 installation at a public recreation facility. The
17 appellant argues that the Zoning Administrator's
18 determination is fundamentally at odds with the
19 plain language of the intentionally broad definition
20 of structure in the regulations, and among other
21 things, at odds with well-established canons of
22 interpretation. The appellee, that is the ZA's
23 interpretation of the structure, argues that the
24 ZA's interpretation of the structure to include
25 light poles is consistent with the text, context,

1 and purpose of the zoning regulations as well as
2 longstanding administrative practices and sound
3 policy.

4 High-mast lighting has never been treated
5 as a structure that is the subject to zoning
6 standards for height setbacks and more. And the
7 ZA's interpretation reflects decades of consistent
8 practice under the zoning regulations for schools,
9 playing fields, parks, PUDs, and PDR zones. So I'd
10 say the rules for reading laws and regulations are
11 clear and well established.

12 First, words mean what they say. If the
13 words are clear, you follow what's written. When
14 the regulation appears ambiguous, there's a clear
15 order for resolving it. First, you read the words
16 in context.

17 Second, you apply any interpretive rules
18 built into the regulations themselves. Third, you
19 use the standard canons of interpretation and
20 consider the purpose of the regulations.

21 And only if ambiguity still remains do you
22 look to the administrative practice. And even then,
23 that practice cannot override clear text or the
24 regulation's own interpretative directives. So that
25 said, a regulation is ambiguous only if after

1 applying the ordinary tools of interpretation, the
2 text is reasonably susceptible to more than one
3 meaning.

4 If the words have a clear, ordinary meaning
5 and the provision fits coherently within the
6 regulatory framework, the regulation must be applied
7 as written. So it was interesting when we went
8 through this case and it was almost like a -- more
9 of an English class than a zoning session. I wanted
10 to call my daughter over so she could sit down and
11 listen to how they dissected the paragraph.

12 But I want to just talk about looking at
13 the definition. The first part, it talks about
14 anything constructed, including a building, the use
15 of which requires permanent location on the ground
16 or anything attached to something having a permanent
17 location on the ground. Now clearly, if you look at
18 an 80-foot light pole, it is constructed.

19 Its use requires permanent location in the
20 ground. It's attached to a foundation, having a
21 permanent location on the ground. So based on this
22 factual observation of these two conditions, we
23 would conclude that the light pole is a structure.
24 That's not ambiguous.

25 If we look at the list where it says

1 including among other things radio or television
2 towers, reviewing stands, platforms, flag poles,
3 tanks, bins, glass holders, chimneys, bridges, and
4 retaining walls. Okay. Now the appellee argues
5 that these examples are not arbitrary and random
6 assortment, but illustrations of improvements with
7 features that implicate zoning concerns such as
8 massing, occupancy, or symbolic presence, light
9 poles share none of these attributes.

10 I should say DGS argues that the deliberate
11 inclusion of flag poles and subsequent omission of
12 light poles demonstrates that light poles are not
13 meant to fall within Subtitle B, Section 100.2. But
14 I'm not persuaded by this argument, as this is not
15 an exhaustive list. The illustrative examples
16 provided include a fairly diverse list of
17 structures. They vary in size, function, and form.

18 From a structural perspective, light poles
19 are similar to flag poles and radio and television
20 communication towers. They are tall, structurally
21 engineered, and permanently anchored. So from a
22 contextual standpoint, the omission of light poles
23 from the illustrative list doesn't establish general
24 ambiguity in my opinion.

25 I will note there that the communications

1 towers were treated as specialized structures in the
2 regulations subject to regulations detailed in
3 Subtitle C. While ZR-16 does not contain a
4 dedicated section relating to flag poles, so flag
5 poles are subject to the same dimensional control of
6 other structures. And I would note that regulations
7 have evolved over the years.

8 And if you look at the exhibit that was
9 presented by DOB, we can see how those regulations
10 pretty much have stayed the same as far as the text.

11 But things have changed over the years. We've had
12 regulations that, first of all, D.C. facilities like
13 the federal government facilities were not always
14 regulated by -- adhere to zoning regulations.

15 And the inclusion of things like the
16 communication towers were not included until the
17 late '80s, early '90s when that became more of an
18 issue as the cellular systems as so forth kind of
19 were extended across the area. But I would say that
20 since light poles are most analogous to flag poles,
21 which are explicitly listed, and there's no
22 principle basis to treat them any differently. So
23 the fact that ZR-16 creates detailed rules for some
24 pole-type structures but not for others does not
25 remove those other structures from the definition of

1 structure.

2 It simply means the general structure
3 rules, height limit, setbacks, and yard
4 requirements, apply without modification. So in my
5 opinion, there's nothing ambiguous about the plain
6 language of the text in Subtitle B, Section 100.2
7 that would lead me to reasonably conclude that light
8 poles are not structures. I think the Zoning
9 Administration interpretation that light poles are
10 not structures under the definition of Subtitle B
11 100.2 is not supported by the plain language of the
12 definition, the surrounding regulatory framework, or
13 the applicable canons of interpretation.

14 The conclusion that the light poles fall
15 within the definition of a structure does not
16 require strained reading, creative interpretation,
17 or the departure from subtle principles. It
18 requires only reading the words as written and
19 consulting the regulatory context that surrounds
20 them. I can appreciate the Zoning Administrator's
21 approach to --

22 We are in a dense urban environment where
23 space is limited. These are somewhat unique
24 installations. And their operation is largely
25 regulated by other District agencies.

1 Practically speaking, many athletic fields
2 in the District abut public streets. So it's hard
3 for me to see how these lighting things would
4 satisfy a one-to-one setback requirement in this
5 environment. So as I said earlier, though, words
6 mean what they say.

7 And if the words are clear, you follow them
8 as written. And agency's failure to enforce a clear
9 provision does not make the provision ambiguous.
10 Non-enforcement may create a practice, but it does
11 not create uncertainty in the text.

12 The regulation means what it says, whether
13 or not it's been consistently applied. So what is
14 described as a longstanding practice is really a
15 matter of inconsistency, not ambiguity. A
16 longstanding administrative practice that
17 contradicts the plain language of the regulations
18 cannot be upheld because the Board does not have the
19 authority to amend the zoning regulations.

20 So for these reasons, I support amending
21 the appeal. I'm going to turn to Commissioner
22 Wright. What are your thoughts?

23 COMMISSIONER WRIGHT: Thank you. I agree
24 with everything you said. I think that it was very
25 well stated. I am trying to focus on the specific

1 question that we are being asked which is an
2 interpretation of the language in the code and not
3 whether light poles are good or light poles are bad.

4 I'm really trying to focus on the language
5 in the code. And I agree with what you've said.
6 Essentially, I think the list of items mentioned in
7 the code as representing structures is not intended
8 to be all inclusive.

9 The language that says, including among
10 other things, definitely makes me feel that that is
11 intended to be an illustrative list of things that
12 are considered structures but is not intended to be
13 all inclusive. The one piece of testimony that we
14 received from the Zoning Administrator that had me
15 thinking for a little while was the idea of these
16 light poles essentially being utilities, just as we
17 do not regulate the installation of telephone poles
18 or other kinds of pole utility fixtures that go on
19 public land. However, the last sentence in the
20 definition is counter to the idea that this could be
21 included as not a structure because it's a utility.

22 And that language says the term, structure,
23 shall not include mechanical equipment, but shall
24 include the supports for mechanical equipment. And
25 I think that's an important sentence. Even if you

1 consider the lights themselves as mechanical
2 equipment a utility, it specifically says that the
3 supports for the mechanical equipment, i.e. the
4 poles, are included in the definition of structure.

5 So I was looking at this very carefully,
6 and I listened very carefully to the testimony of
7 the Zoning Administrator. But I really cannot find
8 a reason to veer away from the plain language that's
9 in the code. The plain language in the code I think
10 is pretty straightforward.

11 I do believe that this is an area that is
12 in need of a zoning text amendment. I know that the
13 Zoning Commission, which I serve on, had looked at a
14 text amendment that was part of the omnibus bill
15 that we reviewed. The zoning text amendment that we
16 -- had been presented to us by the Office of
17 Planning was very basic and not very nuanced.

18 It essentially just said add in light poles
19 as something that doesn't count as a structure. I
20 think that we need a zoning text amendment. But I
21 think it needs to be a little more thought through
22 and nuanced.

23 And I encourage the Office of Planning to
24 work with the Office of Zoning legal counsel and
25 others to come up with a new text amendment that is

1 a bit more nuanced than what we received previously,
2 that the Zoning Commission can consider. So again,
3 I do want to reiterate that I'm not really looking
4 at the pros or the cons of the lights. I listened
5 carefully when the ANC representative provided
6 testimony and explained that there's mixed feelings
7 in the community about the light poles.

8 Although when they were tested, a lot of
9 folks in the community didn't even notice that the
10 lights had been turned on. And I heard all that and
11 that certainly goes to the substance of are light
12 poles acceptable or not acceptable. But I know
13 that's not what we're talking about here.

14 What we're talking about is a very specific
15 finding on the language in the code. And on that
16 specific issue, I agree with everything that you
17 said. And I think the plain language of the code
18 does not exclude light poles as a structure.

19 And I think that we really have to
20 determine that at this point they would be included
21 as a structure, pending any additional work we do on
22 a different and new zoning text amendment. So those
23 are my comments. And I essentially agree with
24 everything you said and just wanted to give a little
25 more background on my thinking on this issue. Thank

1 you.

2 VICE CHAIRPERSON BLAKE: Thank you very
3 much. Commissioner, thank you very much. Board
4 Member Drakeford, your thoughts.

5 MEMBER DRAKEFORD: Yeah, so I definitely
6 appreciate the perspectives and the rationale behind
7 both Chair Blake and Commissioner Wright's comments.

8 This is something that I've struggled with. And
9 I've struggled with going through the transcripts
10 and listening at the hearing. And I've certainly
11 struggled with it.

12 And I kind of am not fully convinced by the
13 applicant's argument that the definition of
14 structure was to include light poles. Particularly
15 as the -- excuse me, as the appellant. Particularly
16 as the appellant mentioned that this was designed or
17 that the statement was designed for all encompassing
18 to think about unforeseen technologies in the
19 future.

20 At the time, lighting was not unforeseen or
21 an emerging technology. It was well established and
22 a central component of urban infrastructure that was
23 broadly and consistently used at the time of the
24 code. Additionally, throughout the zoning
25 regulations, lighting or lighting requirements are

1 mentioned.

2 And so for me, I have definitely considered
3 whether or not the choice to exclude light poles
4 explicitly, right, when it seems as though it
5 would've been a technology that code drafters were
6 aware of, for me suggested it was a deliberate
7 policy choice not to include it. I also do
8 understand and appreciate the fact that there is
9 some ambiguity today, right, indicates that perhaps
10 as Commissioner Wright mentioned that there is a
11 need for additional clarity through a text amendment
12 or update to the zoning code to reflect that. So I
13 think that's a little bit of where I am on this
14 particular matter. That's where I am on this
15 particular matter.

16 VICE CHAIRPERSON BLAKE: So just to be
17 clear, Board Member Drakeford, are you saying that
18 you would not be -- would you be -- would you
19 support granting the appeal or you would still need
20 some more time to consider it, or you would be
21 opposed to granting the appeal?

22 MEMBER DRAKEFORD: At this point, I might
23 need more information to be in support of an appeal.

24 I am leaning to not be in support of the appeal, as
25 it does -- I have not necessarily been fully

1 convinced of the appellant's argument and use of
2 plain language in this particular instance.

3 VICE CHAIRPERSON BLAKE: Okay. Well, in
4 this instance, we have three votes to grant the
5 appeal and one undecided. We need a unanimous --
6 obviously, we've got two seats missing here on the
7 Board. So we cannot actually make a decision on
8 this without -- unless it's unanimous.

9 So Board Member Drakeford, if you could
10 just give me a little bit more. I think we're
11 obviously hitting a wall here. If you can give a
12 little bit more sense of what clarification that we
13 can work with what we have, that might be helpful to
14 us. Otherwise, we'll just have to punt on this. Go
15 ahead.

16 MEMBER DRAKEFORD: I don't want to say -- I
17 don't want to have us to punt on it. That's a -- I
18 think that for me in this instance what would be
19 maybe a little bit more helpful if I have just a
20 little bit more -- a little more time to review. I
21 mean, honestly, I think it's just transparently the
22 appellant's argument did not -- around plain
23 language, did not -- the argument did not convince
24 me.

25 It did not persuade me in this instance. I

1 do feel like the Zoning Administrator has made some
2 consistent decisions. And I have not been fully
3 persuaded by the appellant's argument.

4 VICE CHAIRPERSON BLAKE: Okay. Let's see.
5 Commissioner, do you have any comments you want to
6 add to that, or thoughts?

7 COMMISSIONER WRIGHT: Well, I think if we
8 are not unanimous, maybe we aren't able to take
9 action today and that the idea would be to go back
10 with Office of Planning and Office of Zoning legal
11 staff. Maybe working with the parties involved and
12 think about an appropriate zoning text amendment and
13 see if that zoning text amendment could resolve the
14 issues in this case. I think, again, it needs to be
15 a more nuanced text amendment, not simply saying
16 light poles don't count as structures, which is what
17 we had received previously.

18 It needs to be clear. Maybe it's based on
19 the idea of them being utilities and on public land
20 and treating all utilities on public land as
21 structures. Maybe it does set up a process by which
22 going forward light poles need to have some public
23 process.

24 I don't know what the right language of a
25 zoning text amendment is. But perhaps if we don't

1 have unanimity today, we could ask folks to go back
2 and work on a zoning text amendment that would also
3 include the parties such that perhaps this appeal
4 potentially in the future with an appropriate zoning
5 text amendment could be withdrawn. But I think it's
6 clear we don't have unanimity today.

7 VICE CHAIRPERSON BLAKE: Okay. Well, I
8 think our options as this Board is we don't have the
9 ability to -- I mean, I think two things. First of
10 all, I think the fact that we have to struggle to
11 decipher this does create a question. But I don't
12 think the question is necessarily with the text.

13 I think the question is with the practices
14 that we've had and so forth as I articulated. I do
15 think that the regulations have evolved over time.
16 And I think that sometimes the regulations don't
17 necessarily keep up with every element.

18 It's a long document. It's a lot in there.

19 And like you said, with the omnibus, there was an
20 attempt to kind of address this issue and we'll have
21 to do that. But from our perspective, all we can do
22 right now is we cannot make a decision.

23 So we're going to have to hold off the
24 vote. Madam Secretary, I'm going to need you to
25 reschedule this continuance for this decision at a

1 later date. Do you have any dates in particular in
2 mind you'd like to set it for, to give the Board
3 some time to rethink and review the record to come
4 up -- to see if we can reach a consensus with either
5 new members, additional members, so we can get our
6 three votes one way or the other?

7 MS. MEHLERT: Well, due to the quorum
8 issues, the Board isn't planning on reconvening
9 until April 22nd. So we can schedule it for that
10 date and have Board members read into the record.
11 I'm not sure if that's what you would like to do.

12 VICE CHAIRPERSON BLAKE: Well, I mean, I'd
13 be hesitant to schedule it for that particular day.
14 I think quite a few -- is that calendar full for
15 that day or is there room on that calendar? How
16 does it look?

17 MS. MEHLERT: I mean, we could put it the
18 following week on the 29th --

19 VICE CHAIRPERSON BLAKE: Let's do that.

20 MS. MEHLERT: -- for a decision.

21 VICE CHAIRPERSON BLAKE: Yeah, for a
22 decision on the 29th. That'll give everyone an
23 opportunity to read into the record and see where
24 they are.

25 MS. MEHLERT: Okay. And we can -- I mean,

1 it could be administratively rescheduled if things -
2 -

3 VICE CHAIRPERSON BLAKE: Yeah, exactly, if
4 need be.

5 (Simultaneous speaking.)

6 VICE CHAIRPERSON BLAKE: Okay.

7 MS. MEHLERT: Okay.

8 VICE CHAIRPERSON BLAKE: All right. Well,
9 then thank you very much. Is there anything else on
10 our agenda for this meeting session?

11 MS. MEHLERT: There is nothing else on the
12 agenda.

13 VICE CHAIRPERSON BLAKE: Okay. Well, then
14 thank you very much. This meeting is adjourned.

15 (Whereupon, the above-entitled matter went
16 off the record at 10:34 a.m.)

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

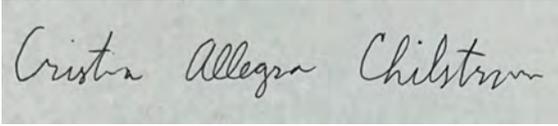
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19 Cristina Allegra Chilstrom

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