

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

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WEDNESDAY

SEPTEMBER 2, 2026

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The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Video/Teleconference, pursuant to notice at 9:21 a.m. EDT, Michelle Pourciau, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MICHELLE POURCIAU, Chairperson
PAUL GOLDSTEIN, Vice-Chairperson
MELISSA LINDSJO, NCPC Designee

ZONING COMMISSION MEMBERS PRESENT:

GWEN WRIGHT, District Resident Appointee
JOSEPH S. IMAMURA, PhD, AOC Designee

OFFICE OF ZONING STAFF PRESENT:

KEARA MEHLERT, Secretary
SARAH A. BARDIN, Director
TRACEY W. ROSE, Sr. Zoning Specialist
PAUL YOUNG, A/V Production Specialist

OFFICE OF PLANNING DEVELOPMENT REVIEW STAFF PRESENT:

KAREN THOMAS
SHEPARD BEAMON
MATTHEW JESICK

1 OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

2 SARAH BAJAJ, ESQ.
3 CARISSA DEMARE, ESQ.
4 JORDANE WONG, ESQ.

5 The transcript constitutes the minutes
6 from the Regular Public Hearing held on Wednesday,
7 September 2, 2026.
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P-R-O-C-E-E-D-I-N-G-S

(9:21 a.m.)

MS. POURCIAU: All right. Good morning, ladies and gentlemen. The Board of Zoning Adjustments, September 2nd, 2026, public hearing will please come to order. My name is Michelle Pourciau, chair of the District of Columbia Board of Zoning Adjustment. Joining me today are board members Vice Chair Paul Goldstein, Member Melissa Lindsjo, and Zoning Commissioner Gwen Wright. And we are also joined for one case by Zoning Commissioner Joe Imamura.

On September 1st, 2026, the board entered into a closed meeting session for the purpose of obtaining legal advice from Counsel. This closed meeting was voted upon previously in a public setting to be held for the purpose of obtaining legal advice from our counsel and to deliberate, but not vote, on contested cases on today's agenda. While discussions were held, there were no decisions made.

Today's meeting and hearing agendas are available on the Office of Zoning's website. Please be advised that this proceeding is being recorded by a court reporter and 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,

1 everyone who is listening on WebEx or by telephone will be
2 muted during the hearing. If you experience difficulty
3 accessing WebEx or with your telephone call-in, then
4 please call our Office of Zoning hotline number at 202-
5 727-5471 to receive WebEx login or call-in instructions.
6 Today, we will begin with our virtual public meeting --
7 decision meeting session, followed by our virtual public
8 hearing session. Please be advised that we do not take
9 any public testimony at our meeting session. Public
10 testimony will be taken during the hearing session.

11 In today's hearing session, everyone who is
12 listening on WebEx or by telephone will be muted during
13 the hearing and only persons who have signed up to
14 participate or testify will be unmuted at the appropriate
15 time. Please state that your name and home address before
16 providing oral testimony or your presentation. Oral
17 presentations should be limited to a summary of your most
18 important points. When you are finished speaking, please
19 mute your audio so that your microphone is no longer
20 picking up sound or background noise. All persons
21 planning to testify either in favor or in opposition
22 should have signed up in advance. They will be called by
23 name to testify. By signing up to testify, all
24 participants completed the oath or affirmation as required
25 by Subtitle Y, Section 408.7.

1 Please note that only parties are allowed to
2 testify for appeals. Requests to enter evidence at the
3 time of an online virtual hearing, such as written
4 testimony or additional supporting documents other than
5 live video, which may not be presented as part of the
6 testimony, may be allowed pursuant to Subtitle Y, Section
7 103.13. The order of procedure for special exceptions and
8 variances is pursuant to Subtitle Y, Section 409. The
9 order of procedure for appeal applications is pursuant to
10 Subtitle Y, Section 507. Time constraints for hearing
11 testimony shall be maintained pursuant to Subtitle Y,
12 Sections 408.2 and 408.3. Once again, if you experience
13 difficulty accessing WebEx or with your telephone call-in,
14 or if you have forgotten to sign up 24 hours prior to this
15 hearing, then please call our Office of Zoning hotline
16 number at 202-727-5471 to sign up to testify and to
17 receive WebEx login or call-in instructions.

18 At the conclusion of each case, an individual who
19 was unable to testify because of technical issues may file
20 a request for leave to file a written version of the
21 planned testimony to the record within 24 hours following
22 the conclusion of the public testimony in the hearing. If
23 additional written testimony is accepted, then parties
24 will be allowed a reasonable time to respond as determined
25 by the board. The board will then make its decision at

1 its next meeting session, but no later than 48 hours after
2 the hearing.

3 At the conclusion of the board's decision meeting
4 session or hearing session, the Office of Zoning and
5 consultation with the chair will determine whether a full
6 or summary order may be issued. A full order is required
7 when the decision it contains is adverse to a party,
8 including an affected ANC. A full order may also be
9 needed if the board's decision differs from the Office of
10 Planning's recommendation. Although the board favors the
11 use of summary orders whenever possible, an applicant may
12 not request the board to issue such an order. Excuse me.

13 Finally, the District of Columbia Administrative
14 Procedure Act requires that the public hearing of each
15 case be held in the open before the public. However,
16 pursuant to Sections 405(b) and 406 of that act, the board
17 may, consistent with its rules of procedure and the act,
18 enter into a closed meeting on a case of purposes of
19 seeking legal counsel on a case pursuant to D.C. Official
20 Code Section 2-575(b)(4) and/or deliberating on a case
21 pursuant to D.C. Official Code Section 2-575(b)(13), but
22 only after providing the necessary public notice, and in
23 the case of an emergency closed meeting after taking a
24 roll call vote.

25 The next item on our agenda is a vote for the

1 board to hold a closed meeting on September 8th, 2026, at
2 2:00 p.m. This session is being held in order for the
3 board to receive legal advice from its counsel regarding
4 the cases noted on the agenda for the September 9th, 2026,
5 meeting and to preserve the attorney-client privilege
6 between the board and its attorney pursuant to D.C.
7 Official Code Section 2-575(b)(4)(A) and to deliberate,
8 but not vote, on the contested cases pursuant to D.C.
9 Official Code Section 2-575(b)(13).

10 I will ask the secretary to provide the list of
11 cases on the agenda.

12 MS. MEHLERT: Thank you. The cases scheduled for
13 September 9th are 21430 of 1365 Perry LLC, 21471 of
14 Station 4 (phonetic) Properties LLC, 21480 of Julia Oliver
15 and Ian Hoffman, 21481 of Hunter Lowe, estate executor,
16 21485 Capitol Hill Hotel, Owner 1 LLC, and 21452 of Sarah
17 and Carl O'Bryant (phonetic).

18 MS. POURCIAU: Thank you. I will now make a
19 motion to enter into closed session on September 8th,
20 2026, at 2:00 p.m.

21 Is there a second?

22 MR. GOLDSTEIN: Second.

23 MS. POURCIAU: Would you please call the vote?

24 MS. MEHLERT: Yes. Please respond to the chair's
25 motion to hold a closed meeting with legal counsel on

1 September 8th at 2:00 p.m.

2 Chair Pourciau?

3 MS. POURCIAU: Yes.

4 MS. MEHLERT: Chair Goldstein?

5 MR. GOLDSTEIN: Yes.

6 MS. MEHLERT: Board Member Lindsjo?

7 MS. LINDSJO: Yes.

8 MS. MEHLERT: Commissioner Wright?

9 MS. WRIGHT: Yes.

10 MS. MEHLERT: Staff approved vote as 4-0-1. The
11 motion passes.

12 MS. POURCIAU: Thank you. The board will -- the
13 motion passes and the board will meet in a closed session
14 at 2:00 p.m. on September 8th, 2026.

15 Madam Secretary, do you have any preliminary
16 matters?

17 MS. MEHLERT: Just one change in today's agenda.
18 Application number 21475 of Barry Rogers has been
19 postponed to September 16th, 2026. Any other preliminary
20 matters will be noted when the specific case is called.

21 MS. POURCIAU: Thank you so much. So with that,
22 let us begin.

23 Welcome back, everyone. I hope you had a great
24 August and looking forward to moving forward with our
25 agenda.

1 So our first case, would you please call case
2 number 21314, please, Madam Secretary?

3 MS. MEHLERT: Did you want to do the --

4 MS. POURCIAU: Oh, I'm sorry. Yes.

5 MS. MEHLERT: Okay.

6 MS. POURCIAU: Yes. I would like to do the board
7 action item first, which is the issuance of final orders.
8 Is there any -- would you please outline that for us,
9 Madam Secretary?

10 MS. MEHLERT: No problems. Yes. This is in the
11 board's meeting session in consideration of the issuance
12 of three final orders. These are application number 21240
13 of 71 Florida Ave 39 LLC, application number 21249 of 4231
14 Clay Street Northeast LLC, and application number 21250 of
15 Fikremariam Mengesha. These proposed orders were sent to
16 parties for exceptions on July 28th, 2026, and no
17 exceptions were received. So again, before the board
18 today is to authorize the issuance of the final orders.

19 MS. POURCIAU: Thank you so much. And I note
20 that having new board members, I have confirmed that we
21 have all reviewed the files and the information therein
22 and have found it to be in order. And so with that, is
23 there -- would someone like to make a motion to approve
24 these orders?

25 MR. GOLDSTEIN: I would be happy to make a motion

1 to approve these orders. I don't know if I need any
2 additional language to that -- in -- to that effect, but I
3 make that motion.

4 MS. POURCIAU: Great. As read in by the
5 secretary, I second.

6 Thank you so much, Paul.

7 MR. GOLDSTEIN: Yeah, that sounds good.

8 MS. POURCIAU: Madam Secretary, would you please
9 call the vote?

10 MS. MEHLERT: Please respond to the vice chair's
11 motion to issue the final orders.

12 Chair Pourciau?

13 MS. POURCIAU: Yes.

14 MS. MEHLERT: Vice Chair Goldstein?

15 MR. GOLDSTEIN: Yes.

16 MS. MEHLERT: Board Member Lindsjo?

17 MS. LINDSJ0: Yes.

18 MS. MEHLERT: And Commissioner Wright?

19 MS. WRIGHT: Yes.

20 MS. MEHLERT: Staff would record the vote is 4-0-
21 1 to approve the issuance of order numbers 21240, 21249,
22 and 21250 on the motion made by Vice Chair Goldstein and
23 seconded by Chair Pourciau.

24 MS. POURCIAU: Thank you all. And so we'll move
25 on to our first decision item, which is an appeal, number

1 21314.

2 MS. MEHLERT: Next is appeal number 21314 of
3 Burleith Citizens Association. This is an appeal pursuant
4 to Subtitle X, Section 1100, the decision made on February
5 14th, 2025, by the Department of Building Zoning
6 Administrator to issue building permit number B2308807.
7 It's approved for new lighting poles, 80 feet in height,
8 installed at a public recreation facility. Project is
9 located in the R-3/GT zone at 1700 38th Street Northwest.

10 It's 41307, Lot 859. I'll note that the hearing was
11 completed on February 25th and the board began
12 deliberations on March 11th. Subsequent decision meetings
13 were then postponed. And on July, the chair granted a
14 request filed by Department of General Services to reopen
15 the record to accept supplemental materials and responses
16 were filed by Department of Buildings and the appellant
17 and participating by Chair Pourciau, Board Member Lindsjo,
18 and Commissioner Wright.

19 MS. POURCIAU: Thank you very much. I'd like to
20 say that Board Member Lindsjo and I have reviewed the
21 record on this case, and I'd like to though start our
22 discussion with Commissioner Wright, who has had the
23 benefit of the history here.

24 And Commissioner, would you please like to start
25 us off with some discussion on this item?

1 MS. WRIGHT: Sure. This has been a very long and
2 complex case. It is an important case because it really
3 has to do with the basic idea of what is the -- what does
4 the definition of structure in the zoning code mean? And
5 are these kinds of light poles that are used at athletic
6 fields, are they structures? We've had a lot of
7 discussion about that. We certainly have heard from many
8 different parties and many different viewpoints. I will
9 say, whatever happens in this case, I do believe there
10 needs to be a clarifying zoning text amendment to help
11 clarify this issue because it is not very clear. I know
12 there was an attempt during the omnibus set of zoning text
13 amendments to include a text amendment regarding this
14 issue, but it was a fairly simplistic text amendment and
15 it was one I couldn't vote for, but I do encourage the
16 creation of a different text amendment with a little more
17 detail and a little more nuance that can be reviewed so
18 that this issue can be clarified in the future.

19 You know, my own sense of things is that, you
20 know, the plain English, plain language reading of the
21 zoning code, does include -- would include these light
22 poles as structures. However, I do understand that that
23 has not been the practice and that there is a whole
24 context to take into account, some of which is what leads
25 to the need for a zoning text amendment, because it

1 definitely is not clear and the practice that has taken
2 place for many years needs to be memorialized in law.

3 So those are my comments. I know that my
4 colleagues have not had the benefit of hearing all the
5 testimony. I know there's been a lot of written testimony
6 that has been allowed in the record, and I'm -- I know
7 we've all read that written testimony, but, you know, I
8 certainly do understand that my colleagues are at a little
9 bit of a disadvantage coming in at this point. I think
10 it's a very difficult case. My tendency would be to come
11 down on the side of supporting the appeal. So those are
12 my comments.

13 MS. POURCIAU: Thank you, Commissioner. I'd like
14 to speak some and then I'd like to hear from you, Board
15 Member Lindsjo. This is a pretty complex case. It's
16 simple in some means, but complex in kind of the
17 implications on both sides. I remain torn about exactly
18 where I am on this case. I want to compliment the staff
19 work that was done on this because there are many nuances
20 in the code and regulations that mirror the complexity of
21 this light pole issue. And seeing that really makes me
22 see how it -- it's not clear that, you know, everything
23 isn't defined in those documents. And so I remain a
24 little torn on that. Leaning more toward, though, that
25 definitely agree with Commissioner Wright that an

1 amendment is needed, and I think amendment -- an amendment
2 could provide that clarification that, in this case, at
3 least, offers clear guidance and -- for both parties and
4 responds to the appeal.

5 I also am a little concerned that there are three
6 of us here today, which means we'd have to vote in unison.

7 And I -- right now, it seems that we're not in unison at
8 this point, but we're going to keep talking a little
9 longer. And we have good news. We are expecting a new
10 member to join us starting in the next meeting. And so
11 having four or five members present at these hearings is
12 really going to be beneficial for all of us as well as for
13 the public. So I look forward to that. And I am thinking
14 that maybe there would be a benefit to -- especially on
15 this type of application, to have a more full board
16 present for the discussion. So that's where I am right
17 now.

18 Board Member Lindsjo, would you please share your
19 thoughts?

20 MS. LINDSJO: Yes. Thank you. I appreciate what
21 both of you have stated so far. And I also agree. I
22 think just coming into this after having such a robust
23 discussion on how, like, complex and -- the implications
24 are, I think it is going to be very helpful for us to
25 reopen and really hear from both parties on this, because

1 I am -- I'm leaning a little bit the other direction. So
2 I think it would be helpful so we can have a little bit
3 more discussion on this in the future and hopefully come
4 to a -- to some sort of agreement moving forward.

5 MS. POURCIAU: So I'm hearing that we may not
6 have a consensus here, which would kind of stalemate this.
7 I don't want that to happen. And then second, I'm
8 hearing that we may want to delay the decision for a
9 fuller presence. And then the third thing I'm hearing is
10 that we may want to reopen the record as well to give the
11 appellant and the applicant an opportunity to present
12 their cases to what will be -- which is a majority new
13 board, right? I think those are our three options: vote
14 today, delay the vote in a decision meeting, or reopen the
15 record and vote at that time.

16 Could I ask each of you, beginning with
17 Commissioner Wright, how you're leaning on those three
18 options? What would, you know, be your preference? I --
19 I'm -- I really don't want to vote today. I'm concerned
20 about leaving this in limbo. My initial thought is a
21 decision meeting, but I agree with Commissioner -- with
22 Board Member Lindsjo. Kind of you read all this kind of
23 hearing from those directly involved might be -- might
24 help us in this decision-making process.

25 Yes, Commissioner?

1 MS. WRIGHT: Yes. I mean, I think I could go
2 with either route. I certainly think that reopening the
3 record has the advantage that, you know, all of the
4 parties will have a chance to make their case to all of
5 the voting BZA members. And I -- you know, again, I know
6 we've gotten materials in writing. I also, you know, as I
7 understand it, the poles have been erected. You know, I
8 guess the lights have been turned on, unless I -- unless
9 I'm misunderstanding things. So there's no time pressure
10 in terms of saying, oh, this is holding up a construction
11 project and the construction is underway. And if we keep
12 the record or reopen the record, it will hold up a
13 construction project. I don't believe that is the case.
14 So you know, given the importance of this in terms of
15 clarifying longstanding practice and, you know, perhaps
16 setting some precedent, I think we should probably reopen
17 the record. I could go either way though, but reopening
18 the record, probably.

19 MS. POURCIAU: Thank you.

20 Board Member Lindsjo?

21 MS. LINDSJO: Yes, I would support reopening the
22 record. I think that would be very beneficial for
23 everyone. Thank you.

24 MS. POURCIAU: Secretary Mehlert, it seems that
25 we have a consensus. I agree that we should open the

1 record. Is there -- could you please let us know how we
2 should proceed with it?

3 MS. MEHLERT: Yes. If you'd like to reopen the
4 record for a hearing, you can make a motion to do so and
5 take a vote, and then I can suggest a date to schedule
6 that for.

7 MS. POURCIAU: Excellent. So with that, I'd like
8 to make a motion on appeal number 21314, Burleith Citizens
9 Association. The appeal was for -- to -- the decision was
10 made on August 7th by D.C. Department of Building and
11 Zoning to issue a building permit at 1700 38th Street
12 Northwest. I make a motion that we reopen the record on
13 this case so that we can have a full presentation by all
14 parties and then -- and have a more full board presence
15 and then make a decision.

16 Is there a second?

17 MS. WRIGHT: I second that.

18 MS. POURCIAU: (inaudible).

19 MS. WRIGHT: I second it.

20 MS. POURCIAU: Please call the vote.

21 MS. MEHLERT: Please respond to the chair's
22 motion to reopen the record and schedule a new hearing.

23 Chair Pourciau?

24 MS. POURCIAU: Yes.

25 MS. MEHLERT: Board Member Lindsjo?

1 MS. LINDSJÖ: Yes.

2 MS. MEHLERT: And Commissioner Wright?

3 MS. WRIGHT: Yes.

4 MS. MEHLERT: Motion passes 3-0-2. In terms of a
5 new hearing date, I would recommend November 18th as the
6 next available date to hold a hearing on this.

7 MS. POURCIAU: That date seems good. Does that
8 seem good to everyone? Good. Let's proceed with that
9 date. Thank you.

10 Okay. Thank you very much. Our next item is a
11 consent agenda item, number 21374-A.

12 Madam Secretary, would you please read it into
13 the record?

14 MS. MEHLERT: Yes. Next is application number
15 21374-A of Laura Williams and Kevin Donohue. This is a
16 request pursuant to Subtitle Y, Section 703 for a
17 modification without hearing of the order approving
18 application number 21374 to revise the approved rear yard
19 setback from 15 feet 2 inches to 13.46 feet. This is for
20 a one-story covered rear deck addition, a screen porch to
21 an existing two-story detached principal dwelling. It's
22 located in the R-2 zone at 4401 Garrison Street Northwest,
23 Square 1581, Lot 80.

24 MS. POURCIAU: Thank you. I think I'd like to
25 call on Vice Chair, but I do want to say this seems to be

1 a item where a correction is in order, but that correction
2 does have a slightly -- a slight additional impact, and
3 we'll talk about that.

4 Vice Chair Goldstein, do you have any comments on
5 this application?

6 MR. GOLDSTEIN: Thank you very much, Madam Chair.

7 It appears to me that this is a very minor technical
8 correction related to the original approval. My
9 understanding is that there was some discrepancies in the
10 plats that were used, which produced an outcome at the
11 Department of Buildings and Permitting that was flagged
12 and sent the applicant back for a modification. The
13 Office of Planning is in support. The ANC3E also put in a
14 letter of support. It seems minor to me with limited
15 impacts, if any, and I would be supportive of this
16 correction or modification to the original order. And let
17 me just say that it involved the measurement of the rear
18 yard, but I believe that the actual project itself has not
19 changed at all, just the placement of the building and the
20 rear yard measurement.

21 MS. POURCIAU: Very good.

22 Board Member Lindsjo, what are your thoughts on
23 this one?

24 MS. LINDSJ0: Yeah. I see no issues. I also can
25 support this project, just as the vice chair stated.

1 Thank you.

2 MS. POURCIAU: Thank you.

3 Commissioner Wright?

4 MS. WRIGHT: Yes. I think this is a very minor
5 change and I support it fully.

6 MS. POURCIAU: Very good. I see it as a minor
7 change as well. I think this is -- we -- we've seen a
8 couple of these where the wall check provided a little
9 difference. Sometimes it has more or less implications,
10 but luckily this time it's not much. Having said that,
11 I'd like to make a motion to approve application number
12 21374-A of Laura Williams and Kevin Donohue as read into
13 the record by the secretary.

14 Is there a second?

15 MR. GOLDSTEIN: I'll second that.

16 MS. POURCIAU: Thank you.

17 Madam Secretary, would you please call a vote?

18 MS. MEHLERT: Please respond to the chair's
19 motion to approve the application.

20 Chair Pourciau?

21 MS. POURCIAU: Yes.

22 MS. MEHLERT: Vice Chair Goldstein?

23 MR. GOLDSTEIN: Yes.

24 MS. MEHLERT: Board Member Lindsjo?

25 MS. LINDSJO: Yes.

1 MS. MEHLERT: Commissioner Wright?

2 MS. WRIGHT: Yes.

3 MS. MEHLERT: Staff would record the vote as 4-0-
4 1 to approve application number 21374-A on the motion made
5 by Chair Pourciau and seconded by Vice Chair Goldstein.

6 MS. POURCIAU: Excellent.

7 Madam Secretary, would you please read the next
8 decision item, number 21419, into the record?

9 MS. MEHLERT: Yes. Next is application number
10 21419 of PMG Mid Atlantic LLC. This is a self-certified
11 application pursuant to Subtitle X, Section 901.2 for a
12 special exception under Subtitle U, Section 511.1(f) to
13 allow enlargement of existing gasoline service station
14 use. This is, again, expansion of existing gas station to
15 incorporate new vehicle towing and associated vehicle
16 storage on the abutting Lot 13. It's located in the MU-3A
17 zone at 4101 Alabama Avenue Southeast, Square 5369 N, Lots
18 13 and 22. This public hearing began on June 10th and is
19 completed on July 15th. Participating are Chair Pourciau,
20 Vice Chair Goldstein, Board Member Lindsjo, and
21 Commissioner Wright.

22 MS. POURCIAU: Thank you. I want to thank the
23 applicant for providing additional information in the
24 record as requested. I think we still have some things we
25 need to talk about and deliberate on this.

1 I think I'd like to start with Vice Chair
2 Goldstein. No surprise there, right? What are your
3 thoughts on this?

4 MR. GOLDSTEIN: Well, see -- oh, sure. Happy to
5 give my thoughts. And I just want to begin by saying I
6 was not in attendance at the previous hearing on this
7 case. I know there have been I believe now two hearings
8 on it. I was not at the July 15th hearing date, but I
9 have reviewed the record and feel confident that I can
10 continue to speak to the case and understand the issues
11 that are at play.

12 I just want to say, you know, I've kind of
13 struggled with this case. Based on testimony and
14 submissions in the record, there was a fair amount of
15 suggestion that the property had not been well-used in the
16 past and had essentially functioned as a type of vehicle
17 dumping ground, which was very distressing to hear.
18 Saying that, the application has evolved over time in
19 response to the board's feedback, community feedback, and
20 DDOT's concerns and suggestions. This application also
21 has a chance to professionalize the use of the property to
22 bring it into compliance and create a mechanism for
23 enforcement of the terms of any order. So I had to weigh
24 a few things as I examine this case.

25 I want to just start, if you'll indulge me, Madam

1 Chair, I'm going to kind of walk through more of my
2 analysis. To begin with, there are the criteria in
3 U511.1(f), and I think the application meets that
4 criteria. The station will -- shall not be located within
5 25 feet of a residential zone. The application -- the
6 property meets that. And actually it goes beyond that and
7 provides an additional buffer based on feedback received
8 during these hearings.

9 Second, the operation of the use shall not create
10 a dangerous or objectionable traffic condition. I think
11 the applicant has agreed to a number of DDOT changes and
12 recommendations, and I think that's really improved the
13 condition and traffic circulation within the site. And
14 required parking spaces may be arranged so that all spaces
15 are not accessible at all times. There's a bit more
16 language in here as well, but the applicant's proposal is
17 designed to meet that requirement.

18 So in this analysis, the sort of more specific
19 criteria, I believe, have been met. It's really then the
20 general special exception standard where I think I
21 encounter the most challenge in my analysis. That's the
22 subtitle X901.2. Just as a starting point, it's a
23 commercially zoned property. It meets the requirements of
24 U511.1(f), so the proposal would be consistent with the
25 zoning regulations and map. However, we also need to make

1 a finding that the use -- and I should say the applicant
2 has a burden of showing that the use will not tend to
3 affect adversely the use of neighboring property in
4 accordance with the zoning regulations and zoning map.

5 And this is where the analysis, in my mind, really had to
6 focus on. We've heard a lot of conflicting information
7 about what the impact would be on the neighbors.

8 I will say that for this determination, the board
9 is able to impose a number of conditions that it deems are
10 vital or relevant to protect adjacent or nearby property.

11 And the board may also impose a time limit on the
12 approval to permit of subsequent evaluation of the use's
13 operation and impact. In my view, you know, with the
14 appropriate conditions, I find that the use can operate in
15 a way that improves the current condition of the lot, its
16 relationship with neighbors, and puts in some safeguards.

17 The property is located near a residential use, which
18 necessitates putting in conditions on the use to blunt any
19 impact. But I think it can be done and I think it would
20 be an improvement for the property.

21 The gas station has operated, I believe, since
22 1968. There's been, at some length of time, some use of
23 this property in a way that hasn't been officially
24 recognized. I think this is an opportunity, with the
25 right conditions, to get this use to operate more

1 effectively in its context. But I would suggest that
2 there have to be some conditions put on it, and I've got
3 four in mind that I'd like to lead off with and would love
4 the board to weigh.

5 The first is a condition on the type of vehicles
6 that can be parked or stored as part of this use. The
7 applicant's presentation, Exhibit 29, states -- in the
8 applicant's presentation states that with respect to the
9 types of cars, the applicant confirms that the only
10 vehicles we store on the property will be standard two-
11 axle vehicles. I think that's a good condition to put in
12 there. I would also propose to expand that slightly, that
13 it -- I'd like it to also reference that semi -- no semi-
14 trucks, box trucks, trailers, or buses be parked on the
15 property.

16 Second, no vehicles may be parked or stored on
17 the property within the property's rear buffer zone as
18 identified in Exhibits 40A and B. While the applicant's
19 layout does not show vehicles parked in those spaces in
20 that area of the site, I'd like it to be emphasized as a
21 condition to keep it further away from the residential
22 neighbors.

23 Third, the applicant will install and maintain
24 the trees shown within the property's rear buffer zone.
25 As presented and identified in Exhibits 40A and B, the

1 applicant has offered these trees as a way to help
2 mitigate the impact on the adjacent neighbors.

3 And fourth and most importantly, I think the
4 approval must have a time limit. In weighing the time
5 limit, I'm sensitive to the neighbors' concerns as well as
6 the applicant's sort of reasonable expectation for
7 investing money and expanding their business. I
8 originally suggested a five-year approval. I wouldn't
9 want to go any longer than that, but I'm willing to have a
10 discussion about whether that should be shortened.

11 And the last thing I'd like to say, and I haven't
12 proposed a condition on this point, but I would -- if
13 approved, I would strongly urge the applicant to engage,
14 communicate, check in with their neighbors and the ANC on
15 a regular basis. I encourage the applicant to make every
16 effort to be a good neighbor. Not only is it, you know,
17 the right thing to do, but it can also be in the
18 applicant's best interest because of the need for future
19 renewal, assuming a time limit, if this is approved and
20 there is a time limit attached to it. So with the
21 conditions, I think the application can meet the special
22 exception standard of X901.2, and I would support the
23 application under those circumstances. I also want to
24 just mention the Office of Planning did support the
25 application as well.

1 So those are my thoughts. A bit lengthy. Happy
2 to break them down a little further if needed or just kind
3 of allow the conversation to flow organically among my
4 colleagues. So thank you very much.

5 MS. POURCIAU: Thank you for that comprehensive
6 overview as well as for weighing in with your
7 recommendation, which I liked all of that. I -- I've got
8 a few points I want to make on that, but I'd like to hear
9 from Board Member Lindsjo first. Thank you.

10 MS. LINDSJO: Yep. Thank you. And thank you,
11 Vice Chair, for your really great analysis. I align
12 myself with them. I think that this will be an
13 improvement for the property, but it -- they really do
14 need to be good neighbors. And I think laying out those
15 four conditions is going to be extremely useful towards
16 working to being a good neighbor. And I think I agree
17 with the time limit of five years. I think that's a
18 reasonable amount of time, especially if they are willing
19 to meet with the ANC maybe on a regular basis. I don't
20 know if we want to add that as a condition, if they want
21 to meet with them yearly or something as part of that, but
22 that could be up for discussion. But that was kind of my
23 -- one of my only things I wanted to bring up, but thank
24 you.

25 MS. POURCIAU: Very good.

1 Commissioner Wright?

2 MS. WRIGHT: Yes. I agree with all of the vice
3 chair's conditions. I very much agree with the five-year
4 limit. I very much agree with the -- well, with all the
5 conditions. The one question I had is in the site plan,
6 which is Exhibit 40B, it shows the rear plantings, which I
7 think look great and they are clearly within the property,
8 but there's also four plantings that are shown at the
9 front of the property that are not within -- as I
10 understand it, are not within this property. They are on
11 public land. So as this site plan has been submitted, I
12 don't think those trees can be placed where they're shown
13 on the site plan, the ones in front, without getting some
14 sort of public use permit.

15 So the only thing I would say, and maybe it's
16 another condition, is that the plantings along the front
17 of the property must either be inside the fence line on
18 the property in question, or the applicant can work to get
19 a public space permit, but the trees must be planted in
20 any case. They can't -- if it's impossible to get a
21 public space permit, they cannot just give up on those
22 trees, you know, that they would have to be placed there.

23 There is a -- on the site, there is a 6-foot wide
24 screening strip shown between the fence and the parking
25 spaces. So you know, in theory, I think 6 feet would be

1 enough to plant those trees. You know, 6 feet is actually
2 wider than many tree strips along public streets. You
3 know, some of those are only 4 feet wide. So I think that
4 the trees could be planted inside the fence line. That's
5 my -- that -- that's my only other comment.

6 MS. POURCIAU: Thank you. I also am -- I like
7 the conditions. I do want to talk a little bit about the
8 vehicle type and, you know, not knowing if a box truck is
9 two axle. I kind of think it is, but I know one of the
10 issues with the neighbors that were in opposition, and
11 they provided great visuals of this, was the screening
12 fence that's there now and how they're using that space
13 now, sometimes those box trucks are maybe up to the height
14 of that fence. And so you can see it there that screening
15 isn't good enough for that height truck. But I do feel --
16 I am a little concerned about eliminating all trucks,
17 right? I feel like a box truck is, you know, the weight
18 isn't severe. The height is generally shorter. And in
19 this day and age, of all the deliveries we have and the
20 use of those types of trucks, it might be a facility that
21 -- where that type of vendor might find it helpful to have
22 that facility in place.

23 And so I didn't know if maybe we could do
24 something with buffering language to maybe include box
25 trucks or two-axle trucks not over a certain height. I

1 don't know what that height is. Maybe I'm getting into
2 too much detail. And then say that the, you know, the
3 barrier or the protection, the -- around it to deal with
4 any visual issues has to be, you know, taller than that --
5 the tallest vehicle. Any thoughts on that or anybody here
6 know about box trucks?

7 MR. GOLDSTEIN: I think we're getting beyond the
8 extent of my knowledge. I certainly don't want -- I don't
9 want to create any confusion, and I also don't want to be
10 too overly broad in what we prohibit, such that it makes
11 the use too encumbered. I'm kind of open to a friendly
12 amendment on this. I think basing it on height, I'm just
13 a little worried that that's going to be -- have its own
14 challenges to implement. I think two axles, you know, you
15 can have buses that are two axles, I believe. You can
16 have pretty tall trucks that are two axles. So I was
17 trying to go a little bit beyond it, but I'm kind of open
18 to how we can refine this better.

19 MS. WRIGHT: Yeah. I wouldn't want to tie the
20 fence height to the type of vehicle because there are
21 limitations on how tall a fence one can build. You know,
22 the zoning code doesn't allow fences over a certain
23 height. So I -- you know, I am fine with the amendment of
24 eliminating box trucks as long as we're still talking
25 about two-axle vehicles. They just aren't going to be

1 that big, you know? And I think the key is that we are
2 talking about not including, you know, semi-trailers, you
3 know, school buses, you know, really large, large
4 vehicles. I think by delineating that they're two axle is
5 a good rule of thumb.

6 MS. POURCIAU: Ms. Lindsjo, any thoughts on that?

7 MS. LINDSJO: No, I kind of agree with the
8 conversation that I also think it's easier to just keep it
9 at the two axle and see. I mean, and also especially
10 because with the time limit too, we can see what's
11 happening again.

12 MS. POURCIAU: I do think though we don't want
13 buses. And so I would think maybe exclude everything but
14 the box trucks and what you stated, Vice Chair, and that
15 that would help me -- that -- I think that would cover a
16 good number of those bigger, heavier vehicles. And then
17 maybe make the time limit four years.

18 MR. GOLDSTEIN: Okay. Well, I -- let -- let's
19 start with the first part. And I think that's a nice,
20 friendly amendment that I would say that it's limited to
21 two-axle vehicles except for buses, semi-trucks, or
22 trailers. That -- that's where we would leave it without
23 box trucks. Regarding the length of time, I'm -- so I'm
24 open to that if we want. I'm not sure there's a magic to
25 a certain number that we land on. My starting point was

1 the five years, but if there's a thought that that's too
2 long, we can also revisit.

3 MS. POURCIAU: I was feeling like if, you know,
4 opening it up a little more, I feel like your statement
5 was very restrictive and I thought that was a really good
6 level of protection for the community. Just that we're so
7 concerned about the community. I'm not trying to open it
8 up for, you know, bad behavior, but maybe opening it up a
9 little more and then letting them know in four years, you
10 know, you've got to come back here and let us know what
11 you're doing. If not before, you know, if they're
12 coordinating with everybody, then I don't know. I know
13 they asked for seven years.

14 MS. WRIGHT: It sounds like it's a compromise.
15 No, I think it sounds like a good compromise. A little
16 more latitude in terms of, you know, maybe allowing box
17 trucks, but have them come back in four years just to
18 check in to make sure it's working. I think that's a
19 great compromise.

20 MS. POURCIAU: And I think the specification
21 about the tree plantings in the motion is important as
22 well. And with that, I feel like we have a consensus.

23 Vice Chair, would you like to make a motion?

24 MR. GOLDSTEIN: Sure. I would like to just talk
25 about the tree planting a little bit more. And I just

1 have in my head the issue of, you know, outsourcing any
2 condition to an outside agency's actions as being
3 something to be mindful of. I would be happy to just
4 suggest that additional trees -- well, I want to make sure
5 I get this right. If saying, you know, if DDOT doesn't
6 approve, they have to be put inside the fence line. I
7 think I'm okay with that. I just want to make sure that
8 that's a condition that meets sort of the standards --

9 MS. WRIGHT: See, I guess I would have gone --

10 MR. GOLDSTEIN: -- authority. Yeah.

11 MS. WRIGHT: I would've gone a little
12 differently. I would've basically said the four trees
13 shown on the site plan must be placed on the applicant's
14 property unless they are able to get a public space permit
15 to place them on the DDOT property. But that the
16 condition is the trees must be there and they must be
17 placed on the applicant's property unless they're able to
18 get a public space permit.

19 MS. POURCIAU: I agree with Commissioner Wright
20 on that. I think that puts the responsibility on the
21 applicant where they can do it, but an option to, if they
22 can get that permission. And I don't know if we need to,
23 say, give a time frame for when the trees have to be
24 planted, but it's all the seasonal stuff. Are you okay
25 with that?

1 MR. GOLDSTEIN: Yeah. I liked -- I like the way
2 that you phrased it. So thank you for saying that,
3 Commissioner Wright.

4 MS. POURCIAU: All right. So I think we're ready
5 for a motion if you're ready.

6 MR. GOLDSTEIN: I -- I'd like to move to approve
7 application number -- pardon me, let me bring back up the
8 number, 21419 as captioned and read by the secretary,
9 subject to the conditions as discussed, with additional
10 flexibility to OZLD (phonetic) legal staff to massage the
11 condition language as needed. Thank you.

12 MS. POURCIAU: I second.

13 Madam Secretary?

14 MS. MEHLERT: Please respond to the vice chair's
15 motion to approve the application with conditions.

16 Chair Pourciau?

17 MS. POURCIAU: Yes.

18 MS. MEHLERT: Vice Chair Goldstein?

19 MR. GOLDSTEIN: Yes.

20 MS. MEHLERT: Board member Lindsjo?

21 MS. LINDSJO: Yes.

22 MS. MEHLERT: And, Commissioner Wright?

23 MS. WRIGHT: Yes.

24 MS. MEHLERT: Staff would record the vote as 4-0-
25 1 to approve application number 21419 with conditions on

1 the motion made by Vice Chair Goldstein and seconded by
2 Chair Pourciau.

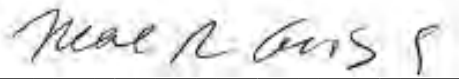
3 MS. POURCIAU: Thank you all. Thank you again to
4 the staff for great work on all these cases. We'll now go
5 into our virtual --

6 (Whereupon, the above-entitled matter went off
7 the record at 10:26 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 was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings; and that I am neither counsel for, related to, nor employed by any of the parties to this action in which this matter was taken; and further that I am not a relative nor an employee of any of the parties nor counsel employed by the parties, and I am not financially or otherwise interested in the outcome of the action.

A handwritten signature in dark ink, appearing to read "Neal R. Gross", is written over a horizontal line.

Court Reporter