

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

FEBRUARY 7, 2024

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The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Videoteleconference, pursuant to notice at 10:53 a.m. EST, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

ROBERT MILLER, Vice-Chairperson
TAMMY STIDHAM, NPS Designee

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, A/V Production Specialist

OFFICE OF PLANNING DEVELOPMENT REVIEW STAFF PRESENT:

RON BARRON
SHEPARD BEAMON
MICHAEL JURKOVIC

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OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

SARAH BAJAJ, ESQ.
CARISSA DEMARE, ESQ.
MARY NAGELHOUT, ESQ.
RYAN NICHOLAS, ESQ.

The transcript constitutes the minutes from the
Regular Public Hearing held on February 7, 2024.

C-O-N-T-E-N-T-S

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

(10:53 a.m.)

CHAIRPERSON HILL: Mr. Moy, you may call our next case.

MR. MOY: Thank you, sir. The board has returned to its public hearing session after a quick break and the time is now at or about 10:53 a.m. in the morning. The next case -- or which actually, that was the first case in the board's public hearing session, is Appeal Number 20944 of the Advisory Neighborhood Commission 3D and Rohit, R-O-H-I-T Kumar, K-U-M-A-R.

This appeal pursuant to Subtitle X, Section 1100 is from the decision made March 1, 2023 by the Zoning administrator, Department of Buildings to issue Building Permit Number B2303238. The property is located in the R-1B Zone at 5122 Cathedral Avenue Northwest, Square 1439, Lot 60.

As the board will recall there are a few preliminary matters here. By my count we have three. There could be another, but there is the Department of Buildings' second motion to dismiss which is under Exhibit 28, and the appellants filed a motion in opposition to DOB's motion which I believe is under Exhibit 30. The appellants also filed a motion to strike which is under Exhibit 34.

And I think that is the gist that I wanted to remind the board with. The appellants' party is in the

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1 hearing, as well as I believe also the -- I want to say the
2 ANC, but I believe Trish -- Commissioner Tricia Duncan is in
3 the panel as well as the property owner and the attorneys
4 with DOB. That's all I have, sir.

5 CHAIRPERSON HILL: Okay, thank you. All right,
6 let's start to introduce everybody. If the appellant could
7 please introduce themselves first, or their representative?
8 You're on mute, Ms. Themak.

9 MS. THEMAK: Tracy Themak for the appellants Rohit
10 Kumar and ANC 3D.

11 CHAIRPERSON HILL: Okay, great. Welcome, Ms.
12 Themak.

13 MS. THEMAK: Thank you.

14 CHAIRPERSON HILL: Mr. Kumar, you want to
15 introduce yourself for the record?

16 MR. KUMAR: Yes, Rohit Kumar, appellant. I live
17 at 5401 Hawthorne Place Northwest which abuts the rear yard
18 of the property in question.

19 CHAIRPERSON HILL: Great, thank you. Commissioner
20 Duncan, you want to introduce yourself for the record?

21 MS. DUNCAN: ANC 3D chair and SMD 3D02.

22 CHAIRPERSON HILL: Great, thank you. Would DOB
23 like to introduce themselves for the record?

24 MR. COX: Erik Cox, deputy general counsel for the
25 DOB.

1 CHAIRPERSON HILL: Okay.

2 MR. MAYO: Good morning. Hugh Mayo, assistant
3 general counsel.

4 CHAIRPERSON HILL: Okay, woah, slow down. Oh
5 sorry, I didn't see you, Mr. Cox, okay, great. Okay, and
6 then Mr. Mayo. Okay, is the property owner here?

7 MR. AGARWAL: Good morning Chair, yes. Karan
8 Agarwal, owner of Silverstone Investment Group and the
9 property in question.

10 CHAIRPERSON HILL: Okay, Mr. Agarwal, are you not
11 using your camera for a reason?

12 MR. AGARWAL: Oh, sorry. There we go.

13 CHAIRPERSON HILL: Okay, great. All right, Mr.
14 Agarwal. Okay, so there's a bunch of preliminary motions
15 going on, and just to let you guys know I don't think we're
16 going to be hearing this today. So we're going to do a
17 couple of things I think. Let's see.

18 First of all, DOB, you got a motion to strike on
19 the table -- or I'm sorry, motion to dismiss. And again, the
20 reason why you have the motion to dismiss is that there's no
21 -- well, actually I'll let you explain it, whatever you want
22 to explain. Who's going to explain it, please?

23 MR. MAYO: I can begin with some brief opening
24 remarks on the motion to dismiss. So --

25 CHAIRPERSON HILL: Great.

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1 MR. MAYO: You know, as all parties are aware, the
2 original permit that was being appealed has been surrendered
3 for several months now. A new permit was issued for the
4 property last week, but it's DOB's position that if the
5 appellant would like to contest a new permit, they'll need
6 to file a separate zoning appeal.

7 This is because under 11YDCMR Section 100.4, the
8 BZA's authority is to hear and decide zoning appeals of
9 administrative decisions. DOB's position is that each new
10 burning -- building permit constitutes a new administrative
11 decision which means there should be a new appeal, case
12 number, a new statement of issues that addresses the most
13 recent set of plans.

14 While the appellant in their response claimed that
15 they reserve the right to supplement their appeal, the board
16 doesn't operate under the same procedural rules as a court
17 and supplementing one's statement of issues is prohibited
18 under most circumstances under Rule 11Y302.13, stating that
19 an appeal may not be amended to add issues not identified in
20 the statement of issues on appeal.

21 So, in short, the -- we think the regulations are
22 clear here, that while we understand that the appellant may
23 have continued issues that they'd like to raise for the
24 property, the board's appeal powers do not extend to
25 construction itself, but to the administrative decisions

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1 that, you know, the DOB or the zoning administrator takes,
2 you know, in the issuance of building permits or otherwise.
3 So, that's our case for why the current building appeal
4 should be mooted out as it doesn't fall under the board's
5 jurisdiction anymore.

6 CHAIRPERSON HILL: Okay, I'm going to let OZLD
7 kind of take a look at that and see because what I was
8 planning on doing, just so everybody knows was at least --
9 and also I'm actually talking to my fellow board members, so
10 I'll just cut to what I have thought of after. I mean, we
11 review the record in the case -- and so, and I can't
12 remember, Commissioner Miller, were you on this at the
13 beginning?

14 ZC VICE CHAIR MILLER: From the beginning, I don't
15 know. I have reviewed all the record. I don't know if I was
16 here at the very beginning, but I was watching even if I
17 wasn't -- I'm familiar with the case.

18 CHAIRPERSON HILL: Okay, great. No, the reason
19 why I was asking is I can't -- the last time they were here
20 there wasn't a building permit before us, right? And DOB
21 asked to dismiss, right? And what I had wanted to do was
22 wait to keep this appeal open because I didn't want the
23 appellant to go back to the -- we heard -- I can't remember
24 how much we heard about it but we heard a little bit about
25 the project and what was going on, and I wanted to keep the

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1 record open so that when the new permit came in, if they
2 wanted to appeal that permit, they didn't get put back to the
3 beginning again.

4 And so, and even if this ends up happening that
5 you get put back to the beginning again, I'm going to do
6 everything I can to make sure you guys get back to us as
7 quickly as possible because I don't want this to linger one
8 way or the other. Okay? And then, DOB, the question I'm
9 going to have for you when I finish talking to my board is
10 what is different from this permit than the last? It's
11 something that I'd be kind of curious of knowing.

12 And so, so what I was going to do -- I can see --
13 I'm looking at my board members -- I was going to dismiss the
14 motion to dismiss because I was going to then allow the
15 appellant to change their filing to reflect the new permit
16 and then set a new appeal date when everybody was going to
17 have time to look at everything, and then I was going to
18 strike the motion to strike because the property -- I'm
19 sorry, the builder is allowed to submit whatever they want
20 to submit as a party, so they submitted their Exhibit 31,
21 which was our slide deck.

22 So I guess the first thing is to ask OZLD if we
23 can allow the property --

24 MS. THEMAK: Do we get a chance to respond to the
25 motion to dismiss since counsel presented --

1 CHAIRPERSON HILL: You can -- yeah, you can. Give
2 me one second though, Ms. Themak.

3 MS. THEMAK: Okay.

4 CHAIRPERSON HILL: So go ahead and -- if OZLD can
5 just let us know whether or not we -- or I can do what I said
6 I was going to try and do. And then if not, then we'll just
7 -- you know, then it's not their -- not within our purview.
8 So go ahead, Ms. Themak, you wanted to respond.

9 MS. THEMAK: Yeah. In our opposition -- I mean,
10 this is very similar to their first motion to dismiss. We
11 do reserve the right for related issues because we had no way
12 of knowing to include this particular permit number when we
13 originally filed, but we anticipated this exact scenario,
14 which is a no -- new permit might be issued and it would have
15 the exact same errors with the design as the former permit.
16 So that's exactly what's happened here. And at that time we
17 were seven months into this process as the neighboring
18 properties are being harmed. At this point we're nine months
19 into the process.

20 So we did reserve the right. If we need to file
21 a new appeal it literally will have the exact same grounds
22 and will only change the permit number from 230 to 2310998.
23 Nothing else about our appeal will change because we -- even
24 though the permit applicant and property owner didn't
25 properly serve us, nor did they provide the requisite plans

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1 to us, we -- we've -- we clearly -- DOB was clearly on notice
2 that this was on our radar for the past nine months. Yes.

3 CHAIRPERSON HILL: That's okay. Ms. Themak, I'm
4 trying to do what you're trying to let me do.

5 MS. THEMAK: Okay.

6 CHAIRPERSON HILL: So I'm just trying to find out
7 whether I can do it. Okay?

8 MS. THEMAK: We think there are grounds for you
9 to do it.

10 CHAIRPERSON HILL: Okay.

11 MS. TATE: So.

12 CHAIRPERSON HILL: I appreciate that. I have to
13 find out from my attorneys, okay? So first of all, does the
14 board have any issues with what I'm trying to do? And please
15 raise your hand if you want to speak about this --

16 (Simultaneous speaking.)

17 ZC VICE CHAIR MILLER: No, I support the direction
18 that you want to go in if we can go that way.

19 CHAIRPERSON HILL: Great. Thanks, Vice Chair
20 Miller. Does anybody else want to give me some support, or
21 Vice Chair John?

22 BZA VICE CHAIR JOHN: Well, in principle, I
23 support what you would like to do. In other words, to
24 expedite the appeal on the new permit just as long as we're
25 all clear that the old permit is extinguished. So there's

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1 no old permit to appeal at this point. We're only looking
2 at the new permit. And so the question is, have the parties
3 been properly not -- I'm sorry -- have the notice provisions
4 been complied with with respect to the appeal on the new
5 permit? And I support expediting the appeal on the new
6 permit, which I believe is where you would like to go.

7 CHAIRPERSON HILL: Okay. So --

8 BZA VICE CHAIR JOHN: And one more thing.

9 CHAIRPERSON HILL: Sure.

10 BZA VICE CHAIR JOHN: And you are probably going
11 to say this at some point, but the appeal is only supposed
12 to focus on how the permit does not meet the regulations, not
13 what the impact is on the neighbors. So there's a
14 distinction on how -- or so I think I need to emphasize that
15 we wouldn't be taking testimony as to how the new building
16 might impact the neighbors to the south or any abutting
17 neighbor or adjoining neighbor.

18 The only issue is whether the permit complies with
19 the regulations, and I believe the essential issue was
20 whether or not this was a raise or not. And whether or not
21 the DOB properly applied the criteria in the reg -- in their
22 guidance, in their interpretation on when something qualifies
23 as a raise and not an addition to an existing structure.
24 Thanks.

25 CHAIRPERSON HILL: Well said, Vice Chair John.

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1 So I guess I'm following, that's what I'm going to review
2 whenever we get to whatever final appeal we do. But
3 right that, you know, whether it is a raise or not is an
4 issue. And so, okay. So that was Vice Chair John. Sure,
5 Mr. Kumar, one second. Let me go through my board since I'm
6 already here and then we'll come over to hear your thoughts.
7 Mr. Smith?

8 MEMBER SMITH: I don't have anything to add more
9 than what Ms. John stated. This should be focused on whether
10 -- focused on the permit at hand whether it meets the
11 regulations and the zoning and light and air. Other than
12 that, yeah, we should just focus on the matter at hand, not
13 have a conversation about impacts to the neighbors --
14 surrounding neighbors, so I have nothing more to add.

15 CHAIRPERSON HILL: Okay. Mr. Blake?

16 MEMBER BLAKE: I have looked through the case --
17 I did not participate in the prior hearing, but I have read
18 into it. I would say that I agree with the statements that
19 you've made and I don't have any additional comments.

20 CHAIRPERSON HILL: Okay. So in terms of the
21 Offices on -- oh sorry, Mr. Kumar, go ahead.

22 MR. KUMAR: Yeah. I just wanted to -- I think
23 Commissioner John said it's primarily about the raise, and
24 while it is true that if it's deemed to be a raise then the
25 other issues become kind of moot, but if it is not a raise,

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1 there are still issues with lot coverage and setback
2 requirements as well.

3 So I just wanted to make clear it's not only the
4 raise because if it's deemed not to be raised then there are
5 collateral issues that crop up, but if it is a raise then
6 those issues are mooted because a raise is a raise and we
7 sort of move on from there.

8 CHAIRPERSON HILL: Okay. All right, so go ahead,
9 Ms. Themak.

10 MS. THEMAK: Okay. I think in terms of being able
11 to notify the DOB of our concerns, we wouldn't be changing
12 any of our concerns in terms of prejudice or there -- of, you
13 know, fairness. We have even in the minimal time that we saw
14 the plans been able to adjust our presentation today and
15 appeal to address the new permit.

16 So there isn't any change in our argument. We're
17 ready to go today as we have been, and both the property
18 owner and DOB have seen our objections since this was
19 originally scheduled for hearing, so there isn't any new
20 information that they would need to respond to that isn't
21 already in our filing. I just want to say that.

22 CHAIRPERSON HILL: Okay. Give me one second, Mr.
23 Agarwal. Can OZLD tell me whether or not we can do what I
24 want to do or do we have to have a meeting?

25 MS. NAGELHOUT: No, you don't have to have a

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1 meeting. The -- it's up to the board. I do not agree with
2 DOB that a new permit necessarily reflects a new zoning
3 decision for purposes of BZA appeal, and the board
4 historically has allowed appellants do amend appeals to bring
5 in subsequently issued permits whether the first permit has
6 been suspended -- or I mean, revoked or merely modified. So
7 yes, I think you can do what you're planning to do here.

8 CHAIRPERSON HILL: Okay. Okay, hold on, Mr. Mayo.
9 Go ahead, Mr. Mayo.

10 MR. MAYO: I just need clarity on just one last
11 point before the board makes its decision. So there is a
12 separate regulation, 11Y302.5, which says that a zoning
13 appeal may only be taken from the first writing that reflects
14 the administrative decision complained of, which the
15 appellant had notice. So here we have a situation in which
16 there is a subsequent administrative decision.

17 Now, 11 -- there is an exception to that
18 regulation for new decisions, so the question is -- that I
19 would like to pose to the board is, is this new permit a new
20 decision that requires a new appeal or is it an extension of
21 the original administrative appeal of the first permit, you
22 know, in which case possibly I believe that we -- it should
23 still be moot because the first appeal and the first
24 administrative issuance has since been rescinded, and this
25 is not a modification or revision to that permit, it's not

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1 Permit B, et cetera, which revises the initial permit, it's
2 a completely new permit which has gone through the DOB
3 permitting process and multiple rounds of review from Zoning
4 constituting a new position -- a new decision on the part of
5 DOB. So, one other thing for your consideration.

6 CHAIRPERSON HILL: Okay. So my -- if we're -- no,
7 Ms. Themak, let me -- give me a minute, all right? So, I
8 want to get back here as quickly as possible, whatever's
9 going to happen, right? And if I don't know who to -- you
10 know, I'm not listening to D -- well, I shouldn't say that.
11 Mr. Mayo, I'm supposed to listen to OZLD, and so that's what
12 they're telling me to do.

13 And if OZLD and DOB want to fight then you all can
14 kind of I guess figure that out on the side. I'm just trying
15 to get through my day, right, and hear whatever is supposed
16 to be heard so that either this appeal gets one way or the
17 other and this builder can go on with his business one way
18 or the other or the neighbor can do whatever they need, so
19 what I -- you're right about the first writing.

20 So the first -- what I was understood is that this
21 new permit is the first writing of this new permit. So they
22 haven't missed that window yet, or at least I hope they
23 haven't missed that window yet, right, to apply for appeal
24 against the first writing of this new permit because the last
25 time you guys were here you said that you didn't have the

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1 permit or that you didn't know what was going to happen with
2 the permit, or it was in the works, right?

3 So I just want to be clear for the record that
4 these people are trying to appeal something that's happening
5 with this project, and I want to hear the appeal one way or
6 the other, and however it -- you know, if Mr. Moy, you can
7 look at it too, like whatever the -- if we're not allowed to
8 change this, then whatever the posting requirements are we'll
9 post it, we'll notify it, and we'll get it back here just as
10 fast as we can, and the developer is still going to have to
11 wait to figure out what's going to happen because they're
12 taking a risk whether it happens one way or the other. So
13 everybody's got their hands tied. So I don't know what I was
14 saying other than I'm just trying to get us moving along
15 here. And Ms. Themak, I don't think there's anything you
16 need to add unless there's something you want to add.

17 MS. THEMAK: No, I'm glad you said what you said.

18 CHAIRPERSON HILL: Right. Thank you. All right,
19 so OZLD again, I'm going to move forward in this way unless
20 you tell me not to move forward in this way.

21 MS. NAGELHOUT: I'm not going to tell you not to
22 move forward in this way.

23 CHAIRPERSON HILL: Okay, very good, there you go.
24 And I'm going to come back to DOB to ask what the difference
25 is between that permit and this permit. Okay? So Mr.

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1 Agarwal, you had your hand up.

2 MR. AGARWAL: I wanted to point out that when the
3 appeal was filed by the appellants in March of '23, they had
4 flagged four zoning issues relating to this permit. When we
5 voluntarily surrendered the permit back in September and
6 reapplied to DOB, DOB and us worked together over three
7 months to make sure each of the points that were flagged by
8 the appellants nine months ago were addressed and cross-
9 checked multiple times.

10 So the idea that Ms. Themak is asserting that, you
11 know, the appeal would be the same is just factually untrue
12 because we have gone ahead and cross-referenced each and
13 every one of the line items that was in the original appeal
14 and those -- none of those items --

15 MS. THEMAK: Can we bring the case now? I'm
16 sorry. Where --

17 MR. AGARWAL: Ms. Themak, can you not interrupt
18 me, please? I'm just trying to speak. Thank you. You'll
19 have your turn.

20 CHAIRPERSON HILL: Yeah, Mr. Agarwal, go ahead
21 with -- Mr. Agarwal, I get to decide who's going to have
22 their turn when, okay? So please, you're -- did you finish
23 your statement?

24 MR. AGARWAL: Sir, I did not because I was
25 interrupted.

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1 CHAIRPERSON HILL: Okay, good, finish your
2 statement.

3 MR. AGARWAL: Okay. So all I'm saying, sir, is
4 that at -- where we stand right now, the existing appeal
5 that's in place has no relevance to the new permit that was
6 issued which is also in line with what DOB is saying.

7 CHAIRPERSON HILL: Okay. All right. Now I'm
8 going to just -- I'm moving forward with my day, so I'm going
9 to move this forward the way that I thought I was going to
10 get it this morning, and the OZLD says I can do it this way.
11 So the motion to dismiss that DOB is putting forward I'm
12 going to deny. Could I get a second on that motion from
13 somebody on my board?

14 MEMBER SMITH: Second.

15 CHAIRPERSON HILL: Second from Mr. Smith. So
16 would you like to take that vote, Mr. Moy?

17 MR. MOY: If I may have your response to -- and
18 I'm referring to the board, of course, to the Chairman's
19 motion to deny the motion to dismiss, and I believe that was
20 on the part of DOB? And second to that motion is Mr. Smith.
21 Zoning Commissioner Rob Miller?

22 ZC VICE CHAIR MILLER: Yes.

23 MR. MOY: Mr. Smith?

24 (No audible response.)

25 MR. MOY: Mr. Blake?

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1 MEMBER BLAKE: Yes.

2 MR. MOY: Vice Chair John?

3 (No audible response.)

4 MR. MOY: Chairman Hill?

5 (No audible response.)

6 MR. MOY: A vote of 5-0-0, the Chairman's motion
7 to deny the motion to dismiss carries. The motion carries
8 5-0-0.

9 CHAIRPERSON HILL: Okay. Thanks, Mr. Moy. So
10 then there's an opposition to the motion to dismiss so I'm
11 going to just dismiss that motion now as moot, and so if
12 anybody has any issues with that from my board please raise
13 your hand. All right, we're dismissing that as moot.

14 Then there's another motion to strike Exhibit 31
15 from the developer, and Exhibit 31, developer is a party here
16 so he's able to submit his exhibit. So I'm going to deny the
17 motion to strike Exhibit 31 and ask for a second. Ms. John?

18 BZA VICE CHAIR JOHN: Second.

19 CHAIRPERSON HILL: Motion was made and seconded.
20 Mr. Moy, if you take a roll call?

21 MR. MOY: All right, when I call your name if
22 you'll please -- when I call your name if you'll please
23 respond to the Chairman's motion to deny the -- what was that
24 again? To deny the --

25 (Simultaneous speaking.)

1 CHAIRPERSON HILL: Deny -- yeah, deny the motion
2 to strike from the appellant.

3 MR. MOY: All right, this is the motion to strike
4 the appellant's motion. And this motion was seconded by Vice
5 Chair John. All right, Zoning Commissioner Rob Miller?

6 ZC VICE CHAIR MILLER: Deny.

7 MR. MOY: Mr. Smith?

8 MEMBER SMITH: Yes.

9 MR. MOY: Vice Chair John?

10 (No audible response.)

11 MR. MOY: Chairman Hill?

12 CHAIRPERSON HILL: Yes.

13 MR. MOY: The -- your motion carries, Mr.
14 Chairman, on a vote of 5-0-0.

15 CHAIRPERSON HILL: Okay. So now I don't know if
16 it's a motion, and I'll ask OZLD again to let me know -- I
17 mean, I want to now include or change the appeal to allow the
18 new building permit as part of the appeal. And is there a
19 motion I need to make, OZLD, or how do I do that?

20 MS. NAGELHOUT: Indicate that's the intent of the
21 board.

22 CHAIRPERSON HILL: Okay. So now I'm looking at
23 my fellow board members again. We've been here already many
24 time -- or no, several times about this and we haven't heard
25 the appeal yet, so I'd rather just hear the appeal so

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1 everybody knows where they stand and they can move on. And
2 so I -- the way that I see this to be as expeditious as
3 possible is to go ahead and allow the appellant to now appeal
4 the new permit, okay? And so if any of my fellow board
5 members have any issues please raise your hand. Seeing none
6 from -- oh, Mr. Miller?

7 (Simultaneous speaking.)

8 ZC VICE CHAIR MILLER: I think it would be good
9 to make a motion to change the appeal to appealing the new
10 permit. Somehow that's the -- what we're discussing.

11 CHAIRPERSON HILL: Okay. Does anybody -- because
12 I was busy going through all of this. Does anybody have the
13 old permit number handy and the new permit number?

14 BZA VICE CHAIR JOHN: Mr. Chairman?

15 CHAIRPERSON HILL: Yeah, go ahead, Vice Chair
16 John.

17 BZA VICE CHAIR JOHN: There is no old permit
18 number. It has not been amended. It's been revoked or
19 surrendered or whatever. It doesn't exist.

20 CHAIRPERSON HILL: I appreciate it.

21 BZA VICE CHAIR JOHN: So I think the appeal needs
22 to state the new appeal number. I mean, this is sort of --
23 this is not -- I've not seen this before. Typically we have,
24 you know, an amendment to an existing permit or a revision
25 or something like that, but here there is no permit because

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1 it's been surrendered. So I agree with Commissioner Miller
2 that we need -- I don't know if the applicant would need to
3 file a new statement stating that the appeal is with respect
4 to the new permit.

5 CHAIRPERSON HILL: That would make sense to me.
6 So I'll go ahead and make a motion, and if the appellant
7 would file a new filing that says on the record that you're
8 appealing the new building permit, which I think is B2310998.

9 MS. THEMAK: That's correct.

10 CHAIRPERSON HILL: Okay. So, I'm going to go
11 ahead and make a motion that we allow the appellant to change
12 their appeal to now reflect the new permit because the
13 previous permit which was of the same site and possibly the
14 same issues was relinquished by the property owner, and the
15 new building permit that they're now appealing is B2310998,
16 and ask for a second. Ms. John?

17 BZA VICE CHAIR JOHN: Second.

18 CHAIRPERSON HILL: Motion made and seconded. Mr.
19 Moy, if you take a roll call?

20 MS. THEMAK: Umm. Ok.

21 MR. MOY: Just the board members, if you would
22 please respond to the Chairman's motion that would allow the
23 appellant to file a new appeal, and I believe the reference
24 is to Permit Number B2310098, and this motion was seconded
25 by Vice Chair John. Zoning Commissioner Rob Miller?

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1 ZC VICE CHAIR MILLER: Yes.

2 MR. MOY: Mr. Smith?

3 (No audible response.)

4 MR. MOY: Mr. Blake?

5 MEMBER BLAKE: Yes.

6 MR. MOY: Vice Chair John?

7 (No audible response.)

8 MR. MOY: Chairman Hill?

9 CHAIRPERSON HILL: Yes.

10 MR. MOY: The motion carries, sir, on the vote of
11 5-0-0.

12 CHAIRPERSON HILL: Okay, great. So when can we
13 reschedule? And I'm going to come back to DOB if that's okay
14 as to what this -- what's the difference between this permit
15 and the last. What did -- when can we schedule this again,
16 Mr. Moy?

17 MR. MOY: All right, Mr. Chairman, as I can gather
18 from the board's discussion that this would be a new appeal,
19 and that would be subjected to the public hearing notice
20 requirements, and the earliest I could schedule this then
21 would be at the board's public hearing session on March 20.
22 That would be the earliest.

23 CHAIRPERSON HILL: Okay.

24 MR. MOY: March 20.

25 CHAIRPERSON HILL: And I don't mind, we're

1 probably going to have to do that anyway for scheduling
2 reasons. Then if that's the case, we could have dismissed --
3 well no, then they would have to file again and pay again and
4 so it's not -- this is where I just want to be clear, it's
5 not a new appeal, or maybe it is a new appeal. This is where
6 I need help from OZLD. If we're not -- if the board is not
7 doing what the board seems to be wanting to do.

8 And again, this is to make it as efficient as
9 possible so everyone can move on with a resolution. This is
10 not some, you know, preference one or the other, I'm just
11 trying to get us back here as quickly as possible. So it's
12 to change the filings -- the original filings to this new
13 building permit number, and Mr. Moy, if you want to go ahead
14 and do the -- you know, the regular notice, and I'll let you
15 and OZLD maybe work through that, if -- because you said
16 March -- what did you say?

17 MR. MOY: It'd be March 20 to meet the time
18 requirements. If this action is not subject to those time
19 requirements then I could tee this up to an earlier hearing
20 date.

21 CHAIRPERSON HILL: Yeah, I mean, we're pretty
22 jammed up I know. And even on March 20, when'd you already
23 schedule on March 20?

24 MR. MOY: Eight cases and two expedited cases.

25 CHAIRPERSON HILL: Okay. So now I got to ask you,

1 when is there a window for this to be back before us?

2 MR. MOY: It seems like my charge is to get this
3 earlier than March 20. If I do that, March 13 is possible,
4 where we have five cases, one expedited, one mod of
5 consequence, or March 6 where you have ten cases and one
6 expedited.

7 CHAIRPERSON HILL: Okay, well maybe we should just
8 hear this now. That's what Ms. Themak says they're ready to
9 do. I'm going to actually have an emergency meeting because
10 I want to talk to OZLD. And so if you can send me that
11 stuff, Mr. Moy, to call for it, and I guess, Mr. Mayo, are
12 you guys ready to go today?

13 MR. COX: We are not. Ms. Beeton, I informed Mr.
14 Moy earlier on that she is out of the country as of noon
15 today, so we expected that there would be procedural
16 arguments on motions to dismiss, but that if it was denied,
17 this will be rescheduled when everyone's available.

18 CHAIRPERSON HILL: Okay. Who is out of the
19 country?

20 MR. COX: The zoning administrator.

21 CHAIRPERSON HILL: Oh okay. So you are going to
22 bring the zoning administrator to the appeal?

23 MR. COX: Yeah.

24 CHAIRPERSON HILL: Oh wow, okay. Have we not had
25 that yet? Oh yeah, right, yeah, that normally happens. I

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1 just haven't had the new zoning administrator yet.

2 MR. COX: No.

3 CHAIRPERSON HILL: Okay, great.

4 MR. COX: But if we may, a couple questions to
5 clarify? First, I think I have to do this just because I'm
6 doing my job, but I think we have to respectfully object to
7 the denial of our motion to dismiss. Just put that on the
8 record. And then a point of clarification. Whatever happens
9 next, we understand the underlying questions will not go
10 away, it's just the vehicle by which they're brought before
11 you. Will it be a new appeal and a new number or will it be
12 a hopswap of the old number but the -- the old permit number
13 versus the new permit number in 20944?

14 CHAIRPERSON HILL: That's what I thought. But I
15 can find out. I mean, I understand what you're -- Mr. Cox,
16 I appreciate it. You're doing your job and I'm trying to do
17 my job, too. And so I'm just trying to get them back here
18 because even the property owner wants to know what's going
19 to happen as quickly as possible.

20 MR. COX: Oh totally.

21 CHAIRPERSON HILL: And so, you know, you guys are
22 just making it far -- you know, it's just going to happen
23 longer, you know? And so, but I understand the regulations
24 are what the regulations are, and I'm not trying to go
25 against those either, right?

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1 MR. COX: Yeah. So that's exactly, I mean, here
2 we've looked at this. We don't see a way under the regs that
3 we can find that you can hopswap and just amend the appeal
4 for a brand new permit that wasn't in existence before. So
5 our position would be that to the extent that's the position
6 the board would make, the DOB would lodge an objection to
7 that absent seeing the authority under which it's issued.

8 CHAIRPERSON HILL: Okay. All right, let's try to
9 clarify --

10 MR. COX: But ultimately, look, if the deal is get
11 back as soon as you can and the path of least resistance is
12 just a new appeal, and if you have the ability to waive the
13 filing fee or something to make it easier, I mean, that
14 would, you know --

15 CHAIRPERSON HILL: That might be feasible, but --
16 (Simultaneous speaking.)

17 MR. COX: -- stress me out less.

18 CHAIRPERSON HILL: I don't know, I have to -- this
19 is all new for me, meaning I've never, like, waived a -- you
20 know, I've never waived a fee -- actually maybe we have
21 waived a fee before, but that's a good idea. So let me --
22 and I'm sorry, I'm going to try to again move us along as
23 quickly as possible.

24 As Chairperson of the Board of Zoning Adjustment
25 of District of Columbia and in accordance with 407 of the

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1 District of Columbia Administrator's Procedures Act, I move
2 that the Board of Zoning Adjustment hold a closed emergency
3 meeting on 2/7/2024 for the purposes of seeking legal advice
4 from counsel on Case Number 20944, deliberate but not vote
5 on Case Number 20944. Is there a second, Ms. John?

6 BZA VICE CHAIR JOHN: Second.

7 CHAIRPERSON HILL: Motion was made and seconded.
8 Mr. Moy, if you can take a roll call?

9 MR. MOY: All right, thank you, Mr. Chairman.
10 Again, this is to the board members. When I call your name
11 if you'll please respond to the Chairman's motion to call an
12 emergency meeting -- closed meeting? And this motion was
13 seconded by Vice Chair John. Zoning Commissioner Rob Miller?

14 (No audible response.)

15 MR. MOY: Mr. Smith?

16 (No audible response.)

17 MR. MOY: Mr. Blake?

18 MEMBER BLAKE: Yes.

19 MR. MOY: Vice Chair John?

20 BZA VICE CHAIR JOHN: Yes.

21 MR. MOY: Mr. Chairman?

22 (No audible response.)

23 MR. MOY: Staff would record vote as 5-0-0. The
24 motion carries, sir.

25 CHAIRPERSON HILL: Thank you. I hereby give

1 notice as it appears this has passed, that the Board of
2 Zoning Adjustment will recess the procedure on 2/7/2024 at
3 11:27 p.m. to hold a closed meeting pursuant to District of
4 Columbia's Administrator's Procedures Act. The written copy
5 of this notice will be posted in the general archives in the
6 Hearing Room. Okay guys, we'll be back as quickly as
7 possible, we're just going to go to another window.

8 MR. COX: And if I may? Just a clarification.
9 This is new to me, too. When you come out of the closed
10 session will there be something in writing circulated or how
11 do we know what happened?

12 CHAIRPERSON HILL: The closed session -- actually,
13 it's not usually -- the closed session is just for us to seek
14 legal advice and we don't submit anything in writing after --
15 or after it. You'll hear about it when we come back.

16 MR. COX: But not -- do we stay on the line or is
17 this announced --

18 (Simultaneous speaking.)

19 CHAIRPERSON HILL: Yeah, just stay on the line,
20 just stay right here.

21 MR. COX: Oh okay.

22 CHAIRPERSON HILL: You're not -- we're not --
23 we're just going to another whatever this is called and we
24 come back.

25 MR. COX: Okay. Taking the time to --.

1 CHAIRPERSON HILL: Ok. Thank you.

2 MR. COX: Yep.

3 (Whereupon, the above-entitled matter went off
4 the record at 11:28 a.m. and resumed at 11:49 a.m.)

5 MR. MOY: Okay, the board has returned to its
6 public hearing session after a very quick emergency closed
7 meeting with counsel, and the time now is at or about 11:50
8 a.m. in the morning. Thank you, sir.

9 CHAIRPERSON HILL: Thanks. Mr. Mayo or Mr. Cox,
10 is the zoning administrator back on the 13 of March?

11 (No audible response.)

12 CHAIRPERSON HILL: Do you know if she can join us?

13 MR. COX: I can ask her.

14 CHAIRPERSON HILL: Well, we'll try to do this.
15 So there's -- I got five cases, an expedited review, and a
16 modification consequence which means I have a full day but
17 I'm going to try to move this to March 13 so it can be as
18 expeditious as possible for the property owner and the
19 appellant.

20 I did talk with OZLD. They do believe again that
21 we allow people to change or amend the appeal quite often,
22 however, if you all want to talk a little bit more about, you
23 know, the first writing rule and, you know, how we got this
24 again, it is an appeal of a zoning decision pertaining to
25 this property.

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1 And the zoning decision is still there. Anyway,
2 I'm just -- again I'm trying to get this back to us as
3 quickly as possible, get this resolved. So that's the point
4 of this. March 13 is the date. Supposedly we'll have the
5 zoning administrator.

6 Mr. Cox -- and I'm not -- this is not for
7 discussion amongst the parties, this is a question that I
8 have for you more to enlighten the board as to what to focus
9 itself on, the differences, could you help the board
10 understand the differences between the first permit and the
11 second permit?

12 MR. COX: Different plans. The building's
13 different.

14 CHAIRPERSON HILL: Okay.

15 MR. COX: And I will just also note that the
16 appeal is -- that was filed was appeal of building permit
17 issuance, not a zoning administrative decision.

18 CHAIRPERSON HILL: Okay. Well I'll tell you what,
19 I'll let -- Mr. Cox, I can only listen to one person so if
20 you guys decide that this is not the way to go, we're going
21 to come back here and we'll start again. Okay? So I will
22 put it on DOB and OZLD to let me know if we're making err
23 because I don't want to drag the appellant and the property
24 owner through something that's going to harm either one
25 later, okay?

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1 MR. COX: Yep.

2 CHAIRPERSON HILL: Okay. Let's see. Go ahead,
3 Ms. John.

4 BZA VICE CHAIR JOHN: So I have a question for Mr.
5 Cox. Can you please describe how the plans are different?
6 Now as I recall, the issue was that the -- one exterior wall
7 was represented as an interior wall, and because of that the
8 project would've been a raise because it would've been less
9 than the 40 percent of the wall is retained. So in the new
10 plans without -- you know, without litigating the issue now
11 can you clarify for me whether the wall that was an exterior
12 wall -- interior wall is now an exterior wall?

13 MR. COX: Well, I'm the government's lawyer, not
14 the government's witness, so I would invite the property
15 owner to maybe opine on that. I think that would be probably
16 the better way to go.

17 BZA VICE CHAIR JOHN: Okay. Mr. Agarwal?

18 CHAIRPERSON HILL: Go ahead, Mr. Agarwal.

19 MR. AGARWAL: Vice Chair John, we went back and
20 forth for three rounds with the zoning administrator when we
21 were applying for this latest permit here and the ZA gave us
22 an outline of what constitutes as a raise specifically for
23 this project. It was a checklist. We met all the
24 requirements for that checklist. The permit was then -- then
25 amended permit was then resubmitted to the ZA. The ZA then

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1 approved it.

2 So again, I'm not the ZA so I don't want to speak
3 to exactly how that determination was made, but all I can say
4 is that this was an issue that was discussed greatly during
5 the permit approval process, and after much discussion and
6 modifications to the drawings, it was eventually approved.

7 BZA VICE CHAIR JOHN: Okay, so I guess we'll have
8 to hear from the zoning administrator, but you can answer my
9 question now about whether that interior wall is now an
10 exterior wall, you know the wall in question?

11 MR. AGARWAL: Yes ma'am. So for this permit, the
12 -- a small section of the old wall is in the interior of the
13 house, however when we did the calculation for that 40
14 percent threshold, initially when we had done it a year ago
15 it was taken in linear feet. The zoning administrator came
16 back and said that she would like it to be seen in terms of
17 square footage, excluding the windows. So when we redid the
18 way -- the mathematics on this, this was very much so
19 compliant with what the ZA wanted. So I guess the way of
20 calculation changed from the first permit to this one.

21 BZA VICE CHAIR JOHN: Okay, so now the new
22 calculation is not linear feet but square footage?

23 MR. AGARWAL: Yes ma'am, and that is reflected on
24 my submission, and also on the permit set.

25 BZA VICE CHAIR JOHN: Okay. Thank you. That

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1 clarifies something.

2 MR. AGARWAL: Thank you, ma'am.

3 BZA VICE CHAIR JOHN: Thanks a lot.

4 CHAIRPERSON HILL: Okay, Mr. Cox, do you know what
5 this ten point list is that the building owner just
6 mentioned?

7 MR. COX: Not --

8 CHAIRPERSON HILL: Okay.

9 MR. COX: Not like that, no.

10 CHAIRPERSON HILL: Okay. Mr. Agarwal, you have
11 a list?

12 MR. AGARWAL: Mr. Chair, I think I might have been
13 -- I might have misspoken or someone may have misheard. I
14 did not say ten point list, I said that there was a list
15 given to -- a checklist given to us in terms of meeting
16 zoning compliance on this when we were doing the review
17 process from project docs. That was -- it basically comes
18 back as feedback or reviews once we submit one round of
19 drawings.

20 So we then received that checklist of corrections
21 or modifications to make during the permit review process.
22 We made those, resubmitted, and then had it approved.

23 CHAIRPERSON HILL: I got you. Do you have that
24 list for the record?

25 MR. AGARWAL: Mr. Chair, I don't have it right

1 now, but I'm sure I could get it for you. But that would be
2 something my architect would have.

3 CHAIRPERSON HILL: Okay. It'd be helpful I think
4 as we're going through the appeal.

5 MR. AGARWAL: Sure.

6 CHAIRPERSON HILL: Okay. All right. You guys --
7 I'll let you all speak, and then I'm going to let the -- how
8 should I do this? Yeah, okay, go ahead, Mr. Kumar, what
9 would you like to say? What I'm trying to get at is we're
10 not having a hearing, like, I just -- so, but go ahead, Mr.
11 Kumar.

12 MR. KUMAR: Two things. So to answer
13 Commissioners John's question that wall is still largely, if
14 not entirely enclosed. The plans kind of reflect that. The
15 other issue I wanted to flag, you know, we talked about it's
16 not just a raise, it's also lot surface, impervious surface,
17 setback, et cetera.

18 One thing I neglected but it actually -- what Mr.
19 Agarwal just said kind of reminded me, there's a whole bunch
20 of reference here, the new plans and a new permit, and DOB's
21 position is this is all new and we have to start with a new
22 case which raises the question of neighbor notification. The
23 record reflects neighbor notification -- October 2023 is the
24 last neighbor notification which was in service of the old
25 plans and old permit which is -- was revoked.

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1 So just lagging, I know we're not going to
2 litigate it today or decide it today, but for everyone's
3 awareness, there was a neighbor notification issue. I'm sure
4 Mr. Agarwal's going to disagree with me, I wouldn't expect
5 any different, I just want to make sure that we're all aware
6 of the various issues that will eventually resurface.

7 CHAIRPERSON HILL: What I'm -- and oh my god, this
8 is taking longer than the appeal. So the -- what I'm trying
9 to get at, Mr. Kumar, and I understand what you're saying,
10 and we can come back -- and Mr. Agarwal, you can dispute the
11 notice issue. The notice issue is on the previous building
12 permit, right?

13 And so you're kind of arguing it both ways. I'm
14 not exactly sure what you're -- like, I can -- we can dismiss
15 this permit and you all can start brand new again, and then
16 everybody can get notified and all the notification. I'm
17 trying to get us back here as quickly as possible. But Ms.
18 Themak, what were you about to say?

19 MR. KUMAR: You're on mute.

20 CHAIRPERSON HILL: You're on mute, Ms. Themak.

21 MS. THEMAK: Thank you. All I want to know is how
22 you want -- what you want us to file in order to get back
23 here on the -- on March 13. Do -- should we file an amended
24 statement of appeal with the -- with only 2310998, or will
25 we just automatically be amended and coming back? It's

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1 simply procedural.

2 CHAIRPERSON HILL: Sure. As I understand -- well,
3 go ahead and submit something to the record, Ms. Themak.

4 MS. THEMAK: Okay.

5 CHAIRPERSON HILL: Okay. And then that at least
6 will be in the record that you're changing the building
7 permit number, okay? What I understand is that you can amend
8 -- you can -- we can make this amendment, and if I'm wrong --
9 which I will again let OZLD and DOB talk to one another --
10 if I'm wrong then we'll have to do this again, and I know
11 that I can at least dismiss -- I know that I can waive filing
12 fees, right? I can't waive Ms. Themak's time.

13 That's what I'm trying to, like -- you know, so
14 I can waive filing fees and I can -- and I can't waive our
15 times. But that's what I'm trying to expedite, right? So
16 that's it. Does any -- oh, I'm sorry. Commissioner Duncan,
17 do you have something to say? I'll come back to you, Mr.
18 Cox. Commissioner Duncan, do you have anything you'd like
19 to say?

20 MS. DUNCAN: I believe ANC's can file free of fees
21 just by default.

22 CHAIRPERSON HILL: Yes, absolutely. This is true.
23 Mr. Cox, you had a question.

24 MR. COX: Yeah. Just on timing and who does what
25 and when? The new permit was issued a week ago. How much

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1 time do the appellants need to put together and review it at
2 the level they deem appropriate and put together a filing,
3 then how much time do we get to address it prior to the new
4 hearing date?

5 CHAIRPERSON HILL: I guess this is where it gets
6 a little confusing. So I thought that everything -- you, Ms.
7 Themak, have already looked at the new permit and have
8 already the same problem or whatever, you've already filed
9 whatever you're filing, right? Your presentation -- did you
10 file a presentation, Ms. Themak?

11 MS. THEMAK: We were ready to go today.

12 CHAIRPERSON HILL: Right. Which exhibit is it in?

13 MS. TATE: It is in Commissioner Duncan's -- let
14 me --

15 CHAIRPERSON HILL: Is that 301 -- 31?

16 MS. THEMAK: It's 31, but I mean, I wrote that in
17 one night, so I mean, a week would help me fine tune it a
18 bit.

19 CHAIRPERSON HILL: Okay. So then if you -- so
20 then, Mr. Cox, I guess if we can have -- Mr. Moy, I'll let
21 you help me understand submissions and when we can get back
22 here on the 13, giving everyone time to see and respond to
23 whatever the appellant might file for the March 13 hearing.
24 Mr. Moy, do you have any suggestions?

25 (No audible response.)

1 CHAIRPERSON HILL: You're on mute, Mr. Moy, if
2 you're trying to speak.

3 MR. MOY: I'm accessing my calendar.

4 MR. COX: And while Mr. Moy is doing that, the
5 reason I brought this up is when you went to your private
6 session we were -- we tried to do a little offline talk but
7 turns out it was online so we didn't, but the starting point
8 of it was that they just the plans -- I think they wanted to
9 sit down and talk, but it's -- I was presuming that they
10 needed more time to look through them. But if the position
11 is that they've filed everything they're going to file, then
12 we just need to know, and we need, even if it's seven days
13 out, two days out, just let us know.

14 CHAIRPERSON HILL: I'll let Mr. Moy give us the
15 deadlines for when the appellant filed. Like, you all my --
16 the commissioner is saying she might want to change her
17 PowerPoint and so, you know, if you want to give me a new
18 PowerPoint, let's file a date -- find a date, Mr. Moy, for
19 the new filings from the appellant giving the DOB and
20 property owner I guess time to respond.

21 MR. MOY: Okay. All right. Today's February 7.
22 The continued hearing date for this appeal is March 13. If
23 the appellant can make their filings as you all have just
24 discussed by -- let's see one -- by -- if the appellant can
25 make their filing by Friday, February 16, all right? And DOB

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1 and the parties, which of course would include -- well, ANC
2 is the appellant -- then if DOB and any other parties,
3 including the -- well, yeah, it'll just be DOB -- can respond
4 to the appellant's filing by March 7 -- March 8, Friday,
5 March 8. And then the continued hearing then will be that
6 Wednesday, March 13. That would be an open hearing. Mr.
7 Chairman? So it will -- so it'd be 2/16, March 8, and
8 February -- or rather March 16, March 13.

9 CHAIRPERSON HILL: Right, we're back here March
10 13?

11 MR. MOY: That's right.

12 CHAIRPERSON HILL: Okay.

13 MR. MOY: DOB parties respond by March 8, which
14 is a Friday. Yeah. Give them ample time and the appellant
15 to make their filings by Friday, February the 16.

16 CHAIRPERSON HILL: Okay, does everybody know their
17 dates? Okay. Great. I'll make one comment. So Ms. Themak
18 and Mr. Agarwal, so I don't know what's going to happen,
19 right, but I'll make a couple of statements. They now, DOB,
20 has gone back and forth on this and scrubbed it to death, or
21 scrubbed it a lot it sounds like, right? This has gone on
22 for a long time.

23 So if -- Mr. Agarwal, if you can somehow work with
24 Ms. Themak and come to some kind of an understanding, which
25 may be some of the other issues that they're having with this

1 project, I would recommend you do that if you can because
2 then you'll save everybody some time. But I'm just letting
3 you both know that we are going to decide what's going to
4 happen and I don't know what's going to happen, but it'd be
5 nice if you can have some opportunity to talk together
6 because it might save you both some time and money.

7 Okay. I will let you all go. So thank you.
8 Close this portion of the hearing and the record. Goodbye,
9 have a good day. And I'm going to talk to my board members.

10 (Whereupon, the above-entitled matter went off
11 the record at 12:06 p.m. and resumed at 12:16 p.m.)

12 MR. MOY: After a very quick break just now, the
13 board is back in its -- has returned to its hearing session
14 and the time now is at or about 12:16 p.m. in the afternoon.
15 So the next case before the board in the public hearing
16 session is Application Number 20146A of Ninety Keys, LLC.

17 This is a request pursuant to Subtitle Y Section
18 7044A, modification of significance of the board's decision
19 in Application Number 20146, granted a use variance for
20 office use to allow general service, arts, design, and
21 creation, or limited medical care uses, as well as office use
22 in the existing building.

23 Property in the R-3/GT Zone at 1510 31st Street
24 Northwest, Square 12 -- 1270, Lot 57. And if I may check one
25 other thing. And we have the applicant's team as well as a

1 person signed up to testify in opposition. Thank you, Mr.
2 Chairman.

3 CHAIRPERSON HILL: Okay, thank you, Mr. Moy. If
4 the applicant can hear me, if they can please introduce
5 themselves for the record?

6 MR. SULLIVAN: Yes, thank you, Mr. Chair. This
7 is Marty Sullivan with Sullivan and Barros here on behalf of
8 the applicant.

9 CHAIRPERSON HILL: Thank you. Mr. Sullivan, you
10 want us to go -- walk us through your client's application
11 and why you believe they meet the criteria for us to grant
12 the relief requested? I'm going to give you 15 minutes on
13 the clock and you can begin whenever you like.

14 MR. SULLIVAN: Thank you. If Mr. Young could
15 please load the presentation? So the address is 1510 31st
16 Street Northwest. This is a modification of significance.
17 Next slide, please. Property is in the R3/Georgetown Zone
18 District. In the original case the board granted use
19 variance relief to convert an existing beauty shop use to
20 office use. And it's an existing one-story building located
21 on the property.

22 The BZA approval granted the current owner, which
23 was at that time the contract purchaser, the ability to run
24 her small business in the building and that business was
25 subsequently sold, and the sale did not include the building.

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1 The applicant no longer has the need for an office use
2 because her and her staff are now downtown with the company
3 that bought her company.

4 So the only approved commercial use is the office
5 use that was approved into a 146, however, the applicants had
6 been unable to rent the space out for another office use due
7 to several factors. And in order to increase the
8 marketability of the building the applicant would like to
9 avoid coming back to the BZA to ask for a specific
10 modification, it wants a tenant who might conditionally be
11 found under the same set of facts and conditions every time
12 there's a new tenant. So would like to have the flexibility
13 to use the building for certain defined uses with certain
14 conditions that they're here about.

15 And the board has done this in several other
16 cases, as well, broadening the potential categories of
17 permitted uses for a non-conforming use. So according to the
18 applicants requesting the modification of significance, in
19 order to change the approved use in building to allow for
20 arts, design, and creation, general service, and some limited
21 medical care uses, and of course the existing office use as
22 well.

23 So the board previously determined that the
24 building could not be reasonably adapted for residential use
25 for the only real permitted use there as it has historically

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1 been used for commercial purposes and designed for commercial
2 purposes, and the board found in that case that it would be
3 an undue hardship to the applicant to have to convert the
4 building to residential use as such a conversion would be
5 prohibitively expensive and even with an expensive
6 conversion, the building would have limited utility as the
7 residential use.

8 And as noted in Y704.7, the board is not tasked
9 with revisiting the original decision and the applicants not
10 required to put forth any justification for a use variance
11 since that was already approved. Next slide, please.

12 So we worked very closely with Commissioner Lohse
13 of the -- of this ANC 2E. She was representing her community
14 and nearby neighbors. And we went back and forth to
15 establish a list of conditions which we think everybody's
16 happy with, and that resulted in ANC 2E voting in support of
17 the application, and the Office of Planning has recommended
18 approval, as well, based on the same proposed conditions.
19 Next slide, please.

20 There's a photo of the existing space. It's just
21 the portion on the left. The taller property on the right
22 is a separate lot, separate property. Next slide, please.
23 So the building was originally designed and built and has
24 been continuously operated as commercial. According to
25 History Quest the building was constructed for use as a store

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1 in 1908, and according to certificates of occupancy it's been
2 operating as a beauty shop since 1955. Following the
3 approval of the original case, the property was renovated in
4 2020.

5 The property owner and the user of that space, Ms.
6 Winston and her employees moved into the building in October
7 2020 and the business was sold in October '22, and Ms.
8 Winston and her employees moved to an office space in the
9 downtown area of the District. I'd like to note as well Ms.
10 Winston is here and available if the board has any questions
11 for her. Next slide, please.

12 Without the modification, the applicants hampered
13 in its efforts to lease the building. I'll try and summarize
14 so I don't have to read all this, but the prospective tenants
15 struggle with the uncertainty associated with going through
16 a BZA modification case. And if the future tenants of the
17 building were to end the lease, the applicant would then have
18 to find another tenant to go through another modification.
19 And prior to 2016 this was a special exception to change from
20 one non-conforming use to another, but that relief, while it
21 still existed, was essentially neutered because the only use
22 that wasn't residential that was allowed to be in that was
23 taken away.

24 So for these reasons, the tenant pool is severely
25 limited. It adds uncertainty to the property marketing

1 process and creates additional financial burden on the
2 applicant, which is why the applicant is requesting this
3 flexibility. Also because of the pandemic, there's a
4 significant amount of leaseable buildings available in
5 adjacent commercially-zoned districts, so the subject
6 property is at a disadvantage because it is zoned
7 residentially.

8 The building use is limited to office use and any
9 interested tenant would have to wait five to six months
10 before any modifications could be applied for and granted for
11 the new proposed use, and this flexibility would allow the
12 applicant to market the space to other commercial uses, other
13 than a -- that's a typo -- other than an office building.
14 Without this modification the building will very likely
15 remain vacant for some time. Next slide, please.

16 Summarize the proposed conditions. So they're
17 fairly extensive and -- but the gist of it was the community
18 did not want retail, and as it turns out the applicant was
19 okay with that. And so retail was struck. The -- nobody
20 ever wanted eating or drinking establishments, either the
21 applicant or the community, and so we made sure that that was
22 very clear from the conditions. And so those were the major
23 conditions. And then operating times are there as listed.
24 And next slide, please. And the full set of conditions was
25 included in an amendment that the applicant filed I believe

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1 --

2 (Simultaneous speaking.)

3 CHAIRPERSON HILL: Is that the one in 17A?

4 MR. SULLIVAN: Yes.

5 CHAIRPERSON HILL: Okay. So right, so they --
6 those are the proposed conditions that were the previous
7 proposed conditions, correct?

8 MR. SULLIVAN: No. The 17A is the new -- is the
9 current proposed conditions, and they should line up both
10 with OP's report and with the ANC's Exhibit A to their
11 submission.

12 CHAIRPERSON HILL: Okay.

13 MR. SULLIVAN: So --

14 CHAIRPERSON HILL: Is the client --

15 MR. SULLIVAN: So the Exhibit 22, the attachment
16 to Exhibit 22, there's Attachment A for Exhibit 22, and the
17 proposed conditions under 17A should match.

18 CHAIRPERSON HILL: Fine. So Exhibit 22 Attachment
19 A, your client is comfortable with those conditions?

20 MR. SULLIVAN: Correct.

21 CHAIRPERSON HILL: Okay, because that -- those are
22 the ones that are in the ANC's report.

23 MR. SULLIVAN: Yes. Happy to -- you know, if --
24 just so the board doesn't have to compare, we're happy to
25 agree that that's -- those should be the conditions.

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1 CHAIRPERSON HILL: OP didn't have conditions in
2 their other report.

3 MR. SULLIVAN: Okay. No, they just -- I think OP
4 just referred to Exhibit 17A, or referred to our conditions.
5 Because the ANC letter hadn't been filed yet when OP filed
6 their report.

7 CHAIRPERSON HILL: Okay. All right.

8 MR. SULLIVAN: And so I believe --
9 (Simultaneous speaking.)

10 CHAIRPERSON HILL: -- else Mr. Sullivan?

11 MR. SULLIVAN: Okay, so that's it. So if you have
12 any questions for myself or for Ms. Winston? Thank you.

13 CHAIRPERSON HILL: Thank you. Before I turn to
14 my board, Commissioner, can you hear me? Commissioner
15 Winston?

16 MR. SULLIVAN: I'm sorry, Mr. Chair, she's the
17 applicant.

18 CHAIRPERSON HILL: Oh I'm sorry.

19 MR. SULLIVAN: The property owner.

20 CHAIRPERSON HILL: Is there a commissioner here?
21 (No audible response.)

22 CHAIRPERSON HILL: No? Okay. Let me turn to the
23 Office of Planning.

24 MR. BEAMON: Good afternoon. For the record,
25 Shepard Beamon with the Office of Planning. We've reviewed

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1 this application for the special exception and we recommend
2 approval of the request of modification of significance for
3 the expansion of allowed uses. OP's in support of the
4 conditions proposed by the applicant and supported by the
5 ANC. We stand on the record and I'm available for any
6 questions.

7 CHAIRPERSON HILL: Thank you. Does the board have
8 any questions of the applicant or Mr. Beamon?

9 (No audible response.)

10 CHAIRPERSON HILL: Okay. Mr. Young, is there
11 someone here wishing to speak?

12 MR. YOUNG: We had someone signed up but they had
13 informed staff that they no longer wish to testify, so we
14 have no one.

15 CHAIRPERSON HILL: Okay, great. All right. Mr.
16 Sullivan, do you have anything you'd like to add at the end?

17 MR. SULLIVAN: No thank you, Mr. Chair.

18 CHAIRPERSON HILL: Okay, thank you. All right,
19 I'm going to close the hearing and the record. I'm fine with
20 this application and the justification that the applicant is
21 putting forward on page 6 of their presentation. As to why
22 it is within the guidelines of us to be able to approve this,
23 I see that again it is, you know, for uses that their
24 community has at least gone and agreed with in terms of the
25 conditions that are in Exhibit 22, Attachment A, that I would

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1 put forward is as a condition.

2 I looked through them and I do think they're all
3 zoning related. And so I would be comfortable putting those
4 as conditions, new conditions. And since this was again the
5 beauty salon, and now they're trying to say -- I think I'm
6 completely comfortable with moving forward on this. Mr.
7 Smith, do you have anything you'd like to add?

8 MEMBER SMITH: I think with the conditions I'm
9 comfortable with the requested modifications for the uses,
10 so I stand on the record for OP's staff report and support
11 the application.

12 CHAIRPERSON HILL: Thank you. Mr. Blake?

13 MEMBER BLAKE: I too am in support of the
14 application. I think the conditions do limit the
15 intensification of use and would be reasonable. I would be
16 in support of the application.

17 CHAIRPERSON HILL: Thank you. Commissioner
18 Miller?

19 ZC VICE CHAIR MILLER: I mean, I concur with the
20 comments of my colleagues and appreciate the applicant and
21 the ANC working together to come up with the conditions to
22 as Ms. -- Commissioner -- as Board Member Blake said, to
23 limit the intensity of the use and mitigate against any
24 potential adverse impact. So I'm comfortable with the
25 application to allow this flexibility to allow additional

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1 specified uses.

2 CHAIRPERSON HILL: Thank you. All right, I'm
3 going to go ahead and make a motion to approve Application
4 Number 20146A as captured and read by the secretary, and the
5 conditions there in Exhibit 22, Attachment A, and ask for a
6 second. Mr. Blake?

7 MEMBER BLAKE: Second.

8 CHAIRPERSON HILL: Motion made and seconded. Mr.
9 Moy, if you can take a roll call?

10 MR. MOY: Yes, thank you, Mr. Chairman. When I
11 call your name if you'll please respond to the motion made
12 by Chairman Hill to approve the application, just a request
13 for a modification of significance, as well as the conditions
14 that's been stated here in Exhibit 17. The motion was
15 seconded by Mr. Blake. Zoning Commissioner Rob Miller?

16 ZC VICE CHAIR MILLER: Yes.

17 MR. MOY: Mr. Smith?

18 (No audible response.)

19 MR. MOY: Mr. Blake?

20 MEMBER BLAKE: Yes.

21 MR. MOY: Chairman Hill?

22 CHAIRPERSON HILL: Yes.

23 MR. MOY: Staff would record the vote as 4-0-1,
24 and this is on the motion made by Chairman Hill to approve.
25 The motion to approve was seconded by Mr. Blake, who also

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1 voted to approve the application, as well as approving the
2 application from Zoning Commissioner Rob Miller, Mr. Smith,
3 and again Mr. Blake, Chairman Hill. We have no other board
4 member participating. The motion carries on the vote of 4-0-
5 1.

6 CHAIRPERSON HILL: Thank you. Do you guys want
7 to just kind of power through and we'll probably get through
8 this? Okay, all right. Everybody seems to be nodding. All
9 right, Mr. Moy, go and call our next case.

10 MR. MOY: Okay, before I call the next case I just
11 want to take a moment, Mr. Chairman, to clarify for the
12 record on the appeal case that the board had addressed
13 earlier, Appeal Number 20944, just make clarity in the case
14 record that the record is still an open record, it's still
15 a live case, and it's continued to March 13. I just want
16 that clarity in our transcript. That's all I have to say on
17 that.

18 CHAIRPERSON HILL: Yes, that is clear and correct.
19 Thank you.

20 MR. MOY: Okay.

21 CHAIRPERSON HILL: Okay.

22 MR. MOY: So the next case is Application Number
23 21024 of Pavan -- yeah, I'm going to spell this last name,
24 but it's K-H-O-O-B-C-H-A-N-D-A-N-I. This is an application
25 pursuant to Subtitle X, Section 901.2 for special exception

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1 under Subtitle C, Section 710.3 from vehicle parking location
2 restrictions, Subtitle C, Section 710.2C2. Property located
3 in the R-1A Zone at 4235 Blagden Avenue Northwest, Square
4 2642, Lot 75. And I'd like to check one other thing. Yeah,
5 all we have before the board is the applicant's team. Thank
6 you, sir.

7 CHAIRPERSON HILL: Thank you. If the applicant
8 can hear me, if they could please introduce themselves for
9 the record?

10 MR. KHOOBCHANDANI: Hi, my name is Pavan
11 Khoobchandani, 4235 Blagden Avenue Northwest.

12 CHAIRPERSON HILL: Okay. All right, could you
13 pronounce your name again for the last -- last name?

14 MR. KHOOBCHANDANI: It's Khoobchandani.

15 CHAIRPERSON HILL: Khoobchandani. Okay. Mr.
16 Khoobchandani, if you could go ahead and walk us through your
17 application and why you believe that you should be granted
18 the relief requested? I'm going to put 15 minutes on the
19 clock and you can begin whenever you like.

20 MR. KHOOBCHANDANI: Great, thanks. Can I get the
21 presentation up on the screen, please? And you can go to the
22 next slide, please. Like I said, my name's Pavan
23 Khoobchandani and I live in this home along with my wife and
24 two small kids. If you can flip forward to slide 5, please?
25 This home is located on a private drive with six homes. It's

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1 off of Blagden. On the very right-hand side of the screen
2 is Blagden Avenue.

3 What we're looking at is the private drive that
4 we live on. There is one entry and exit way at the far end
5 of what we're looking at. All of the houses on this private
6 drive except for mine have at least two off-street parking
7 spaces. My house has one off -- one driveway, one off-street
8 parking space. And I'm sorry, if you go back to the second
9 slide? The -- that's -- the area on the second slide is
10 where I would like to convert a grassy area to a parking pad.
11 Just back to the second slide, please. So that's the area
12 right there that I want to -- slide 2, please.

13 Anyway, so the -- this -- the -- there's a grassy
14 area that's located in front of my front door and that's the
15 area that I would like to convert to a parking pad. The --
16 these photos show what the Office of Planning noted in their
17 report, which is that this site does not have any rear
18 alleyway, it is a severely sloped site, and there is no
19 practical location to place a parking pad behind the front
20 door. If you go to the next slide, please?

21 These are examples of other homes on this private
22 drive, on this block that have the same condition and that
23 they have a parking pad that's located in the front yard.
24 These are three different houses -- sorry, these are two
25 different houses with three different examples of the

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1 condition that they have. The immediate neighbors to my home
2 have submitted to the record a comment in support of this
3 application.

4 If you scroll forward two more slides, please --
5 one more slide, please. And the reason why I believe I
6 should -- I'm entitled -- or I would ask the board to grant
7 this special exception is as I showed you before, this lot
8 has unusual topography and grade which makes it impossibly
9 really to be able to put a parking pad anywhere else on the
10 lot.

11 There's no alley behind to access the rear of this
12 lot. By allowing this parking space it will allow me to park
13 my second car -- we have two cars -- allow me to park my
14 second car off of the private drive. Right now, especially
15 with delivery vehicles, there's a lot of traffic that has to
16 get by my car. At least one delivery vehicle has sort of
17 gotten stuck, not in the (audio interference) because it
18 popped up on the curb, the private drive and got stuck there.
19 So this would allow vehicles to -- the mail truck and
20 delivery trucks to move more freely and would -- no one else
21 parks on the -- sort of parallel parks, everyone else parks
22 off-street.

23 I will note as a last point that I used to have
24 on-street parking on Blagden Avenue in front of my home. A
25 sidewalk was installed there a couple of years -- or a few

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1 years ago and they removed the on-street parking, and so that
2 -- you know, that's sort of another reason why I believe it
3 would benefit just that area of the neighborhood to allow me
4 to put my car off-street onto my property. Thank you.

5 CHAIRPERSON HILL: Okay, Mr. Young, want to drop
6 the slide deck, please? All right, I'm going to turn first
7 to the Office of Planning and then my board.

8 MR. JURKOVIC: Good afternoon, Mr. Chairman and
9 members of the board. My name is Michael Jurkovic,
10 development review specialist for the Office of Planning.
11 OP recommends approval of this special exception for parking
12 location relief as requested by the applicant and stands on
13 the record of the report. I am here to answer any questions.
14 Thank you.

15 CHAIRPERSON HILL: Thank you. Mr. Young, is there
16 anyone here wishing to speak?

17 (No audible response.)

18 CHAIRPERSON HILL: Okay. Does the board have any
19 questions of the applicant or the Office of Planning?

20 (No audible response.)

21 CHAIRPERSON HILL: No? Okay. Mr. -- I'm going
22 to use your first name, I'm sorry, Mr. Pavan. So Mr. Pavan,
23 I mean, you're not going to believe this, I was looking at
24 those homes, the other day I was driving down Rock Creek Park
25 and I was thinking who lives up there? And that is so funny,

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1 it was literally this weekend. So I do have a question
2 because I was actually curious. So they all park on the --
3 on Blagden Avenue and the people walk up that private drive?

4 MR. KHOOBCHANDANI: Are you talking about guests?

5 CHAIRPERSON HILL: No, I'm talking about the
6 people -- well, yeah, guests -- no, so the other residents
7 have parking?

8 MR. KHOOBCHANDANI: They all park off -- they have
9 off-street -- at least two, some of them have three off-
10 street parking, you know, on private parking.

11 CHAIRPERSON HILL: Off that private driveway?

12 MR. KHOOBCHANDANI: Right.

13 CHAIRPERSON HILL: Right. And then guests that
14 park down on Blagden Avenue then walk up that private
15 driveway?

16 MR. KHOOBCHANDANI: Correct.

17 CHAIRPERSON HILL: Wow, in the winter it must be
18 crazy.

19 MR. KHOOBCHANDANI: Well, it's funny, we didn't
20 even -- we didn't use to have a sidewalk, and so now we have
21 to shovel the sidewalk or we get fined. But you know, we do
22 our part.

23 CHAIRPERSON HILL: Okay, no, I'm just saying it's
24 somewhat steep.

25 MR. KHOOBCHANDANI: This is not the steep -- this

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1 is not the steep -- oh, so I think you're thinking about --
2 across the street is a really steep private drive. This is
3 on the other side of Blagden Avenue, it's a pretty flat
4 private drive.

5 CHAIRPERSON HILL: Oh, then okay. Then it's not
6 as exciting as I thought. Okay, all right. I don't have any
7 more questions. Mr. Pavan, do you have any more questions
8 or statements?

9 MR. KHOOBCHANDANI: No, thank you.

10 CHAIRPERSON HILL: Okay. I'll go ahead and close
11 the hearing and the record. Since I am wrong, does somebody
12 else want to start talking while I reorient myself?

13 MEMBER BLAKE: Mr. Chairman, I'm familiar with the
14 area and I do believe that in viewing this the applicant has
15 met the burden of proof to be granted the request of relief.
16 It is a steep hill, it's not as steep as the one across the
17 street but it is a steep hill, and it's very common for folks
18 to be able to park their cars up in that area. The
19 typography of the applicant's property makes it very
20 difficult to do that with no alley and it would definitely
21 meet the require -- I do believe the -- I do credit the
22 Office of Planning's report for the analysis of the criteria.

23 I do note that DDOT has no objection to the
24 project. I do not believe we should include DDOT's condition
25 with regard to the arborist, as that -- it may be required

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1 and handled within their own regulations and not ours. I
2 would also note that ANC 4E is in support, and I would be in
3 support of the application.

4 CHAIRPERSON HILL: Thank you. Mr. Smith?

5 MEMBER SMITH: I agree with Mr. Blake's assessment
6 of this particular case. It is a steep slope. And well,
7 just looking at the Office of Planning's staff report, one
8 of the reasons why we should grant this relief, I do by and
9 large agree with everything -- their reason -- reasoning for
10 granting the special attention, so I will be in support of
11 the application as well.

12 CHAIRPERSON HILL: Great, thank you. Commissioner
13 Miller?

14 ZC VICE CHAIR MILLER: I agree with my colleagues
15 that the applicant meets the criteria for the special
16 exception relief that's being requested here in -- under
17 Subtitle C, Section 710, the -- that parking restriction
18 regulation. So I support the application.

19 CHAIRPERSON HILL: Thank you. And I did neglect
20 to mention this to the applicant about working with an
21 arborist I guess. It's not something that we would have put
22 forward in because it was more of a construction issue, but
23 DDOT had mentioned about working with the arborist and more
24 for the heritage tree issues, and actually, Mr. Young, is the
25 applicant still there?

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1 MR. YOUNG: Yes.

2 CHAIRPERSON HILL: Can you see if you can get him
3 back? Mr. Pavan, can you hear me? Just again, do -- I just
4 want to get this for me cleared up. You know about these
5 trees that DDOT's talking about?

6 MR. KHOOBCHANDANI: Yeah, in slide 5 of my
7 presentation there are two -- they're either probably special
8 or heritage trees on the other side of the private drive down
9 towards Blagden Avenue.

10 CHAIRPERSON HILL: Okay.

11 MR. KHOOBCHANDANI: To me they're not in the
12 immediate vicinity, but of course we will work with the
13 arborist or whatever's required.

14 CHAIRPERSON HILL: Okay. That's all I want to
15 hear. Okay, all right, I'm going to go close the hearing and
16 the record again. Thank you, Mr. Pavan. All right, I have
17 nothing to add for my fellow board members. I appreciate you
18 all taking the lead on that conversation. I'm going to make
19 a motion to approve Application Number 21024 as captured and
20 read by the secretary and ask for a second. Mr. Blake?

21 MEMBER BLAKE: Second.

22 CHAIRPERSON HILL: Motion was made and seconded.
23 Mr. Moy, if you can take a roll call?

24 MR. MOY: When I call your name if you'll please
25 respond to the motion made by Chairman Hill to approve the

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1 application for the relief requested? The motion to approve
2 was seconded by Mr. Blake. Zoning Commissioner Rob Miller?

3 ZC VICE CHAIR MILLER: Yes.

4 MR. MOY: Mr. Smith?

5 MEMBER SMITH: Yes.

6 MR. MOY: Mr. Blake?

7 MEMBER BLAKE: Yes.

8 MR. MOY: Chairman Hill?

9 CHAIRPERSON HILL: Yes.

10 MR. MOY: Staff would record the vote as 4-0-1 and
11 this is on the motion made by Chairman Hill to approve. The
12 motion to approve was seconded by Mr. Blake. Mr. Blake also
13 voted to approve the application, as well as approval from
14 Zoning Commissioner Rob Miller, Mr. Smith, of course Mr.
15 Blake, Chairman Hill. We have no other board members on this
16 case. The motion carries on a vote of 4-0-1.

17 CHAIRPERSON HILL: Okay. Thanks, Mr. Moy. Yeah,
18 I thought it was across the street. There's like some really
19 steep thing. I mean, I guess Mr. Blake knows where it is but
20 it's this steep weirdo driveway thing and just looks like,
21 crazy. So anyway. Okay. But now I know exactly where it
22 was, so that was helpful. Thanks for the time. Mr. Moy,
23 call our last case.

24 MR. MOY: Okay, this case is Application Number
25 21035, Joel Curtin and Hun Quach, Q-U-A-C-H. This is a self-

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1 certified application pursuant to Subtitle X, Section 901.2
2 for special exception, Subtitle D, Section 5201.1 from side
3 yard requirements, Subtitle D, Section 208.7. Property
4 located in the R-1B Zone at 3222 20th Street Northeast,
5 Square 4206, Lot 52. And that's all I have for you, sir.

6 CHAIRPERSON HILL: Thank you. If the applicant
7 can hear me if they could please --

8 MR. MOY: Mr. Chairman?

9 CHAIRPERSON HILL: Sure?

10 MR. MOY: Yeah, sorry to interrupt. This is the
11 case that I mentioned earlier at 9:30 at preliminary matters
12 where the applicant this morning submitted a new or updated
13 burden of proof. So right now it's not in the record, but
14 that's before you, if you want to allow me to enter it into
15 the record.

16 (Simultaneous speaking.)

17 MS. DAVIS: If you'd like me to?

18 CHAIRPERSON HILL: Yeah. One second, Ms. Davis.
19 What did you -- I didn't hear the end, Mr. Moy. There was
20 something they wanted to submit to the record?

21 MR. MOY: Yeah. The applicant just submitted a
22 new burden of proof or updated burden of proof into the
23 record, so I haven't put that into the record without your
24 approval, so that's where we are.

25 CHAIRPERSON HILL: Okay. Ms. Davis, can you

1 introduce yourself for the record, please?

2 MS. DAVIS: Absolutely. My name is Beth Davis.
3 I'm here with the applicant's team to discuss the addition
4 at 3222 20th Street Northeast. In regard to the late filing
5 and the updated burden of proof, there were some
6 administrative issues in the filing of this because we had
7 three separate zoning administrators review this project, and
8 I believe it is my understanding that the zoning code section
9 numbers changed --

10 CHAIRPERSON HILL: Okay, no problem.

11 MS. DAVIS: In the process, and so there's no
12 material difference in the burden of proof that is updated.
13 It's just updating numbers and code references.

14 CHAIRPERSON HILL: Okay. Mr. Moy, could you
15 please put that in the record so the board can see what it
16 is?

17 MR. MOY: Yes sir, I'll have that taken care of
18 now.

19 CHAIRPERSON HILL: And let us know when it's in
20 there. Okay. All right, so Ms. Davis, are you going to be
21 presenting for the applicant? Are you the applicant?

22 MS. DAVIS: I'm on the applicant's team. The
23 architect, Mark Freeman, will be presenting.

24 CHAIRPERSON HILL: Okay. Mr. Freeman, can you
25 introduce yourself for the record?

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1 (No audible response.)

2 MS. DAVIS: Mark, you're muted.

3 CHAIRPERSON HILL: You're muted, Mr. Freeman.

4 (No audible response.)

5 CHAIRPERSON HILL: You're still on mute or
6 something.

7 MR. FREEMAN: How about now, can you hear me?

8 CHAIRPERSON HILL: Yep.

9 MR. FREEMAN: All right. Let me start again.
10 Board of Zoning, Chairman Hill, Vice Chairman Lorna Hill, my
11 name is Mark Freeman, I'm with Aggregate Architecture. I am
12 representing Joel Curtin and his wife, Hun, who has -- are
13 requesting relief from Subtitle D 208.7 in regards to
14 encroachment into a side yard. We are requesting relief due
15 to the fact of Subtitle D 5201.1, which allows for special
16 exception requests for an addition to go into a side yard.

17 CHAIRPERSON HILL: Okay.

18 MR. FREEMAN: Okay. I can keep going. Would you
19 like me to keep going?

20 CHAIRPERSON HILL: Sure.

21 MR. FREEMAN: Okay. Would the -- could we get
22 Exhibit 5, which is the drawings? Could we get those pulled
23 up, please?

24 CHAIRPERSON HILL: Okay, Mr. Moy says that's in
25 the record now if you guys want to look.

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1 MS. DAVIS: And just to reiterate, while the plans
2 are coming up to be presented, there are no major material
3 changes, it's just reference numbers and everything. We just
4 wanted to make sure they were accurate in the record.

5 CHAIRPERSON HILL: Thank you, Ms. Davis. Okay.
6 All right, go ahead, Mr. Freeman.

7 MR. FREEMAN: Okay, so this is the cover page, so
8 currently this is the existing condition of the property.
9 What we have performed to date already is we have designed
10 a third-floor addition to the property. If we could go to
11 the next page? What you see currently is on the left, that
12 is the by-right addition that we have it designed that is on
13 the top floor.

14 Because of a determination by Mr. LeGrant, the
15 previous zoning administrator, and applying a side yard to
16 a street lot line, they stated the third floor addition
17 needed to be pulled back from the current face on the second
18 floor. What we are requesting is a special exception
19 approval for the three foot or so of additional space to come
20 in line with the second floor, which is shown in the red on
21 the right in the axon. Can we go to the next slide, please
22 -- or the next page?

23 So these axons currently show you -- Number 1 on
24 the top left, that is the view from Kearny Street looking
25 south. That is what is currently permitted and approved.

1 The slide to the right shows you the additional addition that
2 would be again at the line of the second floor. Then when
3 you look at Picture Number 3, this is looking from the
4 northeast corner which is basically at 20th and Kearny, and
5 20th Street is again the street lot line and the street front
6 that we are asking for the encroachment into the side yard.

7 Can you go to the next page, please? And then
8 this is the view looking towards the north along 20th Street
9 and shows you the two versions.

10 CHAIRPERSON HILL: Mr. Freeman?

11 MR. FREEMAN: Yes, sir?

12 CHAIRPERSON HILL: Can I interrupt you one second?
13 Actually I'm going to -- I appreciate your presentation and
14 the slide deck. I mean, I have it up and I think it's a
15 relatively straightforward discussion. I'm going to go ahead
16 and -- drop this slide deck, Mr. Young -- and first go
17 through the Office of Planning and then come back to my
18 colleagues to see if they have any questions because while
19 flipping through all this, I think the argument is clear.
20 May I hear from the Office of Planning, please?

21 MR. BARRON: Good afternoon commissioners, my name
22 is Ron Barron, development review specialist for the D.C.
23 Office of Planning. The Office of Planning recommends
24 approval of the special exception relief requested for the
25 minimum side yard requirements to permit an extension of the

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1 third floor living space towards the property line facing
2 20th Street. The application is in harmony with the general
3 purpose and intent for zoning regulations and the zoning
4 maps. The Office of Planning is content to rest on the
5 record and I'm happy to answer any questions you may have.

6 CHAIRPERSON HILL: Thank you. Do my colleagues
7 have any questions for the applicant and/or the Office of
8 Planning?

9 (No audible response.)

10 CHAIRPERSON HILL: Okay. Mr. Young, is there
11 anyone here wishing to speak?

12 MR. YOUNG: We do not.

13 CHAIRPERSON HILL: Okay. Mr. Freeman, I'm going
14 to let you go. Mr. Curtin, are you the property owner?

15 (No audible response.)

16 CHAIRPERSON HILL: Would you like to introduce
17 yourself for the record, sir?

18 MR. CURTIN: Hi, my name is Joel Curtin. I live
19 at 3222 20th Street Northeast.

20 CHAIRPERSON HILL: Okay, Mr. Curtin, since you've
21 waited so long I wouldn't want you to not be able to
22 introduce yourself. Does anybody have any questions for
23 anybody from my board?

24 (No audible response.)

25 CHAIRPERSON HILL: All right, I'm going to close

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1 the hearing and the record.

2 MS. DAVIS: Thank you, Chairman Hill.

3 CHAIRPERSON HILL: Thank you. Okay, sorry. Here
4 actually is something that even I think is relatively
5 straightforward. So I am in agreement with the analysis that
6 the Office of Planning has provided concerning this third-
7 floor extension that's basically I don't think going to have
8 any effect on anything or anybody and is within the
9 regulations, and I'm going to leave it at that, and rest on
10 the record of the Office of Planning and that the ANC has
11 also given their support, which I appreciate the applicant
12 going through the proper procedures because it's always --
13 it makes it easier. It may not seem to be to them.

14 And then also I'd also -- is very happy -- or not
15 happy, I'm glad to see that there's support in the record
16 from neighbors, and also I appreciate that the applicant and
17 his team went out and did the correct community outreach so
18 that I would feel more comfortable with what's happening.
19 So I'm going to be voting in favor of the application. Mr.
20 Smith, do you have anything you'd like to add?

21 MEMBER SMITH: My assessment of this case, I think
22 the proposed addition will have very little -- as you stated,
23 very little impact to the adjacent property owners, even
24 where it's located where it's a side yard facing the street.
25 So I -- it'll have very little impact on light and air, and

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1 based on how it's designed, I think it'll be in keeping with
2 the character of the neighborhood and the overall design of
3 the building and construction here. So with that, I rest on
4 OP's staff report and will support the application.

5 CHAIRPERSON HILL: Thank you. Commissioner
6 Miller?

7 ZC VICE CHAIR MILLER: Thank you, Mr. Chairman.
8 I concur with the comments of you and my colleagues.

9 CHAIRPERSON HILL: Thank you. Mr. Blake?

10 MEMBER BLAKE: The applicant has certainly met the
11 burden of proof. To the extent that there is additional
12 shadowing it will be in -- mostly in public space or the
13 applicant's property. ANC is certainly in support, and again
14 I agree with you and acknowledge the support of neighboring
15 properties. I'll be voting in favor of the application.

16 CHAIRPERSON HILL: Okay great, thank you. I'm
17 going to go ahead and agree with my colleagues and appreciate
18 their analysis. I make a motion to approve Application
19 Number 21035 as captured and read by the secretary, and ask
20 for a second. Mr. Blake?

21 MEMBER BLAKE: Second.

22 CHAIRPERSON HILL: The motion was made and
23 seconded. Mr. Moy, if you can take a roll call?

24 MR. MOY: When I call your name could you please
25 respond to the motion made by Chairman Hill to approve the

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1 application for relief for the requested relief? The motion
2 was seconded by Mr. Blake. Zoning Commissioner Rob Miller?

3 ZC VICE CHAIR MILLER: Yes.

4 MR. MOY: Mr. Smith?

5 (No audible response.)

6 MR. MOY: Mr. Blake?

7 MEMBER BLAKE: Yes.

8 MR. MOY: Chairman Hill?

9 CHAIRPERSON HILL: Yes.

10 MR. MOY: Staff would record the vote as 4-0-1.

11 And this is on the motion made by Chairman Hill to approve.

12 The motion to approve was seconded by Mr. Blake. Mr. Blake
13 also voted to approve the application, as well as approval
14 from Zoning Commissioner Rob Miller, Mr. Smith, and again Mr.
15 Blake, Chairman Hill. We have no other board members
16 participating. The motion carries 4-0-1.

17 CHAIRPERSON HILL: Okay great, thank you. Mr.
18 Moy, is there anything else before the board today?

19 MR. MOY: No sir. Nothing else from the staff.

20 CHAIRPERSON HILL: Okay everybody, nice to see you
21 all. See you next week, or whoever we see next week. Have
22 a nice day. We're adjourned.

23 (Whereupon, the above-entitled matter went off the
24 record at 12:58 p.m.)

25

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DC BZA

Date: 02-07-24

Place: teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate complete record of the proceedings.



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