

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

MAY 6, 2020

+ + + + +

The Regular Public Meeting convened via Videoconference, pursuant to notice at 9:30 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
LORNA JOHN, Board Member
CARLTON HART, Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

MICHAEL G. TURNBULL, FAIA, Commissioner (AOC)
PETER G. MAY, Commissioner (NPS)
PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

DANIEL BASSETT, ESQ.
MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

The transcript constitutes the minutes from the Public Meeting held on May 6, 2020.

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

9:33 a.m.

CHAIRPERSON HILL: Welcome, everybody. This is my first collared shirt in, like, six weeks. Mr. Acosta has a tie on for us today. That's very good.

All right. So, I'm going to go ahead and read in here -- let's see. All right. Okay. The meeting will please come to order.

Good morning, ladies and gentlemen. This is the May 6, 2020, Public Decision Meeting of the Board of Zoning Adjustments for the District of Columbia. It is being convened by videoconference.

My name is Fred Hill, Chairperson. Joining me today is Lorna John, board member. Representing the Zoning Commission is Peter May and also Marcel Acosta.

Today's meeting agenda is available to you on the Office of Zoning website. We do not take any public testimony at our meetings. Please be advised that this proceeding is being recorded by a court reporter.

Mr. Moy, do we have any preliminary matters on the FMBZA issues?

MR. MOY: Good morning, Mr. Chairman and Members of the Board. I do very briefly for -- this is regarding to the two Foreign Mission cases.

The one Foreign Mission case, which is Application

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1 No. 19134C of the Embassy of Zambia, that the applicant filed
2 yesterday a request to postpone. So, that is in your case
3 record.

4 CHAIRPERSON HILL: Okay. Great.

5 And I guess we are still waiting on a State
6 Department letter as well as a Letter of Authorization; is
7 that correct?

8 MR. MOY: I believe so, sir.

9 CHAIRPERSON HILL: Okay. All right. So, we'll go
10 ahead and postpone that.

11 Do we know when we might be postponing that to?

12 MR. MOY: Given the fact that the State Department
13 is involved and under the circumstances in today's
14 environment, it seems reasonable to allow three or four
15 weeks. So, we'll leave that to the -- to this group which
16 day you would prefer.

17 On my calendar, that would be either -- let's see.
18 Calendar. So, we're looking at the earliest of May 20th or
19 beginning with May 27th. Perhaps May 27th.

20 CHAIRPERSON HILL: Okay. I mean, I know that we
21 were going to try to -- and there's probably no way we're
22 going to get it by next Wednesday, right, the 13th?

23 MR. MOY: I think that's unlikely, but, you know --
24 surprise is always good, but, you know.

25 CHAIRPERSON HILL: Okay. All right. If we do get

1 it, because I know we're going to try to do a couple of
2 things next Wednesday as well, perhaps we can schedule it
3 then.

4 I don't know if, Mr. Acosta, you're available next
5 Wednesday or not.

6 MR. ACOSTA: I'm available. That's fine.

7 CHAIRPERSON HILL: Okay. All right.

8 You're not going anywhere, Mr. Acosta?

9 MR. ACOSTA: I am not.

10 (Laughter.)

11 CHAIRPERSON HILL: All right. Okay. Then let's
12 go ahead and, Mr. Moy, if you wouldn't mind calling --

13 MR. MOY: Mr. Chair, before you move on --

14 CHAIRPERSON HILL: Yes.

15 MR. MOY: -- would you mind also asking Peter May
16 because he's sitting on this as well?

17 CHAIRPERSON HILL: Mr. May, are you available next
18 Wednesday?

19 COMMISSIONER MAY: I am available next Wednesday.
20 I am probably not available the following Wednesday.

21 CHAIRPERSON HILL: Okay. All right. So, let's
22 just see how it goes. Okay. All right. Thank you all.

23 I guess, Mr. Moy, if you can call up our first
24 case, the Application 19557A?

25 MR. MOY: Okay. So, the Board is to address Case

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1 Application No. 19557A of the Government of the Commonwealth
2 of Australia pursuant to 11 DCMR Subtitle Y Section 703, for
3 a modification of consequence to the plans approved by BZA
4 Orders No. 19557 to refine several components of the
5 architectural elements and open spaces of the Australian
6 embassy building. This is in the MU-15 Zone at 1601
7 Massachusetts Avenue, N.W., Square 181, Lot 162.

8 CHAIRPERSON HILL: Okay. Great. Is everyone ready
9 to deliberate? Okay. I'm going to go ahead and start.

10 As you'll recall, this was before us quite some
11 time ago and it is back in front of us for a modification of
12 consequence.

13 After I have taken a look through the record, I
14 didn't particularly have any issues with the modification.
15 I did review the report from the Office of Planning as to not
16 to disapprove.

17 There's also a report from the ANC that was also
18 in support. DDOT had no objection. We did get a letter from
19 the State Department that raised some issues.

20 I thought that the Office of Planning's report was
21 well thought out and was thorough in their reasoning. I also
22 thought that the applicant's arguments for the modification
23 of the facade, as well as the public art zone as to the
24 street trees, all fell within the modification of consequence
25 and I would agree with the applicant's argument.

1 So, after reviewing the record, I would be voting
2 to approve. Would you all please let me know what you think?

3 Perhaps, Mr. Acosta, we'll go with you first.

4 MR. ACOSTA: Thank you, Mr. Chairman.

5 I concur with your summary. I think this is a
6 reasonable series of changes and I support this application.

7 MEMBER JOHN: Mr. Chairman, I also would vote not
8 to disapprove the application because it meets the
9 requirements for modification of consequence and I would be
10 in support.

11 COMMISSIONER MAY: So, I would just like to be
12 clear on one thing. I mean, this is a modification of
13 consequence, not a minor modification.

14 So, just to be clear, as I understand it, we can
15 consider this -- not just the decision about whether it is
16 a modification of consequence, but we can actually decide it
17 because we have heard from the ANC and of course there are
18 no other parties. Maybe we need just to have the OAG, you
19 know, confirm my depiction of it or not.

20 Do we have somebody?

21 MR. BASSETT: Yeah. Let's see. I think I agree
22 that this is the first time that it's come up. And so, you
23 could decide both of those issues today, yeah.

24 COMMISSIONER MAY: So, we can decide them today
25 because we've heard from the ANC or is that -- does it not

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1 matter in an FMBZA case?

2 Normally on a regular contested case we'd want to
3 -- we'd decide that it's a modification of consequence and
4 then get -- make sure that we have heard from all of the
5 parties to the case.

6 I don't know if the ANC actually has party status
7 on an FMBZA case or not.

8 MR. BASSETT: I'm not sure I have the answer to
9 that.

10 MS. NAGELHOUT: Peter, I think you can go ahead.
11 If you look at the procedural rules in Subtitle Y for this
12 sort of modification, you can set up for hearing, if you
13 want, you can set it for decision later, or you can go ahead
14 and decide it now.

15 COMMISSIONER MAY: Okay. So, the notion that we
16 wait for hearing from all the parties is just our practice
17 as opposed to something that's required by the regulations?

18 MS. NAGELHOUT: They've had notice of this and
19 they've had an opportunity to weigh in, and you don't have
20 to wait if they haven't weighed in.

21 COMMISSIONER MAY: Okay. All right. Thanks. I
22 have no problem with the case. I just wanted to make sure
23 that we are being consistent with our normal procedures.

24 So, I'm prepared to move ahead and vote in favor
25 -- or vote not to disapprove.

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1 CHAIRPERSON HILL: Okay. Great. Thank you. All
2 right.

3 Then I'll make a motion to not to disapprove
4 Application No. 19557A, as captioned and read by the
5 Secretary, and ask for a second.

6 COMMISSIONER MAY: Second.

7 CHAIRPERSON HILL: The motion has been made and
8 seconded.

9 All those in favor? Mr. Moy, could you please
10 take a roll call?

11 MR. MOY: Thank you, Mr. Chairman.

12 So, the chairman is the maker of the motion to not
13 disapprove. Seconded the motion is Zoning Commissioner Peter
14 May representing the National Park Service in this case.

15 So, on this roll call vote when I call your name,
16 if you would each reply with a "yes," or a "no" or to abstain
17 to the motion made by the Chairman?

18 Ms. John?

19 MEMBER JOHN: Yes.

20 MR. MOY: Let's see. Mr. Marcel Acosta,
21 representing NCPC?

22 MR. ACOSTA: Yes.

23 MR. MOY: Mr. Peter May?

24 COMMISSIONER MAY: Yes.

25 MR. MOY: Chairman Hill?

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1 CHAIRPERSON HILL: Yes.

2 MR. MOY: And so, that's recording the vote as 4
3 to 0 to 1. No other members on the Board. Motion carried,
4 sir.

5 CHAIRPERSON HILL: Okay. Great. All right. So,
6 that motion is done and then we postponed the -- I should say
7 that case is finished. I'm sorry. Then we postponed the
8 other FMBZA.

9 So, I guess that's it for Mr. Acosta; is that
10 correct?

11 MR. ACOSTA: That is correct.

12 CHAIRPERSON HILL: Well, Mr. Acosta, you can go
13 back now and take off your tie.

14 MR. ACOSTA: Okay. Enjoy your day. Thank you.
15 (Laughter.)

16 CHAIRPERSON HILL: All right. Thank you. Bye-bye.
17 All right. So, Mr. Moy, I'm going to go ahead and
18 read our -- I'm thinking Mr. Hart was going to join us again.
19 Okay. Great.

20 VICE CHAIRPERSON HART: I'm here.

21 CHAIRPERSON HILL: All right. Wonderful. All
22 right. Let's see. So, I'm going to go ahead and read our
23 meeting process, I suppose.

24 So, this meeting will please come to order. Good
25 morning, ladies and gentlemen. We're conducting the public

1 decision meeting via WebEx video conferencing.

2 This is to convene the May 6, 2020, public meeting
3 of the Board of Zoning Adjustment of the District of
4 Columbia.

5 My name is Fred Hill, Chairperson. Joining me
6 today is Lorna John, Board Member; Carlton Hart, Vice Chair;
7 and Peter May representing the Zoning Commission.

8 And I believe actually -- is Mr. Turnbull also --
9 he'll be representing us as well later at some point on one
10 of the cases. So, Mr. Turnbull will also be with us
11 representing the Zoning Commission for other cases.

12 Today's meeting agenda is available on the Office
13 of Zoning website. Please be advised that this proceeding
14 is being recorded by a court report.

15 This is a decision meeting, so no testimony is
16 taken from the public. The record will be closed at the
17 conclusion of each case, except it will remain open for any
18 materials specifically requested by the Board.

19 The Board and the staff will specify at the end
20 of the meeting exactly what is expected and the date the
21 material must be submitted to the Office of Zoning. After
22 the record is closed, no other information will be accepted
23 by the Board.

24 The District of Columbia Administrative Procedures
25 Act requires that public hearing and meeting on each case be

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1 held in the open before the public pursuant to Section 405(b)
2 and 406(c) of that act.

3 The Board may, consistent with its Rules of
4 Procedures and the Act, enter into closed meeting on a case
5 for purposes of seeking legal counsel on a case pursuant to
6 DC Official Code Section 2-575(b)(4) and are deliberating on
7 a case pursuant to DC Official Code Section 2-575(b)(13), but
8 only after providing the necessary public notice, in the case
9 of an emergency closed meeting, after taking a roll call
10 vote.

11 The decision of the Board in legislative
12 proceedings must be based exclusively on a public record.
13 Preliminary matters are those which relate whether a
14 case will or should be heard today such as request for a
15 postponement, continuance or withdrawal, or whether proper
16 and accurate notice of the hearing or meeting has been given.

17 Again, Mr. Secretary, do we have any preliminary
18 matters concerning our meeting agenda?

19 MR. MOY: Good morning again, Mr. Chairman, Members
20 of the Board.

21 The only note I would like to make -- and this is
22 to you, Mr. Chairman, about -- regarding the status of
23 Application Nos. 19863 of Brian Wise and 19629 of Timothy and
24 Charlotte Lawrence.

25 CHAIRPERSON HILL: What are those, Mr. Moy? I'm

1 sorry.

2 MR. MOY: These two cases, Brian Wise and Timothy
3 and Charlotte Lawrence, the question from the staff is
4 whether or not you wanted to move forward with these two
5 today or whether or not you were intending to reschedule it.

6 CHAIRPERSON HILL: Is that about the order, Mr.
7 Moy, because I don't have those in front of me.

8 MR. MOY: Yeah, those -- I wanted to have that on
9 the record regarding the status of these two cases.

10 CHAIRPERSON HILL: Okay. Well, actually I think,
11 Mr. Moy, if they're the ones I'm thinking of, I wanted to
12 take a look at the orders because there was a couple of
13 questions about how they were being written and if we could
14 clarify, as a board, some of the issues.

15 So, what I'd like to do with those two, if we
16 could go ahead and put them until next Wednesday -- and I
17 believe we've checked in with the board members that are
18 necessary and they would be available next Wednesday to help
19 clarify on those issues.

20 So, if we could put those on the agenda for next
21 Wednesday, that would be helpful.

22 MR. MOY: Thank you. Sorry for interrupting, Mr.
23 Chairman.

24 The only question I have I wanted to place on the
25 table that Mary Nagelhout on the screen is whether or not --

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1 because I have to advertise this in the registers, so whether
2 or not one week is possible or whether I need two weeks to
3 advertise for this public meeting for these two cases, Mary.

4 MS. NAGELHOUT: I don't know. That's an OZ
5 question.

6 MR. MOY: Yeah. I was alerted yesterday that I
7 would need at least two weeks. So, I wanted to share that
8 with the Board.

9 CHAIRPERSON HILL: Okay. Well, Mr. May said he's
10 not available the week after next and I believe that -- I
11 think both of those he is on, correct?

12 MR. MOY: That is correct. And the next day after
13 that would be, of course, May the 27th.

14 COMMISSIONER MAY: I am available on the 27th.

15 CHAIRPERSON HILL: Okay. All right. So, Mr. Moy,
16 let's go ahead and move those then to -- oh, wait. So, we
17 can't -- what about the 13th -- oh, no. You have to do the
18 two weeks. Right. Okay.

19 So, then let's go ahead and do the 27th then.

20 MR. MOY: Okay. Very good. Thank you, Mr.
21 Chairman.

22 CHAIRPERSON HILL: Okay. Let's see. I forgot --
23 I neglected to mention on one of the cases Mr. Shapiro will
24 be joining us, I believe.

25 He is not in yet or with us yet. So, I believe

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1 he will --

2 MR. MOY: That's correct.

3 CHAIRPERSON HILL: -- probably pop in, correct?

4 MR. MOY: Yes, sir.

5 CHAIRPERSON HILL: Okay. Great.

6 Mr. May, are you flying somewhere next week or the
7 week after next?

8 COMMISSIONER MAY: I wish. No. I just have
9 another meeting that's long-planned and requires my
10 attendance.

11 CHAIRPERSON HILL: I see. We're not as important,
12 is what you're trying to say.

13 COMMISSIONER MAY: It's a delicate dance trying to
14 make sure that I can make all of my BZA appearances and meet
15 all my other obligations, and it has not ended in spite of
16 COVID.

17 CHAIRPERSON HILL: I see. Well, it's nice to be
18 popular and needed.

19 (Laughter.)

20 CHAIRPERSON HILL: Ms. Nagelhout, what's the name
21 of the cat?

22 MS. NAGELHOUT: This one is Eloise.

23 CHAIRPERSON HILL: Eloise. All right. Hello,
24 Eloise. That's nice. I'll bring up my dog in a moment.
25 I'll stick the dog in the camera there as well. We can have

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1 like a pet BZA session.

2 Maybe they can vote or chair for me. That would
3 be great.

4 MS. NAGELHOUT: Dogs are much easier to control.

5 CHAIRPERSON HILL: Yeah, you would think so, but
6 you have to go outside unfortunately.

7 All right. Well, actually the first case that we
8 are going to be discussing, I am not on. And so, I believe,
9 Mr. Moy, if you want to go ahead and call Application No.
10 20201, and then I will mute myself as you go ahead and I'll
11 let Vice Chair Hart lead.

12 COMMISSIONER MAY: So, can I just jump in for a
13 second because I am no longer needed, I believe. I have
14 nothing else. So, I'm going to sign out.

15 CHAIRPERSON HILL: All right. Well, nice to see
16 you, Commissioner May.

17 COMMISSIONER MAY: Nice to see you. See you in
18 three weeks.

19 CHAIRPERSON HILL: All right.

20 COMMISSIONER MAY: Maybe even next week. Who
21 knows.

22 CHAIRPERSON HILL: Sure.

23 COMMISSIONER MAY: All right. Bye.

24 VICE CHAIRPERSON HART: Okay. So, Mr. Moy, if you
25 could call the next case, I think we have everybody on the --

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1 that's sitting on it. Just the three of us.

2 MR. MOY: Yes. Thank you, Mr. Vice Chair.

3 So, This would be Case Application No. 20201 of
4 DC Superpack LLC. And this is a request for a special
5 exception under the Downtown-Use requirements Subtitle I
6 Section 303.1(a) and pursuant to Subtitle X, Chapter 10, for
7 a variance from the MU-Use Group E requirements Subtitle U
8 Section 513.1(a)(2).

9 This would permit an animal care and boarding use
10 in an existing mixed use building, D-4-R Zone, at premises
11 450 Massachusetts Avenue, N.W., Square 517, Lot 50.

12 Participating on this discussion and vote is Vice
13 Chair Hart, Ms. John and Zoning Commissioner Michael
14 Turnbull.

15 VICE CHAIRPERSON HART: Okay. Is the Board ready
16 to deliberate? I'm assuming that means yes. Okay. So, I
17 can start.

18 There were seemingly a lot of, kind of, pieces to
19 this. A lot of moving parts. The applicant is seeking this
20 special exception which allows a dog grooming in this zone,
21 but the requirements also include a number of criteria to be
22 met.

23 The applicant does not meet one of the criteria
24 and is seeking a variance from that. And that's Subtitle U
25 513.1(a)(2).

1 This criteria states that when located in a mixed
2 use building, the animal use and sales use should be not on
3 the same floor as a residential use and shall be located
4 separately from any residential use by at least one floor --
5 one floor of nonresidential use.

6 So, the applicant is again having to -- they're
7 requesting the special exception and there is -- they're
8 requesting a variance from one aspect of the criteria.

9 Under the variance test, of course there are three
10 prongs. The exceptional condition that leads to a practical
11 difficulty, and then whether or not the project is -- that
12 without this relief there will be -- I'm sorry -- granting
13 the relief would be a substantial detriment to the public
14 good and without substantially impairing the intent, purpose
15 and integrity of the zone plan.

16 So, the question is really how do we see the case
17 with regard to the special condition. The applicant has
18 provided a number of -- a discussion about the confluence of
19 factors that have -- that are affecting the property.

20 And they're saying that this is really what's
21 leading to the exceptional condition for them that there is
22 -- the issue of vertical separation, they're saying that they
23 can't move the, you know, the nonresidential any higher. And
24 that the residential that's on the same floor, again they
25 can't move that.

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1 They are proposing some, what they're calling,
2 mitigation and we can kind of talk about that a little bit
3 more.

4 But in my estimation in this, I kind of see it
5 like this that while the applicant has stated a confluence
6 of factors that contribute to the project that require them
7 needing the relief, they are -- they need to provide the
8 information why it believes this criteria -- how they
9 actually are meeting the criteria.

10 And I will note that the zoning relief itself is
11 going with the building and not the tenant. So, the building
12 would receive this.

13 And unfortunately I just don't think that I can
14 agree with the tenant that the -- that there is an
15 exceptional situation here.

16 There are buildings in the area that have
17 residential above the commercial that are located -- they're
18 talking about the dog parks and being in close proximity to
19 them and all of the other kind of pieces that they talked
20 about. And I know this is some of this information that we
21 had requested from them.

22 I understand that some of the buildings may also
23 have small commercial spaces and that may be -- that must be
24 enlarged to attract a tenant.

25 I just think that the -- while I understand that

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1 there is a difficulty with this particular tenant, I think
2 that the building owner still can rent out the space as they
3 need to and I don't think that the variance is required to
4 do that.

5 In some ways, I almost believe that if they are
6 really looking for this variance or if they need to be -- if
7 they want to be able to do this, that it's probably better
8 served if they go for a zoning amendment or some change in
9 the zoning to allow this as opposed to going for a variance
10 in that I think that the factors -- many of the factors that
11 they are looking at are really -- other buildings have the
12 same concerns.

13 Regarding the practical difficulty, I think that
14 there may be some practical difficulties for the tenant. I'm
15 still not sold on them being practical difficulties for the
16 building owner.

17 And then with regard to the substantial detriment
18 to the public good and impairing the intent and purpose and
19 the integrity of the zone plan, again I think that really
20 what we're talking about is this is probably served as a
21 zoning amendment as opposed to allowing this variance because
22 I think that there are -- that there are a number of uses --
23 a number of buildings that could actually seek this same
24 variance.

25 And so, I'm voting -- I would be voting to not

1 approve the application because I don't believe that the
2 applicant has met their burden of proof for meeting the three
3 prongs of the zoning -- of the variance test.

4 I'd like to hear from my fellow board members.
5 Ms. John, if you could?

6 (Pause.)

7 VICE CHAIRPERSON HART: We can't hear you, Ms.
8 John.

9 (Pause.)

10 VICE CHAIRPERSON HART: There you go.

11 MEMBER JOHN: Right. So, I agree with your
12 comments and I would just add a few thoughts of my own to
13 supplement what you have said.

14 So, in this case, the applicant seeks zoning
15 relief to allow animal care and boarding use in a mixed use
16 building at 450 Massachusetts Avenue, N.W., which is in the
17 D-4-R Zone.

18 Animal care is generally permitted in this zone
19 as a special exception under Section 4 U 513.1(a). However,
20 paragraph (a)(1)(2) of that section also states that animal
21 care use shall not be on the same floor as a residential use
22 and shall be horizontally separated from any residential use,
23 at least one floor of nonresidential use.

24 And in the context of this building, animal care
25 use is not permitted on the first floor because there's

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1 residential use on the second floor. So, there would be no
2 horizontal -- no vertical separation and there's residential
3 and commercial use on the first floor.

4 To obtain variance relief -- so, although this is
5 a special exception, there is this prohibition in the
6 regulation.

7 So, the applicant must seek variance relief and
8 must show that there's an extraordinary or exceptional
9 condition -- situation or condition affecting the property.
10 This exceptional condition must be specific to this property.

11 Although this application is filed by the tenant,
12 the extraordinary condition must affect the property owner.
13 In this case, the property owner submitted a letter stating
14 that he had difficulty -- or that the property owner had
15 difficulty renting the property, which is roughly 1900 square
16 feet, and occupies a corner of the ground floor.

17 The property owner does not allege that he has
18 been unable to rent this space since the building was built
19 or with any -- in any extended period of time.

20 The applicant argues that there is a confluence
21 of factors that are unique to this property. These factors
22 are that the unit is small, located on the corner of the site
23 and separated from the residential units, and that no other
24 property in this square has both commercial and residential
25 units on the ground floor. And the applicant also states

1 that this unit is in close proximity to parks frequented by
2 dog owners.

3 In my view, these conditions are unremarkable and,
4 as the vice chair stated, there could be other buildings that
5 share these same qualities.

6 And so, in this case, the essence of the
7 applicant's argument is that the need for the variance is
8 being driven by the desired use and not by any condition
9 affecting the property.

10 And, as the Court of Appeals has said, that the
11 desire to use a particular property in a particular way
12 should not be the focus of this exceptional or extraordinary
13 condition.

14 And we have to assume, because there's nothing in
15 the record to contradict this, that the owner has, in the
16 past, been able to rent this space for the commercial
17 purposes for which it was built.

18 And so, I am also in disagreement with OP's report
19 which recommends approval of the variance request and cites
20 that there is, and agrees, in essence, that there is this
21 confluence of factors, but the OP does not have enough
22 clarification of how these factors we have described meets
23 that variance test.

24 The OP report states that there is limited
25 commercial space on the first floor and it's possible to

1 provide two floors -- and it's not possible to provide two
2 floors of separation and does not go into any more specific
3 detail.

4 So, because the application does not satisfy this
5 first prong of the variance test, I have not looked at the
6 second and third prong because this first prong is a basic
7 requirement. Either there is an exceptional condition or
8 not.

9 So, based on the regulations, we have to first
10 find that this exceptional condition exists before we look
11 at whether or not there is a practical difficulty.

12 So, I think that the Office of Planning's report
13 did a fairly good analysis of the other criteria as well as
14 the remaining criteria in 451382 as the mitigation.

15 And the applicant also offered several examples
16 of how it could mitigate any adverse impact, but we go back
17 to the first prong of the test, which is that there has to
18 be an extraordinary condition that affects the property.

19 Now, the regulations require the Board to give
20 great weight to the zoning-related issues and concerns of the
21 ANC.

22 And in this case, the ANC supports the application
23 and state that the business is needed to support the growing
24 population of dogs and dog owners in the downtown area.

25 And while I understand that the situation might

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1 be true, these statements do not support how the property
2 meets the exceptional condition criteria of the variance test
3 or how the confluence of factors that the applicant has
4 stated would rise to the level of an exceptional condition.
5 And so, I cannot give great weight to the issues or concerns
6 of the ANC in this case.

7 The applicant also cited a particular case where
8 the Board did provide relief. I haven't looked at the order.
9 I looked at the OP report which was included in the
10 applicant's -- one of the applicant's submissions.

11 I think that case is different. But, in any case,
12 we don't give -- we always look at each case in its own
13 facts. And in this case, we are limited by the particular
14 facts of this building.

15 And so, I also would -- I also believe, as you
16 said, Mr. Vice Chairman, that if we were to allow this
17 variance in this particular case with the configuration of
18 this building, I believe that this variance would swallow the
19 rule -- or granting this variance would swallow the rule
20 because there would be many other buildings in the downtown
21 area that could meet this requirement.

22 And so, I agree with you that perhaps the remedy
23 in this case is to request some sort of zoning relief because
24 these -- this particular provision is put in this special
25 exception as a special criteria so it can't -- as a variance.

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1 So, it's embedded in the special exception criteria.

2 So, I have to believe that there was a reason for
3 doing this. And so, I think that while I think it's good to
4 have this particular service in a building such as the one
5 that we're reviewing here, I think the property -- proper
6 remedy is zoning relief. So, I would not support the
7 application.

8 VICE CHAIRPERSON HART: I appreciate that, as
9 always, Ms. -- or Board Member John, your very thorough
10 discussion and your analysis in that I would also agree with
11 that.

12 I think that you brought up -- and I appreciate
13 you bringing up the Office of Planning report, as well as the
14 ANC report, and I would agree with your analysis of that as
15 well.

16 So, I wanted to hear from Mr. -- Commissioner
17 Turnbull. I'm not sure if he is on right now, however.
18 Looks like he may have had some difficulties with his -- with
19 joining.

20 I'm not sure if we -- I guess we're going to have
21 to possibly wait for Mr. -- Commissioner Turnbull to log back
22 in so that we can --

23 MR. BASSETT: This is Daniel Bassett, OAG. I think
24 without Commissioner Turnbull we don't have a quorum for this
25 case.

1 VICE CHAIRPERSON HART: Yeah.

2 MR. BASSETT: And so, any other consideration of
3 the case would have to wait until he could rejoin.

4 VICE CHAIRPERSON HART: That's fine.

5 MR. MOY: Mr. Bassett.

6 MR. BASSETT: Yes, sir.

7 MR. MOY: Just to let you know, I've been trying
8 to contact Mr. Turnbull. So, I've been unsuccessful. So,
9 we don't know what happened.

10 So, I would suggest we can move on to the next
11 case and then come back to this.

12 VICE CHAIRPERSON HART: Well, that's fine. We can
13 table this for the moment. And when he rejoins, we can maybe
14 take a short break, hear from him and then -- and I don't
15 know, Mr. Hill, if you -- Mr. Chairman Hill, if you want to
16 hear this next -- or go to the next case and then come back
17 to the -- this -- Application 20201 after that point when we
18 have Commissioner Turnbull back.

19 So, we can move to the next case. That's fine.
20 And I'm talking to Chairman Hill.

21 CHAIRPERSON HILL: Okay. Can you guys hear me?

22 VICE CHAIRPERSON HART: Yes.

23 CHAIRPERSON HILL: Okay. I guess what we're
24 looking at now is for Zoning Commissioner Shapiro to join us.

25 VICE CHAIRPERSON HART: He's here.

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1 CHAIRPERSON HILL: I do not see him.

2 VICE CHAIRPERSON HART: He just joined. He was in
3 as an attendee.

4 CHAIRPERSON HILL: Do you see him?

5 VICE CHAIRPERSON HART: Yes -- well, not see him
6 yet, but I see that he's on the list, though.

7 COMMISSIONER SHAPIRO: My apologies. Gentlemen,
8 I am here. I'm actually on the phone with Mr. --
9 Commissioner Turnbull to see if there is anything I can do
10 to help him get back online.

11 VICE CHAIRPERSON HART: Thank you.

12 CHAIRPERSON HILL: Okay.

13 (Pause.)

14 CHAIRPERSON HILL: You're on mute, Commissioner
15 Shapiro.

16 COMMISSIONER SHAPIRO: Oh. Well, I can mute or
17 unmute on this real quick. So, if you give me another maybe
18 15, 20 seconds so I can see if I can help Mike --
19 Commissioner Turnbull get back to you-all, okay?

20 CHAIRPERSON HILL: Okay. Let's do that.

21 VICE CHAIRPERSON HART: You can also just call in
22 if we can't necessarily see him, if that's the issue. It's
23 a suggestion, I guess.

24 (Pause.)

25 CHAIRPERSON HILL: Okay. Why don't we do this?

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1 Why don't we go ahead and move on. Mr. Shapiro, why don't
2 you join us for the next case and then -- I mean, he,
3 Commissioner Turnbull, could possibly call Paul and see if
4 that is helpful or did you hang up the phone with him now,
5 Mr. Shapiro?

6 COMMISSIONER SHAPIRO: Yes, Mr. Chair. I hung up
7 the phone with him now. He is still working to get back on.
8 He's rebooting his computer and he's looking to sort of sign
9 back in.

10 CHAIRPERSON HILL: Okay.

11 COMMISSIONER SHAPIRO: He does have a wireless
12 signal. He doesn't know why he dropped off.

13 CHAIRPERSON HILL: Okay. All right. That's okay.
14 Let's go ahead and move on to the next case, and then we'll
15 see him when he pops into the screen.

16 And then he can just wait until we're done with
17 this next case, and then you guys can jump back on as well,
18 okay? All right. Great.

19 So, since I am now back having the microphone, I
20 would like to -- I realize there's other people that are with
21 us now again in the public. You can actually see, I guess,
22 the names of people and I see a lot of names that are
23 familiar.

24 And I would like to welcome everybody and wish
25 them all well and hopefully they're staying safe and not

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1 going insane during this -- being locked down.

2 Okay. So, let's see. Then, Mr. Moy, if you
3 wouldn't mind calling our next case, please.

4 MEMBER JOHN: So, Mr. Chairman, sorry to interrupt.

5 CHAIRPERSON HILL: Sure.

6 MEMBER JOHN: I'm not on this next case. So, I
7 will be muting my mic and will monitor the discussion until
8 Mr. Turnbull joins us.

9 CHAIRPERSON HILL: Okay. That sounds good.

10 MEMBER JOHN: Thank you.

11 CHAIRPERSON HILL: Actually okay. There was an
12 issue that I had. I was curious about the -- well, I guess
13 you're not on the case so it doesn't matter.

14 MEMBER JOHN: No, Mr. Chairman.

15 CHAIRPERSON HILL: That's okay. All right. Thank
16 you.

17 Go ahead, Mr. Moy.

18 MR. MOY: All right. Thank you, Mr. Chairman.

19 So, with that, I'm going to call Appeal No. 20183.
20 This is of the residences of Columbia Heights, a condominium.
21 As captioned and advertised, this is the appeal from the
22 decision made on September 30, 2019, by the Zoning
23 Administrator, the Department of Consumer and Regulatory
24 Affairs, to issue Building Permit No. B1908601 to permit a
25 new building with 50 residential apartments for the Short

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1 Term Family Housing in the MU-5A Zone. This is at premises
2 2500 -- or 2-5-0-0 -- 14th Street, NW, Square 2662, Lot 205.

3 Participating on this appeal is yourself, Chairman
4 Hill, Vice Chair Hart and Zoning Commissioner Peter Shapiro.

5 CHAIRPERSON HILL: Okay. Great. Okay. You guys
6 can just nod. Are you-all ready to deliberate? Okay.
7 Great. All right. So, there's a bunch of things that we
8 have to go through with this.

9 And I guess, you know, it was a very lengthy
10 hearing. It was, you know, before we were all shut down.
11 And I would like to say, actually, before we start, I guess,
12 you know, there was discussion about how sometimes, you know,
13 the neighbors were -- as if they were against, you know,
14 Short Term Family Housing or against shelters.

15 And, you know, I never got any kind of, you know,
16 impression as though, you know, the neighbors were against,
17 you know, helping their fellow man.

18 And so, I just wanted to kind of like state that.
19 And so, you know, I don't think that, you know, I'm
20 disappointed if that's something that the people that came
21 forward with this appeal have experienced.

22 And I just think that they were here, you know,
23 exhibiting their right that this is something that they
24 didn't think was an error by the Zoning Administrator. And
25 so, I just wanted to kind of, like, get that -- make that

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1 statement.

2 In terms of the preliminary matters, there was one
3 with -- on timeliness. And that was the -- actually the
4 issue that I wanted to walk through first.

5 And I thought that, you know, Ms. John, we -- and
6 that's why I was actually interested in hearing from Ms.
7 John, but she's not on this case, and wanted to do that first
8 with you-all here; again, Commissioner Shapiro and Vice Chair
9 Hart, about the untimely nature of the filing.

10 You know, this has always been kind of -- you
11 know, we've voted -- or I've voted in favor of things being
12 untimely because of when somebody -- again within the
13 regulations -- knew or should have known that this was
14 something that was taking place and what is the
15 administrative decision that is actually being appealed.

16 While we were listening to all of the testimony
17 from everyone, you know, it appeared to me as though the
18 appellant, you know, had always intended to appeal this
19 decision and were keeping close eye on the -- whatever the
20 issue was that they were going to have to appeal like
21 something from the Zoning Administrator.

22 And so, when they did finally get the building
23 permit, they did timely file within the building permit that
24 this was, you know, something that they were trying to
25 appeal.

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1 And so, in this particular case, you know, I would
2 agree with the appellant that they, you know, filed timely.
3 And I guess that's why I'm kind of opening up this for a
4 little bit of discussion is that I have voted in the past for
5 something where -- and I don't know whether we end up having
6 more of a discussion about this with OAG or not, but, you
7 know, when someone should have known -- known or should have
8 known, right?

9 And I voted against -- or not -- I voted that it
10 was untimely in the past based on, like, an email or
11 different things that were, you know, kind of the first
12 writing rule.

13 And in this particular case, I think that the
14 appellants were timely in their filing of this. So, I'm
15 going to kind of ask if I can get my board members' opinion
16 on that.

17 And if it's okay, I'll start with Vice Chair Hart.

18 VICE CHAIRPERSON HART: Sure. Thank you very much,
19 Chairman Hill.

20 I know that this has been definitely a question
21 and I think because of the case there were certain things
22 that were going on like the foundation permit that happens
23 prior to the building permit being issued.

24 And I think where I come down on this is that the
25 appellant decided to file the appeal when it felt that there

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1 was sufficient reason with the issuance of a building permit.

2 In the case of the foundation permit being issued
3 -- in this case, the foundation permit was being issued --
4 or had been issued prior to that.

5 I think the appellant was justified in filing with
6 a building permit because the building permit actually helped
7 that -- describes the issue of this being -- the use that was
8 being put forward as well as the issue about the, you know,
9 the rear yard that they were having a concern about and that
10 the -- there really wasn't a kind of decision on the
11 foundation permit because it only had really the foundation
12 in it.

13 The rest of the things that were included in that,
14 I don't think that they were necessarily final, but the final
15 design and drawings were included with the building permit
16 which was issued in September -- September 30th, if I'm not
17 mistaken, of 2019.

18 So, I felt that it was timely and that we should
19 look at the merits of the case, but those -- that's my
20 opinion.

21 CHAIRPERSON HILL: Commissioner Shapiro.

22 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

23 Yeah, I would agree with both the analyses. I
24 think there's a bit of a gray area here, but that's what
25 we're here to decide and I don't -- I would not support the

1 motion to dismiss.

2 There's enough for us to say that they filed in
3 a timely manner. So, I'm fine. Again, I would not support
4 the motion to dismiss.

5 CHAIRPERSON HILL: Okay. And, Ms. Nagelhout, if
6 you don't mind, I'm kind of curious if -- I guess maybe this
7 is something that we can have a discussion on later or, you
8 know, do you have any thoughts about, you know, it's now kind
9 of like this is the building permit and prior we have decided
10 on things that were timely or not that weren't the building
11 permit.

12 I guess, do you have any thoughts on this issue?

13 MS. NAGELHOUT: I think one of the important things
14 to think about here is when was the zoning decision made by
15 DCRA to allow a particular use. And I don't see how the
16 foundation permit approved a use.

17 What the building permit did was allowed a
18 construction of an apartment house, and the appellants are
19 alleging that it's not an apartment house, it's something
20 else, but the zoning decision was to allow an apartment
21 house.

22 And that decision was made with the building
23 permit, not with the foundation.

24 CHAIRPERSON HILL: Okay. All right. So, this
25 will again continue to be a gray area. All right. So, I'm

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1 going to go ahead and I don't know if I -- and I guess we can
2 just take a motion by consensus to deny the motion that this
3 is untimely.

4 Can everybody just nod that you're in agreement?
5 (Nodding in agreement.)

6 CHAIRPERSON HILL: Okay. All right. So, we're
7 going to go ahead and deny that motion.

8 The next was to reopen the record. And, I mean,
9 I didn't really have any need to have the record reopened.
10 I thought we had, you know, hours and hours of testimony.
11 I thought that we got a lot of information from the
12 appellant, from the property owner and from the Zoning
13 Administrator, in terms of the case and I didn't have any
14 need for the record to be open.

15 There are a couple of things I did want to mention
16 about what was kind of spoken to, I suppose. I mean, and
17 I'll give my opinion and then I'll -- since we're just kind
18 of going in order here, Mr. Hart and Mr. Shapiro, some of the
19 issues that were raised, even though again I don't think the
20 record needs to be reopened because I think that we have
21 enough information, but they did mention -- the appellant,
22 that is, the ANC letter and the great weight that the ANC is
23 to be given; however, you know, it didn't necessarily meet
24 the criteria of great weight. And I think that the Board is
25 able to determine whether or not it officially qualified as

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1 great weight.

2 I would actually agree that it didn't necessarily
3 officially qualify as great weight, but that is the
4 information that we've been given from the ANC and I would
5 still be taking that information into consideration as we are
6 deliberating. So, I didn't have necessarily any issues with
7 that.

8 In terms of the cross examination opportunity that
9 the appellant had raised that they did not have enough time
10 or opportunity to cross examine, I would disagree and say
11 that, you know, we did have -- everyone was there. Everyone
12 had the opportunity to ask their questions, had an
13 opportunity to cross examine.

14 I mean, as I recall, it was again a case that went
15 late into the night and there was a time where I was a little
16 confused as to the questioning of the appellant and how the
17 process was moving along.

18 But then, Mr. Shapiro, I believe you joined in and
19 was able to clarify what the appellant was trying to ask,
20 which helped me. And then I believe the appellant had an
21 opportunity to continue to ask any questions they might have.

22 So, in terms of reopening the record, I didn't
23 have any reason to reopen the record. So, I would be voting
24 to deny that motion to reopen the record.

25 Mr. Hart, may I begin with you?

1 VICE CHAIRPERSON HART: I agree with you. I do not
2 think that we need to have further information to be added
3 to the record. So, I would be voting to deny the request of
4 the motion to add to the record.

5 COMMISSIONER SHAPIRO: I concur, Mr. Chair.

6 CHAIRPERSON HILL: Okay. All right. So, we'll go
7 ahead then and, by consensus, deny that motion to reopen the
8 record. If I could just -- if that's good with consensus?

9 (Nodding in agreement.)

10 CHAIRPERSON HILL: All right. Mr. Moy, if you
11 need more than that, just let me know, but I see that
12 everyone is nodding in terms of denial to reopen the record.

13

14 So, then that is going to bring us to the actual
15 merits of the appeal. And I believe that the thing that is
16 before us -- or the two things that -- again, from the amount
17 of testimony that we had, I think it kind of, for me, it
18 boiled down to just two items really, which was whether or
19 not is this an apartment building, and then whether or not
20 there is a meaningful connection.

21 And so, I'll kind of go ahead and speak to my
22 thoughts on the apartment building first. I thought that it
23 --

24 COMMISSIONER SHAPIRO: Mr. Chair.

25 CHAIRPERSON HILL: Yes.

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1 COMMISSIONER SHAPIRO: Just to be clear about the
2 language, I think the language is "apartment house," and I
3 just, you know, stick with the definitions that are in the
4 code.

5 VICE CHAIRPERSON HART: I would agree.

6 CHAIRPERSON HILL: Thank you, I'm sorry. Thank
7 you.

8 So, I mean, I went back to the definitions under
9 B 100.2 and I was looking again at "apartment" and "apartment
10 house."

11 I did think that the Zoning Administrator
12 correctly identified this as an apartment house because the
13 apartment was one or more habitable rooms with
14 kitchen/bathroom facility exclusively for the use of, and
15 under the control of, the occupants of those rooms. And so,
16 I did believe that they met that definition.

17 And then the other in terms of the apartment
18 house, any building or apartment building in which there are
19 three or more apartments providing accommodations on a
20 monthly or longer basis, I also thought that they met that
21 definition.

22 I thought that the -- there was some discussion
23 about the lodging and that it was -- in the testimony that
24 we heard, that these were apartments that would be occupied
25 for over 30 days. And so, I thought that it qualified as a

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1 matter of right apartment house and also as an apartment.

2 I didn't see anything within the plans or from any
3 of the testimony to make me think otherwise. And so, I mean,
4 it was pretty straightforward in my kind of -- once we got
5 through all of the testimony as to that first issue.

6 Again, the residents will have a right to be there
7 for over 30 consecutive days. Therefore, I thought it
8 qualified under the lodging definition.

9 And I suppose I'll go ahead and just open it up
10 for that first issue before going to whether or not it's a
11 meaningful connection.

12 May I ask Mr. Hart to go next?

13 VICE CHAIRPERSON HART: Sure. Thank you, Chairman
14 Hill.

15 So, after reviewing the record, I would also agree
16 with your assessment, Chairman Hill, regarding the apartment
17 house use.

18 And I'll kind of look at the issue about just the
19 floor plan configurations. And I understand that the mayor
20 and others in the past have used similar terminology when
21 they were discussing this building with the -- emergency
22 shelters in other wards and that there would be some of the
23 same clientele, but I do think that this is a different
24 project.

25 This project very clearly includes floor plans --

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1 and we have the floor plans from Exhibits 38C and D -- that
2 show apartments that have separate bedrooms, separate
3 bathrooms, a kitchen area, a living room area in separate
4 units.

5 So, I don't believe that the ZA erred in
6 determining that this is a matter of right use as an
7 apartment house.

8 And so, I would agree with you, Chairman Hill,
9 that that's definitely what this is. So -- oh, looks like
10 we have Mr. Turnbull back.

11 (Pause.)

12 VICE CHAIRPERSON HART: We can't hear you right
13 now.

14 COMMISSIONER SHAPIRO: Mr. Chair, let me just wrap
15 that up.

16 I concur on this point related to the ZA, the
17 Zoning Administrator, not erring in determining this is an
18 apartment house. So, I agree with you and Vice Chair Hart.

19 CHAIRPERSON HILL: Okay. All right. Vice Chair
20 Hart, if you don't mind, in terms of the meaningful
21 connection, I mean, I do have my thoughts on it, but it --
22 since you're the architect --

23 VICE CHAIRPERSON HART: Yes.

24 CHAIRPERSON HILL: -- if you wouldn't mind by
25 continuing the discussion?

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1 VICE CHAIRPERSON HART: Sure. Yeah.

2 My comments regarding the single building versus
3 separate building or the meaningful connection issue is --
4 and I'll try to keep it fairly succinct.

5 So, under Subtitle B 309.1, structures or sections
6 shall be considered parts of a single building if they are
7 joined by a connection that is -- and then there are several
8 criteria that fall within that.

9 These connections have to be fully above grade.
10 They have to be enclosed. They have to be heated and
11 artificially lit. And they either have to be common space
12 shared by users of all portions of the building or space that
13 is designed and used to provide free and unrestricted passage
14 between separate portions of the building.

15 So, at first I thought this was fairly complex
16 before we actually kind of heard the case, because the
17 building is on a slope. It's not flat. It's not a level
18 area. It is on a slope.

19 Since the meaningful connection was within the
20 building and far from any facade or side of the building,
21 determining what is below grade was not obvious.

22 However, I realize that if this were on a level
23 site with no elevation change and then it would be -- then
24 the ZA would really determine -- determining what was
25 underground would be easy because you would just look to see

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1 what is actually below the level of the ground, which is a
2 level area, and you would kind of draw a line between the two
3 ends.

4 If, you know, this building were this entire site,
5 you would draw the lines at where the ground met the building
6 and that line would be basically a straight, level line.

7 So, it seems to me that the consistent way to
8 determine what is below grade on an incline, so that has a
9 sloped topography, you could do the same thing.

10 Look at the ground plane on either end and then
11 draw a line between them, which is what the Zoning
12 Administrator demonstrated in the hearing and the documents
13 that they submitted on Exhibit 38F.

14 The interior connection is clearly above this
15 inclined ground plane line. And in addition, DGS stated that
16 the connection is a common hallway that is fully enclosed,
17 will be heated and artificially lit, and is designed to
18 provide free and unrestricted passage between the new
19 addition and the community center with interior doors serving
20 both portions of the single building.

21 So, I believe that the connection does meet the
22 criteria under Subtitle B 309.1 and that the ZA did not err
23 in determining this.

24 And I tried to make it -- I kind of wrote some of
25 this down because I thought it was easier to describe this

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1 as -- in a fairly simple way, but it really is about the
2 incline and putting the two lines -- the points where the
3 ground plane hits the building, drawing a line between those
4 two points helps to then identify where that ground plane
5 would be considered.

6 And if things are above that, then it's above
7 ground. If it's below that, then it's below ground. In this
8 case, it's very clearly identified that this is a meaningful
9 connection because it is fully above grade. And those are
10 my thoughts on that.

11 CHAIRPERSON HILL: Okay. Great. Thank you, Vice
12 Chair Hart.

13 Commissioner Shapiro?

14 COMMISSIONER SHAPIRO: I have nothing to add to
15 that very lucid and succinct argument. I agree with Vice
16 Chair Hart.

17 CHAIRPERSON HILL: Okay. All right. Well, then
18 I don't really have anything additional to add, I suppose.
19 I mean, as you mentioned, Subtitle B 309, the criteria there
20 for the single or separate buildings, I think, Mr. Hart, you
21 just walked through that. I would agree with your analysis.

22 I also appreciate the testimony that the Zoning
23 Commissioner gave and how it was a little bit complicated in
24 that it wasn't on a flat -- you know, the line that was drawn
25 helped me understand in terms of how it was, in fact, above

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1 grade.

2 VICE CHAIRPERSON HART: The Zoning Administrator,
3 you mean?

4 CHAIRPERSON HILL: Sorry. Yes. Thank you. The
5 Zoning Administrator.

6 All right. So --

7 COMMISSIONER SHAPIRO: I agree. That was very
8 helpful.

9 CHAIRPERSON HILL: I guess, then, unless anyone has
10 anything else to add --

11 VICE CHAIRPERSON HART: There's one point, Chairman
12 Hill --

13 CHAIRPERSON HILL: Yes.

14 VICE CHAIRPERSON HART: -- that I'd like to just
15 bring up. And that's -- there was a question about the --
16 whether or not the project is subject to the residential
17 multiple dwelling unit use category for parking purposes.

18 And the parking requirements would require 16
19 spaces under Subtitle C 705 -- 701.5 and that the project
20 would be entitled to a 50 percent reduction in that and they
21 would be -- I guess the overall parking numbers would be
22 about eight spaces. The project is providing 21 spaces, so
23 that's being met.

24 The loading berth is required only when a
25 residential apartment exceeds 50 dwelling units. The project

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1 has 50 units exactly and it's not required. So, I didn't
2 think that the Zoning Administrator erred in that instance
3 as well.

4 This was more of a - kind of a minor point in
5 that, but I just wanted to make sure that we addressed it as
6 well.

7 CHAIRPERSON HILL: No, I appreciate that. It was
8 again those things, I guess, being moot since it was, in
9 fact, a matter of right apartment house.

10 All right. I'm going to go ahead and make a
11 motion then to deny Appeal No. 20183, as captioned and read
12 by the secretary, and ask for a second.

13 VICE CHAIRPERSON HART: Second.

14 CHAIRPERSON HILL: Motion made and seconded.

15 Mr. Moy, if you would please -- and actually I
16 just want to say again I don't think that the ZA erred. And
17 that's why I'm -- I don't think the appellant made a case or
18 made enough -- as we walked through this, that the Zoning
19 Administrator actually did err in this decision.

20 So again, make a motion to deny Appeal No. 20183
21 as captioned and read by the Secretary. Mr. Hart, you have
22 seconded.

23 Mr. Moy, if you could please take a roll call?

24 MR. MOY: Thank you, Mr. Chairman.

25 So, in this roll call if the participants would

1 please reply with -- your agreement with the motion made by
2 the Chairman with a "yes," "no" or "abstain" when I call your
3 name.

4 Zoning Commissioner Peter Shapiro?

5 COMMISSIONER SHAPIRO: Yes.

6 MR. MOY: Vice Chair Hart?

7 VICE CHAIRPERSON HART: Yes.

8 MR. MOY: Mr. Chairman?

9 CHAIRPERSON HILL: Yes.

10 MR. MOY: So, the resulting vote is 3 to 0 to 2.
11 Motion carries, Mr. Chairman.

12 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.

13 All right. So now, I guess, Mr. Shapiro, you are
14 welcome to stay. I'm going to close the hearing at the end,
15 but now Mr. Turnbull -- Commissioner Turnbull is back with
16 us. And then, I guess, Ms. John, if you would rejoin us?

17 Mr. Shapiro, are you going to stay or are you
18 going to go?

19 COMMISSIONER SHAPIRO: I'm going to drop off.
20 Thank you all very much.

21 VICE CHAIRPERSON HART: Take care.

22 CHAIRPERSON HILL: Nice to see you.

23 VICE CHAIRPERSON HART: Okay. Chairman Hill, I
24 guess we should just reconvene. Secretary Moy, could you
25 just call this case back to order -- or bring this case back

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1 to order because I want to make sure that we hear from Zoning
2 Commissioner Turnbull on this case as well.

3 MR. MOY: Yes. Thank you, Mr. Vice Chair.

4 So, the Board is reconvening Application No. 20201
5 of DC Superpack LLC. Zoning Commissioner Michael Turnbull
6 has rejoined the Board and again, other than that, the
7 participants taking action on this application is Vice Chair
8 Hart, Ms. John and, as I said, Zoning Commissioner Mr.
9 Turnbull.

10 VICE CHAIRPERSON HART: Thank you, Mr. Moy.

11 So, we -- I've given my analysis on this. Board
12 Member John has given her analysis on this. I don't know,
13 Commissioner Turnbull, if you'd like to hear Board Member
14 John again or if you would just like to give your thoughts
15 on this.

16 COMMISSIONER TURNBULL: No, I -- thank you, Mr.
17 Hart. I think I heard basically everything. For some
18 reason, my home technology -- Fios is wonderful when it
19 works, I guess.

20 My home computer just -- Ms. John was talking
21 about -- or the last thing that I heard from Ms. John is --
22 I heard the whole argument and she was beginning to talk
23 about her main reason was they couldn't get by the first
24 element of the variance test. I think that was the main
25 factor without going through.

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1 And I apologize again for going out. I brought
2 up a laptop to get back online. So, I don't know what's
3 wrong with my home computer, but again I apologize for just
4 going blank.

5 VICE CHAIRPERSON HART: It's okay.

6 COMMISSIONER TURNBULL: Anyways, I would agree --
7 I would concur with all of your comments. I think you -- I
8 don't want to go back over the same arguments again, but I
9 think you both gave a lot of the reasons and the analysis
10 that I had myself and I would agree with you.

11 I think this was a very convoluted case, in one
12 sense, in that you have a tenant and you had an owner and we
13 weren't sure for quite a while, had the owner's viewpoint
14 until we finally (telephonic interference) saying that the
15 owner accepted the attorney -- or the tenant as their
16 attorney and went through the same arguments, but I would
17 agree with you on all of the arguments that both of you made.

18 And I guess my second point, I think you touched
19 upon it, Mr. Hart, that there's going to be many buildings,
20 many residences, many developments that are mixed use and
21 that have a small commercial space on the ground floor.

22 I am concerned that granting the variance is going
23 to create a model as far as many similar properties in the
24 city and they could make the same arguments on basically the
25 same facts.

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1 And I think that's going to be essentially
2 eliminating the controlling regulations that we have in
3 place.

4 And I think that you had started to mention -- I
5 think the proper venue for them is to go before Office of
6 Planning and talk to them about possibly a text amendment of
7 the zoning regulations that would basically clarify this.

8 Right now, I think that the zoning regulations
9 that we have in place are there for a specific purpose in the
10 analysis that we have.

11 And I think them changing and granting the
12 variance begins to start changing the zoning regulations and
13 is going to open us up to a lot of other cases like this
14 which I don't think -- they're going to get a little self-
15 serving.

16 And I think they need to go back and get a text
17 amendment to clarify situations like this and what has to be
18 met to be able to grant this. And basically those are my
19 comments.

20 VICE CHAIRPERSON HART: Yeah. I appreciate that
21 and I think I -- actually I agree with your comments as well.
22 I think that we're kind of on the same page. We're all three
23 on the same page with this.

24 So, I don't think -- Board Member John, do you
25 have any further -- any final comments that you'd like to

1 make?

2 (Pause.)

3 VICE CHAIRPERSON HART: We can't hear you.

4 MEMBER JOHN: Okay. So, I heard Mr. Turnbull and
5 I agree with him. And really this needs a text amendment
6 because I could just see this one case swallowing the rule
7 and I don't know how we would distinguish any other mixed use
8 building that comes in with especially commercial space on
9 the ground floor and residential space.

10 Even if there is some mitigation for the vertical
11 separation, the horizontal separation is just hard to
12 overlook, you know, even if we could find that there is some
13 exceptional conditions. So, this, I think, swallows that
14 rule entirely.

15 VICE CHAIRPERSON HART: Okay. All right. Well,
16 I'll make a motion to deny Application No. 20201 of DC
17 Superpack LLC as read and captioned by the Secretary.

18 Do I have a second?

19 MEMBER JOHN: Second.

20 VICE CHAIRPERSON HART: Mr. Moy, if we could do a
21 roll call vote? Sorry.

22 MR. MOY: Thank you, Mr. Vice Chair.

23 It's just -- I'm trying to get used to moving the
24 prompter over to the mute or unmute. It takes me a second.
25 Seems like a long time, right?

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1 So, anyway, when I give the roll call vote by
2 name, if each of you would respond with "yes," "no" or
3 "abstain" to the motion that was made?

4 Ms. John?

5 MEMBER JOHN: Yes.

6 MR. MOY: Zoning Commissioner Michael Turnbull?

7 COMMISSIONER TURNBULL: Yes.

8 MR. MOY: And of course Vice Chair Hart?

9 VICE CHAIRPERSON HART: Yes.

10 MR. MOY: So, the resulting vote is 3 to 0 to 2.
11 The motion carries, sir.

12 VICE CHAIRPERSON HART: Thank you very much. And
13 I turn it back over to Chairman Hill.

14 CHAIRPERSON HILL: Okay. Great. Thank you.

15 All right. You guys are all freezing up on me.
16 I assume you can hear me, correct?

17 (Pause.)

18 CHAIRPERSON HILL: Great. Thank you, Mr. Hart.

19 All right, Mr. Moy. So, I guess we're done today
20 and I don't think there's anything else before us; is that
21 correct?

22 MR. MOY: That's correct, Mr. Chairman. You've
23 gone through the agenda.

24 CHAIRPERSON HILL: Okay. Then we'll go ahead and
25 I don't think we have anything scheduled then for next

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1 Wednesday, correct, Mr. Moy?

2 MR. MOY: That's correct, Mr. Chairman.

3 The next time the Board meets again in a decision
4 meeting virtually, I should say, is May -- Wednesday, May
5 20th and Wednesday, May 27th.

6 CHAIRPERSON HILL: So, what do we have before us
7 on -- there are cases on the 20th? Because I didn't think
8 we had anything now.

9 MR. MOY: Yeah. You just moved the Embassy of
10 Zambia, 19134C, to May 20th.

11 VICE CHAIRPERSON HART: I think you're going to
12 have to move that to the 27th because Commissioner May said
13 he couldn't make the 20th.

14 MR. MOY: Okay.

15 CHAIRPERSON HILL: I think we're back then again
16 on the 27th.

17 MR. MOY: Okay. So, that means we'll have two case
18 for May 27th, sir.

19 CHAIRPERSON HILL: Okay. All right. Well, we can
20 talk about what we have there on the 27th.

21 All right. So, unless anyone has anything else,
22 we'll go ahead and adjourn this. And I hope everyone has --
23 you know, stay safe, okay?

24 (Whereupon, the above-entitled matter went off the
25 record at 10:45 a.m.)

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DCBZA

Date: 05-06-20

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