

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY

APRIL 10, 2024

+ + + + +

The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened via Video/Teleconference, pursuant to notice at 9:30 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
CARL BLAKE, Member
CHRISHAUN S. SMITH, NCPC Designee

ZONING COMMISSION MEMBERS PRESENT:

JOSEPH S. IMAMURA, PhD, AOC Designee
TAMMY STIDHAM, NPS Designee

OFFICE OF ZONING STAFF PRESENT:

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

OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

SARAH BAJAJ, ESQ.
COMETRIA COOPER, ESQ.
RYAN NICHOLAS, ESQ.

The transcript constitutes the minutes from the Regular Public Meeting held on April 10, 2024.

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

9:37 a.m.

CHAIRPERSON HILL: Good morning ladies and gentlemen, Board of Zoning Adjustment, today's date is 4/10/2024's public hearing please come to order. My name is Fred Hill, chairman of the District of Columbia Board of Zoning Adjustment. Joining me today is the whole zoning commission. Chrishaun Smith, Carl Blake, Commissioners Tammy Stidham, Anthony Hood, Rob Miller, and Dr. Imamura.

Today's meeting and hearing agenda are available on Office of Zoning's website. Please be advised this proceeding is being recorded by a court reporter, it is also webcast live via Webex and YouTube Live. The video of the webcast will be available on the Office of Zoning's website after today's hearing. Accordingly, everyone who is listening on Webex or via telephone will be muted during the hearing.

Also please be advised that we do not take any public testimony at our decision meeting session. If you're experiencing difficulty accessing Webex, or with your telephone calling, then please call our OZ hotline number at 2027275471 to receive Webex call in or login instructions. At the conclusion of our decision meeting session, I shall, in consultation with the Office of Zoning, determine whether a full or summary order may be issued.

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

8 In today's hearing session, everyone who is
9 listening on Webex or on telephone will be muted during the
10 hearing, and only persons who have signed up to participate
11 or testify will be unmuted at the appropriate time. Please
12 state your name and home address before providing oral
13 testimony or your presentation. Oral presentations should
14 be limited to a summary of your most important points.

15 When you're finished speaking, please mute your
16 audio so that your microphone is no longer picking up sound
17 or background noise. Once again if you're experiencing
18 difficulty, our hotline is 2027275471. All persons planning
19 to testify either in favor or in opposition should sign up
20 in advance, they will be called by name to testify. If this
21 is an appeal, only parties are allowed to testify.

22 By signing up to testify, all participants
23 completed the oath or affirmation as required by Subtitle
24 Y408.7. Request to enter evidence at the time in only virtual
25 hearings such as during testimony or additional supporting

1 documents other than live video, which may not be presented
2 as part of the testimony may be allowed pursuant to Y103.13
3 provided that the person who is making the request to enter
4 an exhibit explain A, how the composed exhibit is relevant.

5 B, the good cause that justifies allowing the
6 exhibit into the record, including the explanation of why the
7 requester did not file the exhibit prior to the hearing
8 pursuant to Y206. And C, how the proposed exhibit would not
9 unreasonably prejudice any parties. The order procedures for
10 special exceptions and variances are pursuant to Y409. At
11 the conclusion of each case, an individual who was unable to
12 testify because of technical issues may file a request for
13 leave to file a written version of the testimony to the
14 record within 24 hours following the conclusion of the public
15 testimony hearing.

16 If additional written testimony is accepted, the
17 parties will be allowed a reasonable time to respond as
18 determined by the board. The board will then make its
19 decision at its next meeting session, but no earlier than 48
20 hours after the hearing. Moreover, the board may request
21 additional specific information to complete the record. The
22 board and the staff will specify at the end of the hearing
23 exactly what's expected, and the dates for when persons must
24 submit the evidence to the Office of Zoning, no other
25 information shall be accepted by the board.

1 Once again, finally the District of Columbia
2 Administrative Procedures Act requires that the public
3 hearing on each case be held in the open before the public.
4 However, pursuant to Section 405B, and 406 of that act, the
5 board may, consistent with its rules and procedures, and the
6 act, enter into a closed meeting on a case for purposes of
7 seeking legal counsel on a case pursuant to D.C. Official
8 Code Section 2-575B4.

9 And or deliberate on a case pursuant to D.C.
10 Official Code Section 2-575B13, but only after providing
11 necessary public notice in the case emergency closed meeting
12 after taking a roll call vote. Madam Secretary, do we have
13 any preliminary matters?

14 MS. MEHLERT: Good morning, Mr. Chairman and
15 members of the board, just a few scheduling changes,
16 application number 20417A of Narayanswarup, Incorporated,
17 has been postponed to September 11th, 2024, application
18 number 21089 of 4711 Ellicott Street Northwest, LLC, has
19 also been postponed to September 11th, 2024.

20 Application number 21031 of CT 4th Street
21 Southeast, LLC, has been rescheduled for the June 26th public
22 hearing. And then application number 21083 of Narayanswarup
23 Incorporated has been withdrawn. In regards to late filings,
24 the chairman has reviewed and granted waivers to allow late
25 filings into the applicable case records pursuant to Subtitle

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1 Y, Section 206.7, and Section 103.13.

2 Any other late filings during the course of
3 today's public hearing should be presented before the board
4 by the applicant parties or witnesses after the case is
5 called, and any other preliminary matters will be noted when
6 that case is called.

7 CHAIRPERSON HILL: Thank you. Ms. Mehlert, if you
8 can -- I'm still having -- I found another link that will get
9 me to the case files, but I don't know why that website still
10 seems to be odd, maybe if you can just take a look at it at
11 some point in time if you wouldn't mind? That's one thing.
12 All right, you guys, we've got a really long day. I've got
13 everybody with the commissioners, I kind am trying to finish
14 by 6:00 because I have an obligation.

15 So, we'll see how this goes. The first one, if
16 you wouldn't mind calling, Madam Secretary?

17 MS. MEHLERT: Sure. So, this is in the board's
18 public meeting session, application number 20996 of 106 13th
19 Street, LLC. This is a self certified application pursuant
20 to Subtitle X 1002 for a use variance in Subtitle U301 to
21 allow the expansion of a restaurant use to the second floor
22 of an existing building. This is located in the RF-1 Zone
23 at 106 13th Street Southeast where 1036, lot 60, the hearing
24 for this case was held on January 31st and March 6th.

25 The decision was scheduled for March 13th, and

1 postponed to today, April 10th, at the applicant's request.
2 The board has asked for additional submissions, and responses
3 from parties. And participating on this case are Chairman
4 Hill, Mr. Blake, Mr. Smith, and Lieutenant Commissioner
5 Stidham, as well as Ms. John, however she's not here.

6 CHAIRPERSON HILL: Okay, great, thank you. Okay
7 guys, so this has been -- excuse me one second. So, we've
8 taken a lot of testimony about this, and this has garnered
9 a lot of public discussion, as well as letters in primarily
10 support of this particular application. I think we kind of
11 have gone back and forth in terms of the board as to
12 understanding where we might be with regards to that second
13 floor use of the restaurant.

14 And I am in the belief that they are meeting the
15 criteria, again, for us to grant this particular variance.
16 Now, there are a little bit of discussions, I think, that we
17 might, or may not be having about some of the conditions that
18 we might want to put forward if we are to get to approve
19 this, conditions that we might put forward to mitigate some
20 of the potential adverse impacts.

21 Before I go into any discussion about the
22 criteria, or why I believe they're meeting the variance
23 relief, or the use variance relief, I kind of want to go
24 around the table, I guess, and just see where we are, and see
25 if we are in fact where we're all in a position where we

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1 believe now that they have met the criteria. I mean, again,
2 I do not think it's a strong case, nobody is going to argue
3 that.

4 But I do think that there is a case to be made for
5 the variance. And I guess if you all want to tell me what
6 your thoughts are about the variance first, and then I
7 suppose then I want to kind of go through and see if we need
8 any other mitigating questions or other conditions that we
9 might put forth to mitigate adverse impact again. And I know
10 that there has been some discussion about a time limit on the
11 use on the second floor in terms of the hours of operation.

12 And then also a potential even time limit, and if
13 we do a time limit, then that would probably bring into
14 discussion the applicant, and I'm not terribly sure where I
15 am on the time limit, because it's just -- I mean setting a
16 time limit on the order, because it would just be for the
17 second floor, and so that's why I think it's kind of not
18 necessary.

19 But I would be in favor of a time limit on the
20 hours of operations, and I can go into that in a little bit
21 more detail as we talk this through. Mr. Blake, would you
22 be willing to share with us your thoughts?

23 MEMBER BLAKE: Sure, Mr. Chair. Excuse me, I have
24 a little bit of congestion. In having reviewed the case, I
25 by and large agree with the Office of Planning's analysis of

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1 the three prong test of the variance being met. In the first
2 prong, I completely agree with the Office of Planning's
3 analysis. I agree with you that it's not a particularly
4 strong case, but I do believe that the Office of Planning has
5 made a plausible argument that I'm in support of.

6 Agreeing that the circumstances, the confluence
7 of factors contributing to an undue financial hardship, the
8 excess of half a million dollars. And the second prong, most
9 substantial detriments to the public good, I do have some
10 issues there that cause me to think that -- I think there's
11 broad base support in the neighborhood for the restaurant.
12 It's all been praised, great food, convenient, it removes an
13 eye sore.

14 But I think the enthusiasm overshadows the
15 potential adverse impacts of a 140 seat restaurant in a
16 residential zone. And because of that there's some issues
17 that still exist like parking, trash management, noise,
18 delivery hours, hours of operation, things like that, which
19 we should -- which will ultimately be potentially
20 unanticipated consequences of this that could be unpleasant
21 for the neighbors, even though I know they are very
22 enthusiastic about it.

23 So, I do agree, I do believe the first prong is
24 met, and I believe that some mitigating activities could take
25 place to manage this. I would also point out that when you

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1 think about a 130 seat restaurant versus a 50 seat
2 restaurant, it's not necessarily consistent with the
3 character of the area, which was intended for single family
4 residential.

5 All that said, for those reasons I think some
6 minor conditions would be appropriate. My first thought
7 would be, and these conditions would only apply to the second
8 floor, not the entire restaurant. Limit the hours of
9 operation of the second floor to 11:00 p.m., just the second
10 floor. Limit the number of seats on the second floor to 60,
11 subject to building code restrictions and so forth.

12 And then I understand your comment about the ten
13 year term, that's unusual, and we haven't necessarily done
14 that a lot before, but it certainly could potentially have
15 tremendous financial implications for the applicant. But
16 it's interesting, I thought about this, the average life of
17 a restaurant is five years. So, a ten year use variance
18 would actually be beyond the normal average life of a
19 restaurant.

20 So, I mean there are some very successful that are
21 up for decades and make millions, but this is something that
22 is not unrealistic in terms of a time frame. Also it implies
23 that their use for the area, right now -- uses aren't
24 allowed, but in the future -- uses may change in that
25 neighborhood, in which case something could actually be used

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1 here that's different.

2 So, I do think there is something that is
3 reasonable. I also think there is an issue at the end of the
4 day, I didn't really get to speak to this a lot, this is
5 limited to a restaurant use. And our issue would be to avoid
6 a more intense use such as a night club, which could be
7 defined as an eating and drinking establishment, but could
8 actually go in to have a much more significant impact of the
9 zoning.

10 So, for that reason I'm going to have to kind of
11 agree with you that some conditions may be warranted to kind
12 of help address this. But that said, with those conditions,
13 I believe that all three prongs of the test would be met, and
14 I would be in favor of supporting the application.

15 CHAIRPERSON HILL: Okay, Mr. Blake, you're kind
16 of cutting in and out. So, maybe you might want to, after
17 this hearing -- well, you're really kind of cutting in and
18 out. I don't know if you want to jump out and jump back in.
19 Go ahead, Mr. Smith.

20 MEMBER BLAKE: I can do that.

21 MEMBER SMITH: Before he jumps out, Mr. Blake, can
22 you restate the reasonable conditions that you were
23 recommending on the space just really quickly? And then you
24 can jump out and restart.

25 MEMBER BLAKE: If it's not clear, please let me

1 know. I was going to say that the first one I said, that I
2 felt most comfortable with, was putting a limitation on the
3 hours of operation on the second floor until 11:00 o'clock.
4 This addresses the issues that I think I said a few minutes
5 ago with regard to this variance travels with the property,
6 not necessarily the -- so, over time another establishment
7 could come in and say we're going to have a quote night club
8 that has entertainment on top, parties and so forth.

9 And this would essentially eliminate some noise
10 issues up there, and it would kind of keep it to a
11 restaurant, recognizing the peak hours of operation, and then
12 it would kind of phase down. It has no impact on the lower
13 levels of the restaurant, so I kind of see a phasing down of
14 activity that would allow the neighborhood to digest the
15 entirety of this larger operation.

16 The second one was to limit the seats to no more
17 than 60, and that was just relating to the fact that it would
18 again, keep this within the context of the size that we
19 talked about, but that would also be subject to building code
20 restrictions. And the last one was talking about the term
21 being ten years, which I think reflected the fact that things
22 can change. The narrow use requirements could change over
23 the ten year period.

24 And also I thought that -- I acknowledge the fact
25 that this could cause a tremendous financial implication for

1 the applicant, but if it's a successful restaurant, and it's
2 not disturbing the community, it's life will actually be
3 extended, assuming that no other matter of right uses were
4 in place. And I also acknowledge the fact that the average
5 restaurant life is five years, so I didn't think ten was too
6 short or unreasonable. Were you able to hear me?

7 CHAIRPERSON HILL: Yes. Okay, so -- well, we'll
8 see how it goes, Mr. Blake, I thought all that sounded very
9 reasonable, and I can understand it. However, I do, and we
10 can talk through it just a little bit, but I still would then
11 kind of want to bring the applicant back to discuss some of
12 the finer points of these mitigating factors. And that would
13 be kind of my only -- because all of it sounds reasonable,
14 and again, even more reasonable as to why you're speaking to
15 this, again that this being a neighborhood restaurant is not
16 necessarily 140 seats.

17 And so, that's something that you are concerned
18 about in the long run concerning the neighborhood. It's not,
19 again, this immediate particular applicant, but since it runs
20 with the land. Mr. Smith, do you have some thoughts?

21 MEMBER SMITH: Well, I would say that I will go
22 on record and say this, I agree with you, Chairman Hill, and
23 Chairman Blake, that I do believe that this is not really a
24 strong case for a use variance. But I do agree by and large
25 that the Office of Planning, given that additional

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1 information that was provided by the applicant regarding the
2 cost to convert the upper floor space into a residential
3 unit, I do agree with the Office of Planning that they meet
4 the exceptional situation prong for the use variance.

5 On undue hardship, I do agree with the Office of
6 Planning regarding the financial hardship to convert the
7 space back into a residential space. Where I do share with
8 Mr. Blake some concerns is the no substantial detriment to
9 the public good, and no substantial impairment to the intent
10 purpose and integrity of the zoning regulations, which while
11 they're also -- does support this application.

12 From the way that I'm reading, they are probably
13 55, 45 percent there on this particular case meeting those
14 prongs. I agree with Mr. Blake that in order to strengthen
15 this case, and for me to support it honestly, and to see that
16 it would be a substantial detriment to the public good, I
17 think it would be reasonable to include some of these
18 conditions in order to protect the integrity of the zoning
19 regulations.

20 Again, the intent of the zoning regulations is not
21 to expand non-conformity, the intent is for non-conformities
22 to go away. What we have done with this case, simply -- and
23 I recognize that the neighborhood is in favor of this
24 restaurant, and kudos to the neighborhood for advocating for
25 this restaurant being a good neighbor, being a good inclusion

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1 to their neighborhood, but the regulations are the
2 regulations, it is an expansion of a non-conformity.

3 And I think to a certain extent we want to
4 mitigate any adverse impacts of a non-conforming restaurant,
5 that for right now, I think is a neighborhood restaurant.
6 But expanding it to the third floor, we're moving into
7 something that is a little bigger than a neighborhood
8 restaurant, that probably is more conducive to along the
9 commercial corridor, such as along H Street.

10 The traditional commercial corridors that abut
11 Capitol Hill. So, I think that the way we can protect
12 against that is to recommend a time restriction that was
13 recommended by Mr. Blake for activities to cease on the upper
14 floor. The other reason that also was stated by Mr. Blake
15 is this runs with the land. I understand Capitol Hill, the
16 residents are in favor of this restaurant, and as Mr. Blake
17 stated, historically, traditionally, many restaurants don't
18 last longer than five or ten years.

19 So, it could be a situation that Capitol Hill
20 residents will see a restaurant that could operate here as
21 a matter of right, because that's what they're advocating for
22 this particular restaurant, this restaurant could close, and
23 there could be another restaurant that could be a little bit
24 more problematic that is in the center of a residential
25 neighborhood that they may have problems with.

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1 And I think that providing some guardrails would
2 protect against any future adverse impacts. Thus us granting
3 a use variance for a restaurant embedded within a residential
4 neighborhood. I wish the -- needs to be residential, so I
5 am in favor of the ten year time limit on the upper floor.
6 I recognize that that does create a strata of differing use
7 categories within this building, where it will be a ten year
8 restriction on the upper floor.

9 The first floor would be essentially grand
10 fathered, and the basement would have the existing variance
11 granted a few years ago, so it could operate as a restaurant.
12 But I do believe that that would protect against any future
13 adverse impacts on either a future operation that is not
14 conducive with the neighborhood, or what the neighborhood
15 would want.

16 And I would like to memorialize in the order that
17 this will be for restaurant use, not for an eating and
18 drinking establishment. So, I would be in favor of those
19 conditions, I would support this application with those
20 conditions, and I would welcome bringing the applicant back.
21 I understand they may have some concerns about that time
22 restriction, but that's where I believe would protect against
23 some of these adverse impacts, having a ten year restriction,
24 so that was both my thoughts on that, Chair.

25 CHAIRPERSON HILL: Thank you. Commissioner

1 Stidham?

2 MEMBER STIDHAM: Thank you, Chair. I also agree
3 with the Office of Planning's analysis for the use variance,
4 but I do have concerns about future impacts to the
5 neighborhood. I'm not going to reiterate what Mr. Blake and
6 Mr. Smith already said, because I think those are all valid,
7 and I do agree, and would support the additional requirements
8 to ensure that in the future there are some restraints if
9 there is another facility here, or operator here that is not
10 blending well with the neighborhood and is a problem, that
11 there is a way to deal with it.

12 CHAIRPERSON HILL: Okay. I think we kind of are
13 where we are, but I do want to give the applicant an
14 opportunity to come back and speak to us. And so, Ms.
15 Mehlert, I don't -- in fact I know two cases, this other
16 decision might get kicked down there too, but what does the
17 first of May look like? Because I'm out the next couple
18 weeks.

19 MS. MEHLERT: It is okay in terms of having, so
20 you want to bring the applicant back for a hearing?

21 CHAIRPERSON HILL: Yeah.

22 MS. MEHLERT: Yeah, the first of May is good. You
23 have one decision case, three hearing cases, and an appeal
24 case, but that has requested a postponement.

25 CHAIRPERSON HILL: Oh my God, things are actually

1 lining up for me today. Okay, so let's go ahead and bring
2 this back for a limited scope hearing on some of the -- you
3 can ask the applicant to come back on some of the mitigating
4 criteria or conditions that the board has been speaking to,
5 and I'm going to repeat them for the applicant. I think the
6 60 spots on the second floor was based on the most recent
7 diagram of seats, is that correct, Mr. Blake?

8 MEMBER BLAKE: Yes.

9 CHAIRPERSON HILL: Okay. And so, I don't see how
10 that would be an issue, that's what you've already shown us.
11 The next would be the hours of operation, that we are trying
12 to limit the second floor to 11:00 p.m., and so that's
13 something to discuss also with the applicant. And then the
14 third would be a term limit on the second floor of ten years,
15 and then I guess the applicant can also speak to trash, and
16 noise.

17 And other things that again, for the public that's
18 listening right now, if this were a different type of case,
19 and not something that we were struggling over the use
20 variance, which again is basically the highest bar we have,
21 we would have gotten into these different items, such as
22 noise, trash, parking. So, just kind of we'd like to hear
23 from the applicant on this now being a 140 seat restaurant,
24 and how they plan to mitigate any kind of adverse impact that
25 might come from that to the neighborhood.

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1 And so, we'll have a limited scope hearing on that
2 for May 1st. Did I miss anything? And if so, raise your
3 hand. Okay, then we will come back on May 1st to discuss
4 that limited scope hearing.

5 MS. MEHLERT: Mr. Chairman, just to confirm, did
6 you want the applicant to submit that to the record prior to
7 the hearing on May 1st?

8 CHAIRPERSON HILL: I mean, anything that the
9 applicant wants to submit that'll make this as efficient as
10 possible, and if I were the applicant I would say yes to
11 everything, and make it very easy. Because getting the other
12 members of this board to agree to this was not easy. And so,
13 I think that taking yes for an answer is a great idea. But
14 now that you mention it, I'm going to reiterate again.

15 This is an old case where they originally asked
16 for the third floor that we've already done a couple of
17 times, and so just pointing that out to the applicant, this
18 is not new. Okay, anything else? Okay, then let's move on
19 from there, thank you. And then you can call our next one
20 please.

21 MS. MEHLERT: Next decision case for the board is
22 Application number 20974 of RVP H Street Northwest, LLC.
23 This is a recently amended self certified application
24 pursuant to Subtitle X 901.2 for a special exception under
25 Subtitle C, Section 909.2, and the loading requirements of

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1 Subtitle C, Section 901.1, and pursuant to Subtitle X for an
2 area variance from the rear yard requirements of Subtitle I,
3 Section 205.1.

4 This is a new nine story building retaining
5 portions of existing three and four story buildings for
6 lodging, retail, and assembly uses with approximately 85
7 lodging units with a range of 60 to 120 lodging units. This
8 is located in the D-4R zone at 505 to 517 H Street Northwest,
9 square 485, lots 330, 42 through 44, and 48. This case was
10 last heard on March 27th, where the board closed the record
11 and requested closing statements from the applicant ANC and
12 the Wah Luck House Tenants Association.

13 Participating on this case are Chairman Hill, Mr.
14 Smith, and Lieutenant Commissioner Stidham. And I'll just
15 note again, on Monday the applicant submitted revised self
16 certification, and plans withdrawing the area variance relief
17 from the Chinatown sub area requirements.

18 CHAIRPERSON HILL: Okay. So, I'm looking at my
19 three board members, and there has been a wrinkle, not a
20 wrinkle, I guess the applicant withdrew some of the requested
21 relief. Then we also had a new filing that we admitted into
22 the record from the Wah Luck Residents, or tenants
23 association, who had at one point applied for party status,
24 and then we had heard from them as opposition from the
25 public.

1 What I wanted to do was since this is a little bit
2 of a different application now with us, in so far as they
3 have withdrawn some relief requested, and the people in
4 opposition have put forward an argument as to why that relief
5 is still needed, I would like to give the applicant an
6 opportunity to respond to that, and then close the record.
7 Like we as a board here basically since the pandemic, I have
8 to kind of blame it on that, since we do this video hearing
9 thing, we've allowed things into the record kind of at the
10 last minute.

11 And that's kind of been our process because again,
12 we haven't been in person. Had we been in person, I don't
13 know if this would have exactly been the same way that we
14 were treating things on the record. Never the less, we've
15 allowed something into the record that I don't think the
16 applicant has had an opportunity to respond to. So, I'd like
17 to let the applicant respond to this argument that has been
18 put forward into the record, and then we will come back again
19 on the same day, since I know that we have the available time
20 on 5/1.

21 And since, Commissioner Stidham, you've got to
22 come back anyway for 5/1, we can come back and have a
23 decision on that. The other thing I will make note of, as
24 we could have deliberated on this today, is that I think that
25 the area variance in terms of the criteria that is being --

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1 the argument that's being put forth by the opposition is a
2 computational issue that is something that the board doesn't
3 necessarily get involved in when it's a self certified
4 application in this particular way.

5 However, I don't know what my fellow board members
6 might have to say on that, but again, it's not necessarily
7 a zoning interpretation. It would be something that the
8 zoning administrator, since it's a numbers thing, would be
9 able to say whether or not they are or aren't meeting the
10 criteria. So, I say all of that just to kind of let the
11 public know where I am, and then also giving the applicant
12 an opportunity to respond to what has now been put into the
13 record. Mr. Smith, do you have anything you'd like to add?

14 MEMBER SMITH: No, I agree with your approach on
15 this particular case given the substantial changes that have
16 been made by the applicant regarding withdrawing that
17 variance for 100 percent building to bringing it down to 40
18 percent. I do share with you some concerns to slow things
19 down a little bit given the substantial change in the
20 application, the architectural plans have also changed to
21 reflect whether they would include some additional commercial
22 uses.

23 And the representatives of the Wah Luck House had
24 submitted a letter to us still challenging that
25 interpretation that they don't need that variance. So, I do

1 welcome your approach for the applicant to respond to the
2 tenants association's representatives at Wah Luck House on
3 them still needing the variance. So, in that response I
4 would just recommend that the applicant does outreach with
5 the zoning administrator regarding that interpretation of
6 whether they would still need a variance.

7 So, I agree with your approach, and I would like
8 to hear a little bit more from the applicant, and then we can
9 close the record.

10 CHAIRPERSON HILL: Okay, and I guess now to
11 clarify, Mr. Smith, you're asking the applicant to check with
12 the zoning administrator on the computations?

13 MEMBER SMITH: Have a discussion with them, yeah.

14 CHAIRPERSON HILL: Okay, have a discussion with
15 them, okay. So, that would be something that would be added
16 to the record if they're ready for that by May 1st.
17 Commissioner Stidham?

18 MEMBER STIDHAM: I am in agreement with your
19 approach as well. I think they need time to respond, and May
20 1st feels good.

21 CHAIRPERSON HILL: Okay, all right. Then Ms.
22 Mehlert, we'll go ahead and put this on for decision on May
23 1st, and we'll leave the record open for a response from the
24 applicant to what has just been put forth in the record. And
25 then we're not going to allow anything else into the record.

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1 I'm just putting it out there, like it has to stop at some
2 point, the back and forth, back and forth, right?

3 So, I think that -- you can always, again, people
4 can apply to put something into the record. I forget what
5 the word is, it's slipping my brain right now, in any case,
6 it's unlikely that we're going to allow anything else into
7 the record because we want to get the response from the
8 applicant. Any questions from anybody? And if so, please
9 raise your hand.

10 MS. MEHLERT: Mr. Chairman, would you like the ANC
11 an opportunity to submit something for the record, since they
12 have not, I guess responded to the applicant's amended
13 application yet?

14 CHAIRPERSON HILL: Sure, I mean they can -- they,
15 as I recall, were in favor of the application even with the
16 area variance. And so, I don't think much has changed, but
17 they're welcome to the submit.

18 MS. MEHLERT: Would you like to put a deadline for
19 any submissions?

20 CHAIRPERSON HILL: I guess whatever you suggest,
21 to be quite honest.

22 MS. MEHLERT: We could say two weeks, so that
23 there's a week to review. So, by the 24th.

24 CHAIRPERSON HILL: Yeah, by the 24th. And then
25 we would have a week before the hearing, I mean the decision.

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1 Okay, great. And I guess if the applicant and the opposition
2 can somehow continue to figure something out, even though I
3 don't really think it has anything to do with the
4 regulations, if they can kind of -- anyway, okay. Let's see,
5 Ms. Mehlert, if you want to go ahead and call our next one?
6 Maybe, Commissioner Stidham, that's it for you, right?

7 MEMBER STIDHAM: Yeah, have a good day.

8 CHAIRPERSON HILL: You have a good day.

9 (Whereupon, the above-entitled matter went off the
10 record at 10:15 a.m. and resumed at 2:48 p.m.)

11 CHAIRPERSON HILL: All right, the next case we
12 have, you may call forth when you get a chance Madam
13 Secretary.

14 MS. MEHLERT: Sure. So, the board is moving back
15 into its meeting session for this next case, it's an
16 expedited review application, number 21097 of Edward and
17 Valerie O'Keefe. This is a self certified application
18 pursuant to Subtitle X, Section 901.2 for a special exception
19 under Subtitle D5201 with assigned requirements of Subtitle
20 D208.1. this is to construct a side addition to an existing
21 two story detached multiple dwelling in the R-01B zone. It's
22 located at 4401 Burlington Place Northwest, square 1587, lot
23 68.

24 CHAIRPERSON HILL: Okay, there's a little bit of
25 a preliminary matter for the board, which is that there was

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1 a notice requirement in the D.C. register that is possible
2 for us to waive if the board believes that other mechanisms
3 were in play for notice. All of the 200 footers were
4 notified, the ANC actually gave a report to this, the Office
5 of Planning has given a report to this.

6 So, I believe that there is no issues with that
7 particular notice requirement, so I'm going to waive it
8 unless somebody raises their hand from the board. Seeing no
9 one raising their hand from the board, we might move on now
10 to the expedited review. I thought this was relatively
11 straight forward, and I did not have a lot of discussion.
12 I would be resting on the report of the Office of Planning
13 and their analysis.

14 We did get some information from ANC 3E concerning
15 their support, however, I guess there might be a signature
16 missing, so we were unable to give it great weight. However,
17 I do take comfort that they did see it, hear it, and vote in
18 favor. I'm going to be voting in favor of this application,
19 does anyone have anything they'd like to add? If so, please
20 raise your hand. Mr. Blake?

21 MEMBER BLAKE: Your assessment, I do believe that
22 this meets the terms and conditions for approval. I would
23 note also that there are several letters of support included
24 in the record, I'll be voting in favor of it.

25 CHAIRPERSON HILL: Thank you. Dr. Imamura?

1 MEMBER IMAMURA: Nothing more to add, Mr.
2 Chairman, I agree with both you and Board Member Blake.

3 CHAIRPERSON HILL: Thank you. I make a motion to
4 approve application No. 21097 as captured and read by the
5 secretary, and ask for a second. Mr. Blake?

6 MEMBER BLAKE: Second.

7 CHAIRPERSON HILL: Motion made and seconded.
8 Madam Secretary, could you take a roll call?

9 MS. MEHLERT: Sure, and I would just note for the
10 record an updated ANC report was submitted with the signature
11 in Exhibit No. 28.

12 CHAIRPERSON HILL: Thank you.

13 MS. MEHLERT: When I call your name, please
14 respond to the chair's motion to approve the application.
15 Chairman Hill?

16 CHAIRPERSON HILL: Yes.

17 MS. MEHLERT: Mr. Blake?

18 MEMBER BLAKE: Yes.

19 MS. MEHLERT: And Dr. Imamura?

20 MEMBER IMAMURA: Yes.

21 MS. MEHLERT: Staff would record the vote as three
22 to zero to two to approve application 21097 on the motion
23 made by Chairman Hill, and seconded by Mr. Blake with two
24 board members not present or participating.

25 CHAIRPERSON HILL: Thank you.

1 (Whereupon, the above-entitled matter went off the
2 record at 10:15 a.m.)
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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: DC BZA

Date: 04-10-24

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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