

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

OCTOBER 25, 2017

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chair  
CARLTON HART, Vice Chair  
LESYLLEÉ M. WHITE, Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

CHRISTOPHER COHEN, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ANNE FOTHERGILL  
MAXINE BROWN-ROBERTS

The transcript constitutes the minutes from the Public Hearing held on October 25, 2017.

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

2 10:39 a.m.

3 CHAIRPERSON HILL: All right. Mr. Moy, let's go  
4 ahead and get started again, please.

5 SECRETARY MOY: All right. Thank you, Mr.  
6 Chairman.

7 So we're in the public hearing session, so I  
8 believe if we're following the line up in the agenda the next  
9 case application is 19574 of Shirley Taylor. Caption and  
10 advertised -- actually the Applicant has been amended for a  
11 special exception under Subtitle U, 320.2 for conversion of  
12 an existing residential building and pursuant to Subtitle X,  
13 Chapter 10 for an area variance from the lot area  
14 requirements of Subtitle U, 320.2(d), which would convert an  
15 existing flat into a three-unit apartment house by  
16 constructing a dwelling unit in an existing accessory  
17 building in the RF-3 Zone at premises 10 3rd Street, N.E.,  
18 Square 759, Lot 838.

19 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.  
20 Moy.

21 Could you please introduce yourselves from my right  
22 to left?

23 MS. FOWLER: Good morning. I'm Jennifer Fowler.  
24 I'm the architect.

25 MS. CONE: Lisa Cone. I am the daughter of Shirley

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1 Taylor.

2 CHAIRPERSON HILL: Okay. And were you both sworn  
3 in this morning?

4 MS. FOWLER: Yes.

5 MS. CONE: Yes.

6 CHAIRPERSON HILL: Okay. Great.

7 So, Ms. Fowler, I guess you're going to be  
8 presenting to us?

9 MS. FOWLER: Yes.

10 CHAIRPERSON HILL: Okay. I mean, I would like to  
11 hear I guess a relatively full presentation in terms of it's  
12 just kind of an interesting issue for us here. I mean, again  
13 I'd like to see and hear the presentation and all of the  
14 different reasons as to why -- first of all what you're  
15 asking for and then also how you're reaching the standard of  
16 relief that we should grant this. And then we'll turn to the  
17 Office of Planning and such.

18 But I'm going to go ahead and put 10 minutes on the  
19 clock for you just so we'll start off with that and see where  
20 we go.

21 MS. FOWLER: Okay.

22 CHAIRPERSON HILL: Okay?

23 MS. FOWLER: Thank you.

24 Okay. So this is a -- again, we're asking for  
25 relief for a special exception to add a third unit to a row

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1 dwelling in the R-3 -- RF-3 Zone, but then there's also that  
2 -- the variance aspect.

3 As far as the special exception I think there is no  
4 change to the exterior of the building. We're basically  
5 keeping the existing space. We're going to renovate the  
6 interior. We originally had a roof deck that we had planned,  
7 but we did get feedback from ANC and neighbors and we  
8 eliminated the roof deck. So there's no exterior changes to  
9 the building.

10 This is kind of a unique situation that we have a  
11 three-story carriage house on the back of this property. It  
12 was actually built in 1881 originally as a one-story garage  
13 prior to the construction of the main house. The main house  
14 was built in 1885, and Preservation staff has confirmed the  
15 dates for us. They have also confirmed that there was an  
16 addition added, a third -- a second and third level -- I'm  
17 sorry, it was the third level that was added --

18 MS. CONE: Just the third.

19 MS. FOWLER: -- in the '20s. And that's when  
20 habitation was introduced to the property.

21 So again, it was a three-story carriage house since  
22 the '20s and it's been occupied; however without C of O  
23 through this -- through the years and definitely prior to the  
24 1958 Zoning Regulation implementation.

25 So it has a -- we have a Certificate of Occupancy

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1 for the main building. There's a basement apartment as well  
2 as an upper unit, so this is really the third unit on this  
3 property, and again it's been acting as such for decades.  
4 The house has been in the owner's family for -- since 1942,  
5 basically, and it's been occupied as such.

6 Again, it's a three-story building. There's a  
7 garage on the first floor and a kitchen and bathroom on the  
8 upper floors. It's 1,064 square feet of interior square  
9 footage. So it's -- again, it's -- Historic staff has said  
10 that it's a very -- it's a unique thing to see a three-story  
11 carriage house in this area, an unusual building type.

12 It is looking on Terrace Court, which is an named  
13 alley. There are eight other existing alley dwellings, row  
14 dwellings on that court, so there is other examples of alley  
15 habitation on this -- in this area.

16 Again, we're not seeking to change the footprint of  
17 the building or the exterior in any way and we're going to  
18 be kind of maintaining the use that's currently there. They  
19 have a longstanding tenant that has temporarily moved out  
20 that wishes to move back in after we do the renovations, so  
21 we're hoping to keep that tenant in place. This is also  
22 going to be staying in the family. There's no plans to sell  
23 it or to turn it over as a developer flip.

24 So as far as the practical difficulties, the HPO  
25 office has confirmed that it can't -- the building can't be

1 demolished, so we really -- we're working with this existing  
2 square footage. Because it -- because of its age it is  
3 contributing to the character of the Hill District.

4 The owner of the property is retired. This is Ms.  
5 Taylor. She's on a fixed income and has been reliant on the  
6 rental income she receives for the past 25 years.

7 The interior of the carriage house is in disrepair,  
8 so we do need to do some modernization in order to continue  
9 its use. The electrical and the plumbing and heating must  
10 be updated. There's other safety concerns. The cost to  
11 renovate would be a major burden if it were not able to  
12 create income for the owner or if the rental income were to  
13 be reduced if we had to proceed with a matter of right  
14 option.

15 Let's see. The accessory buildings have been an  
16 income source to the family for decades. Again, it -- we  
17 would be -- there would be a financial hardship for the owner  
18 if we were to eliminate that use and only go to the two C of  
19 O property.

20 Let's see here. What we -- we did look at some  
21 matter of right options and there's a number in the  
22 supplemental filing that we submitted. We did have an  
23 independent appraiser run the numbers in terms of what the  
24 rental potential is for the various options. One option we  
25 looked at was to combine the main house into one unit and

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1 then convert the garage into a dwelling unit. Basically we  
2 would have to reconfigure the basement removing a recently  
3 upgraded kitchen that was added -- renovated not too long  
4 ago.

5 VICE CHAIRPERSON HART: Ms. Fowler?

6 MS. FOWLER: Yes.

7 VICE CHAIRPERSON HART: You're talking about  
8 Exhibit 54?

9 MS. FOWLER: Yes.

10 VICE CHAIRPERSON HART: Thank you.

11 MS. FOWLER: So there would be -- some renovations  
12 would have to happen to the main house in order to convert  
13 to basically combine the two units together. We'd have to  
14 put in an interior stair and DCRA would not allow us to keep  
15 a kitchen in the basement. We would have to remove that.  
16 So there would be some renovations that would have to happen,  
17 as well as the renovations that would need to happen in the  
18 carriage house in order to make it livable or up to code.

19 So if we look at -- we had an existing rental  
20 income that's 8,250, which was -- the main house was 3,800,  
21 the upper unit. The lower unit is 2,200 and the carriage  
22 house is currently 2,250 -- at 8,250. So with the matter of  
23 right, if we have to combine the units, we're looking at  
24 \$1,000 per month loss in income for that particular option.

25 The second option we looked at was to rent the

1 garage as part of the main house, so basically just to  
2 combine it with the -- with one of the units that's currently  
3 in the front of the property. In this option it's  
4 challenging because there would have to be kind of a house  
5 mate or somebody living in the garage that wouldn't be able  
6 to have a cooking facility. We would not be able to put a  
7 kitchen in the garage, so they would have to use the kitchen  
8 in the main house. So it's more like a nanny suite or  
9 something like that that's the potential there.

10 So again, we look at the 8,250 as the existing  
11 income. If were to combine the main house with the garage,  
12 that would increase the rent to 5,000, which is less than the  
13 combined of the current, so we would be down to 7,200 a  
14 month. So again, there's a loss of about \$1,000, a little  
15 more than \$1,000 income per month with that situation.

16 And then thirdly we looked at the -- looking at an  
17 artist studio. That's another potential matter of right use.  
18 The appraiser had -- actually had a hard time finding comps  
19 for that in this area, but he did determine that that -- the  
20 rental for the artist studio in the carriage house would be  
21 about 500 to \$600 a month, and that would be if we upgraded  
22 it as well. So with this particular case we're looking at  
23 a substantial loss of income from what they currently have.

24 The other option is to rent it as a short-term  
25 rental unit, Airbnb, maybe not necessarily a long-term option

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1 depending on what the -- how the regulations change. This  
2 was something we've -- they decided they did not want to do.  
3 A lot of the neighbors were opposed to this and we  
4 specifically got feedback from the neighbors during the  
5 process that nobody wants Airbnb to happen in that location  
6 because of the noise, parties, whatever other issues that  
7 have come about. So this is an option that is matter of  
8 right currently, but we have ruled it out, out of respect for  
9 the neighbors.

10 So those are the -- kind of the -- that's the  
11 overview of the practical difficulties. Happy to answer  
12 questions about more specific items if you have them.

13 CHAIRPERSON HILL: Okay. Does the Board have any  
14 questions for the Applicant?

15 MEMBER WHITE: I have one question.

16 MS. FOWLER: Yes.

17 MEMBER WHITE: How long has -- how long have you  
18 been renting that property? Has it been like a continuous  
19 rental? For how many years?

20 MS. CONE: It has been rented for as long as I can  
21 remember. I know the stories going back was it was rented  
22 during the war as was the front house in individual units,  
23 kind of like a weekly --

24 MEMBER WHITE: Yes.

25 MS. CONE: -- what they called rooming house -- a

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1 rooming house. It did -- was an artist studio for a number  
2 of years, but the artist unbeknownst to us actually -- turned  
3 out that he was living there for a very long time. So it has  
4 been -- it's been in continual use for a long time but in  
5 various forms.

6 MEMBER WHITE: Yes.

7 CHAIRPERSON HILL: Ms. Cone, when you say "the  
8 war," which war are you talking about?

9 MS. CONE: World War II.

10 CHAIRPERSON HILL: Wow. Okay. Just to make it  
11 clear.

12 MS. CONE: Yes, my mother's 91 and she tells --

13 CHAIRPERSON HILL: Right.

14 MS. CONE: -- the stories of being 12 years old and  
15 going with her dad to collect the rents down at the -- well,  
16 they called it the rooming house.

17 CHAIRPERSON HILL: No, I got it. I just haven't  
18 heard it referred to as the war in awhile.

19 (Laughter.)

20 CHAIRPERSON HILL: Thanks.

21 VICE CHAIRPERSON HART: And, Ms. Fowler, I do  
22 appreciate the information about the various options that  
23 you've looked at because I think it's helpful to kind of  
24 understand that, and you all have tried to find another  
25 alternative to this. And I understand that it is a difficult

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1 kind of position to be in trying to figure out which is the  
2 avenue that you'd prefer to go down.

3           And did you -- and I don't know if it was in here  
4 and I may have missed it. Is there an option where you have  
5 -- is it possible to have three units -- I guess three units  
6 anywhere would be an issue, but three units in the main  
7 building?

8           MS. FOWLER: No, because we're limited because of  
9 the 900 square feet per land area.

10          VICE CHAIRPERSON HART: This is the whole issue  
11 around that, yes.

12          MS. FOWLER: Yes, so it's -- and really it would be  
13 difficult to put a third unit in that building the way that  
14 it's --

15          (Simultaneous speaking.)

16          VICE CHAIRPERSON HART: I mean, it's not -- I don't  
17 --

18          MS. FOWLER: Yes.

19          VICE CHAIRPERSON HART: -- I'm not saying that, I'm  
20 just thinking about what the other options are. But I think  
21 you're right. You looked at if this weren't done how to --

22          MS. FOWLER: Right.

23          VICE CHAIRPERSON HART: -- kind of do all of -- and  
24 renovate and be able to have something that is up to the  
25 current codes and everything. So thank you.

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1 MS. FOWLER: Yes, and I think another point is that  
2 it is a lot of square footage. When you look at the size of  
3 this carriage house, it's similar to a lot of the smaller row  
4 houses in interior square footage, so it's just a -- it would  
5 be I think a negative thing to the neighborhood to not be  
6 able to use it in a way that's occupied; for instance if it  
7 were just storage, and I don't think that that's what people  
8 want. I think people want to have habitation out there.

9 VICE CHAIRPERSON HART: And you also discussed that  
10 this was a one-story carriage building in 1881, and I'm  
11 assuming it was kind of a -- I don't want to say a cathedral  
12 ceiling, but it's got a much higher ceiling so they could put  
13 in a second floor within the building envelope and then add  
14 a third floor in the '20s.

15 MS. FOWLER: I think so. We don't --

16 VICE CHAIRPERSON HART: I'm assuming that's --

17 MS. FOWLER: Yes, we don't have any information on  
18 like what was there originally, but there was a -- I think  
19 there was a hayloft kind of carriage or garage.

20 MS. CONE: Yes, as I understand it there's a big  
21 window that I guess used to be where the feed and things  
22 would go in for the horses.

23 MS. FOWLER: So technically, yes, the third -- it  
24 was the third floor that was added --

25 MS. CONE: Right.

1 MS. FOWLER: -- during the '20s.

2 VICE CHAIRPERSON HART: Yes, that's why I was --

3 MS. FOWLER: Yes.

4 VICE CHAIRPERSON HART: I was like what happened to  
5 the second floor?

6 MS. FOWLER: Yes, I think I misspoke.

7 MS. CONE: Yes, that was already part of the  
8 building as we understand it, part of the original permit.  
9 And then the third floor was added later in the 20s.

10 VICE CHAIRPERSON HART: And because of the length  
11 of time in which this has been -- has kind of taken place,  
12 a Certificate of Occupancy was not something that was  
13 necessarily needed at that point because it's, well, we just  
14 want to make some rental income and -- not just you, but  
15 those that wanted to use that. And then it is now an issue  
16 because of this is kind of what the current regulations are,  
17 the current rules are. So you have to try to adhere to that,  
18 and that's the difficulty in which you find yourself.

19 MS. CONE: And I think for me becoming in  
20 compliance, you know, finding this out and thinking I'm --  
21 it's gone from my grandfather to my grandmother to my father  
22 to my mother, and my mother's still living, but she's 91.  
23 It's going to come to me and I felt that stewardship that I  
24 needed to have it in compliance, not only with the  
25 Certificate of Occupancy but with the codes so that all the

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1       electrical codes and various things were up to where they  
2       should be.

3                     VICE CHAIRPERSON HART: Thank you.

4                     MS. CONE: Yes.

5                     CHAIRPERSON HILL: All right. I'm going to turn to  
6       the Office of Planning.

7                     MS. FOTHERGILL: Good morning. For the record I'm  
8       Anne Fothergill with the Office of Planning, and I just  
9       wanted to follow up on Board Member Hart's question about the  
10      Certificate of Occupancy.

11                  The Office of Planning and the Office of the  
12      Attorney General and the Zoning Administrator's Office had  
13      some discussion about this case and whether or not it could  
14      be considered an existing nonconforming use, however, because  
15      there was never a Certificate of Occupancy for this -- for  
16      residential use in the carriage house, it is not considered  
17      a lawful existing nonconforming use. And so it does need  
18      this relief in order to be in compliance with the Zoning  
19      Regulations. So I just wanted you to know we went down that  
20      path. That's the discussion.

21                  But, so the relief is appropriate. They've applied  
22      for a special exception to have three units, three  
23      residential units in the RF-3 Zone. And because they don't  
24      meet the 900 square feet, they -- that condition of the  
25      special exception they've requested a variance from that

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1 condition. And as you will see the Office of Planning  
2 supports that relief and finds that it is an exceptional  
3 situation that creates a practical difficulty for compliance.

4 The property is exceptionally large for an  
5 accessory building in this location. It has been in  
6 residential use for decades and to comply would either mean  
7 -- would mean some major reconfiguration for either the  
8 primary dwelling or the accessory dwelling. And because  
9 there's no -- there would be no impact to the neighbors to  
10 the property; they're not proposing any exterior changes, we  
11 don't think that it would be detrimental to the public good  
12 or harm the zoning regulations to allow this relief for this  
13 property.

14 So we rest on the record in support of the  
15 application and I'm happy to take any questions because I may  
16 have --

17 (Simultaneous speaking.)

18 CHAIRPERSON HILL: Does anyone have questions for  
19 the Office of Planning?

20 VICE CHAIRPERSON HART: So you are -- the  
21 nonconformity, the existing nonconforming use is -- because  
22 there was no C of O there is no ability for you to call this  
23 a nonconforming -- existing nonconforming use?

24 MS. FOTHERGILL: That's correct.

25 VICE CHAIRPERSON HART: And so that's the -- that's

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1 kind of the linchpin for it, right?

2 MS. FOTHERGILL: If it was a -- if it was  
3 considered an existing nonconforming use, they wouldn't need  
4 this relief.

5 VICE CHAIRPERSON HART: Yes, and -- but the C of O  
6 issue is the -- and it's not that they -- it's not that --  
7 it's just that they never -- there was never one that was  
8 issued for the third unit?

9 MS. FOTHERGILL: That's right.

10 VICE CHAIRPERSON HART: Okay. Thank you.

11 CHAIRPERSON HILL: Anything?

12 MEMBER WHITE: I'm good.

13 CHAIRPERSON HILL: Yes, I don't have a lot of  
14 questions. I guess, like I didn't want hear -- Ms.  
15 Fothergill, thanks so much. I didn't want to hear you kind  
16 of walked here because it's very odd for the Office of  
17 Planning to be in a -- like the 900-square-foot thing is like  
18 -- like I just had to reread it a few times to understand it  
19 and kind of wrap my head around it that you guys were in  
20 agreement. And I guess I understand the -- due to the nature  
21 of how old the property is and how long this has been going  
22 on, I still think it's a little interesting in terms of the  
23 discussion that you had with Mr. Hart in terms of the  
24 nonconformity and the way the use was and the Certificate of  
25 Occupancy, I mean in 1920, whatever. That was a long time

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1 ago.

2 All right. So I don't have any further questions  
3 for the Office of Planning. No one else on the Board here.

4 Do you have any questions for the Office of  
5 Planning?

6 MS. FOWLER: In your opinion if they had applied  
7 for C of O pre-1958 they could have been granted that,  
8 correct?

9 MS. FOTHERGILL: That is my understanding. We --  
10 the Zoning Administrator's Office did some research and found  
11 a number of C of Os. And so, yes, I would have thought that  
12 if they had applied. I think the property owner just didn't.

13 MS. FOWLER: Yes, right. So it could have been if  
14 they had done that prior, then it would have been a  
15 longstanding C of O that would be valid today, right?

16 MS. FOTHERGILL: That's my understanding, yes.

17 MS. FOWLER: Okay. That's it.

18 CHAIRPERSON HILL: And I have another question. So  
19 were people applying for C of Os prior to 1958 for this?

20 MS. FOTHERGILL: There's a 1948 Certificate of  
21 Occupancy for a rooming house.

22 CHAIRPERSON HILL: Okay. All right.

23 Did you have something, Mr. Hart?

24 VICE CHAIRPERSON HART: And so that was for the  
25 existing structure, the existing front building, not the

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1 carriage house?

2 MS. FOTHERGILL: It doesn't distinguish, but the  
3 most recent Certificate of Occupancy trumps that, so -- does  
4 that make sense?

5 VICE CHAIRPERSON HART: Yes, and when was the --

6 MS. FOTHERGILL: The one we have is 1999 for the  
7 two units in the primary structure.

8 VICE CHAIRPERSON HART: Interesting. Okay. Thank  
9 you.

10 CHAIRPERSON HILL: Okay. All right. Is there  
11 anyone here wishing -- is anyone here from the ANC?

12 (No audible response.)

13 CHAIRPERSON HILL: Is there anyone here who wishes  
14 to speak in support?

15 Please come forward, sir.

16 Sir, did you get sworn in earlier today?

17 MR. BRAITHWAITE:

18 (No audible response.)

19 CHAIRPERSON HILL: Okay. Great.

20 If you'd just push the microphone there and speak in. Did  
21 you fill out your witness cards?

22 MR. BRAITHWAITE: I have them here.

23 CHAIRPERSON HILL: Okay. Great. If you could just  
24 give us your name also. And then I'm going to go ahead and  
25 give you three minutes on the clock whenever you have a

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1 chance.

2 MR. BRAITHWAITE: I'm William Braithwaite. I live  
3 at 12 3rd Street, N.E., which is right next door to the  
4 building. I've been there for over 20 years. The property  
5 in question has been occupied most of that time, at least in  
6 my experience, and we haven't had any problem with the long-  
7 term people in that residence.

8 The owner is very -- has heard our objection about  
9 putting a roof deck on it and modified their plans because  
10 it was a privacy issue for us because we have an atrium roof  
11 that looks down into our master bathroom. So the occupancy  
12 of the roof of that building would have been a privacy issue  
13 for us, but they have taken that off the table. And so we  
14 are in support of taking this existing residential structure  
15 and bringing it up to code.

16 CHAIRPERSON HILL: Okay. Great. Does anyone have  
17 questions for the witness?

18 (No audible response.)

19 CHAIRPERSON HILL: When did you move in, sir?

20 MR. BRAITHWAITE: 1997.

21 CHAIRPERSON HILL: '97? Okay. I was just curious.  
22 Okay. All right. Great. Thank you, sir.

23 All right. Anyone else wishing to speak in  
24 support?

25 (No audible response.)

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1 CHAIRPERSON HILL: Anyone here wishing to speak in  
2 opposition?

3 (No audible response.)

4 CHAIRPERSON HILL: Ms. Fowler, do you have  
5 anything else you'd like to add?

6 MS. FOWLER: No, I just wanted to thank Anne for  
7 her time. It was a tough case and we had spent a lot of time  
8 kind of thinking through and so I appreciate that. And I  
9 know it's a tough thing for them to approve or support these  
10 types of projects.

11 But I also just wanted to say I appreciate your  
12 time and consideration for allowing us to continue this use  
13 for the family. Thank you.

14 CHAIRPERSON HILL: Okay. Great. All right. Thank  
15 you.

16 I'm going to go ahead and close the hearing. Is  
17 the Board ready to deliberate?

18 (No audible response.)

19 CHAIRPERSON HILL: Okay. Would anyone like to  
20 start? I can start. You can start.

21 All right. So I mean, I thought it was -- yes, as  
22 I was just talking with the Office -- or talking through with  
23 the Office of Planning, I mean, I thought it was an extremely  
24 interesting case in terms of again how the Office of Planning  
25 had gotten behind the 900 square feet variance, because the

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1 area variance -- well, to begin with the variance is very  
2 difficult to get approval for, and then for an area variance,  
3 particularly this one, I have rarely seen the Office of  
4 Planning do that.

5 So, and then there was I guess the issue concerning  
6 whether this was necessary at all, but that seems to have  
7 been discussed again through our discussion with the Office  
8 of Planning.

9 So I actually am in support of this application.  
10 The ANC was in support. There was a few people that voted  
11 to oppose it seems like, but the -- I agree with the analysis  
12 that the Office of Planning has provided as well as that of  
13 the Applicant.

14 Does the Board have any other thoughts?

15 MEMBER WHITE: My thought is that, like you said,  
16 the variance test, whenever someone comes before us asking  
17 for a variance, we're always -- flashes go off because we  
18 want to make sure that the Applicant is meeting all the  
19 criteria. And I think your case provides a very good example  
20 of how that criteria can be met.

21 I think it's a very exceptional situation. Very  
22 unusual carriage house, a third-story carriage house. I  
23 don't think I've actually been in one before. But it does  
24 make sense just from an economic perspective for you to be  
25 able to get the relief and I think you've met the three-prong

1 test in order to get the relief.

2 You have OP's support; that's always very helpful,  
3 as well as ANC support. I didn't really get into the nuances  
4 of why the vote was 4-2, but it -- they still voted to  
5 approve.

6 So I'm comfortable with the applications, Mr.  
7 Chairman.

8 VICE CHAIRPERSON HART: And, Mr. Chairman, I also  
9 am comfortable with the application. I would note that Ms.  
10 Fowler's presentation as well as the information that you  
11 provided regarding the other options that you kind of looked  
12 at helped to make I think the -- I'll speak for the other  
13 Board Members, us understand this a little bit better in  
14 terms of, well, we really can't do this or you can do this,  
15 but it is a fairly significant cost and kind of a monthly  
16 cost that would be incurred.

17 And I find that it is a hard bar to get over. As  
18 you're probably well aware, the variance test is -- the three  
19 prongs are there to make sure that what the Board is actually  
20 approving are things that are -- they -- there's a definite  
21 need for the Board to approve the relief because of some  
22 fairly -- some unique conditions that are going on at a  
23 particular location. And I think that this location meets  
24 the prongs that are -- the three prongs that are set up in  
25 the variance test.

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1           I think it's helpful to understand the history,  
2 which I'm appreciative of you providing for us, because that  
3 kind of further lets us understand this -- the depth of the  
4 information that we're kind of going through.

5           And as my colleagues have said, reviewing the  
6 Office of Planning report as well as the ANC report -- and  
7 I guess the Architect of the Capital also submitted a -- even  
8 though we don't give that great weight --

9           (Laughter.)

10          VICE CHAIRPERSON HART: -- it is still something  
11 that is has been submitted to us for the project. And it  
12 seems as though there is considerable support for this  
13 application as well. So I'd make a motion to approve  
14 Application No. 19574 of Shirley Taylor as read by the  
15 secretary.

16          MEMBER WHITE: Second.

17          CHAIRPERSON HILL: Motion made and seconded. All  
18 those in favor?

19           (Chorus of aye.)

20          CHAIRPERSON HILL: All those opposed?

21           (No audible response.)

22          CHAIRPERSON HILL: The motion passes. Mr. Moy?

23          SECRETARY MOY: The staff would record the vote as  
24 3 to 0 to 2. This is on the motion of Vice Chair Hart to  
25 approve the application. And this is as shown on revised

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1 plans under Exhibit 55. Seconded the motion, Ms. White.  
2 Also in support Chairman Hill. We have no other members with  
3 us today and a Board seat vacant. Motion carries, sir.

4 CHAIRPERSON HILL: Thank you. Summary order?

5 SECRETARY MOY: Yes, sir. Thank you.

6 CHAIRPERSON HILL: Thank you, Mr. Moy.

7 Thank you all very much.

8 Mr. Moy?

9 SECRETARY MOY: The next application, Mr. Chairman,  
10 if I can have the parties to the table, this is Application  
11 No. 19595 of Robert and Kim Segers. As amended the Applicant  
12 reads as follows: "This is a request for a special exception  
13 under Subtitle D, 5201. This is from the maximum building  
14 area requirements of Subtitle D, 5006.1 and the previous  
15 surface requirements of Subtitle D, 308.1. This would  
16 construct an accessory two-car garage in an R-1-B Zone at  
17 1355 Monroe Street, N.E., Square 3963, Lot 22."

18 CHAIRPERSON HILL: All right. Great. Thank you,  
19 Mr. Moy.

20 Could you please introduce yourselves from my right  
21 to left?

22 You need to push your button right there and speak  
23 into the microphone.

24 MR. SALTANI: Good morning. Adil Saltani,  
25 architect.

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1 CHAIRPERSON HILL: Okay. Could you spell your last  
2 name, please?

3 MR. SALTANI: Saltani, S-A-L-T-A-N-I.

4 CHAIRPERSON HILL: Mr. Saltani, were you sworn in  
5 earlier today?

6 MR. SALTANI: No.

7 CHAIRPERSON HILL: Okay. Were you sworn in earlier  
8 today?

9 (No audible response.)

10 CHAIRPERSON HILL: Okay. Could you give me your  
11 name first as well?

12 MR. SEGERS: My name is Robert Segers. I'm the  
13 homeowner.

14 CHAIRPERSON HILL: Okay. Can you spell your last  
15 name for me?

16 MR. SEGERS: S-E-G-E-R-S.

17 CHAIRPERSON HILL: Okay. Great. All right. If  
18 you could both stand and take the oath administered by the  
19 secretary to my right -- left? Thank you.

20 SECRETARY MOY: Do you solemnly swear or affirm  
21 that the testimony you're about to present in this proceeding  
22 is the truth, the whole truth and nothing but the truth?

23 THE WITNESSES: I do.

24 SECRETARY MOY: Thank you. You may be seated.

25 CHAIRPERSON HILL: Okay. Great. I don't know

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1 who's going to present to us, so you can go ahead, and what  
2 I guess I'd like to hear again is the -- what you're trying  
3 to do I suppose with this and then also how you're meeting  
4 the criteria for us to grant the special exception through  
5 the regulations. I'm going to go ahead and put ten minutes  
6 on the clock just so I know where I am. Who's going to  
7 present to us first?

8 MR. SEGERS: I will.

9 CHAIRPERSON HILL: Okay. Great. So you can go  
10 ahead start whenever you'd like. There has been a little bit  
11 of questions concerning like I guess the driveway a little  
12 bit and the previous surface, but I guess we'll get to that  
13 through the presentation, so please start whenever you'd  
14 like.

15 MR. SEGERS: Thank you. So we're trying to build  
16 a two-car garage with an adjacent storage for our two cars  
17 and also for storing lawn mower, snow blower and garden  
18 equipment and our patio furniture. We've had in the past  
19 some theft of all of the three items in our neighborhood and  
20 want to have an opportunity to put them into locked storage.

21 So in terms of the burden of proof for the special  
22 exception, the light and air available to neighboring  
23 properties will not be unduly compromised because of the way  
24 the buildings around are fairly well spaced. And we have  
25 also not had any opposition from any of the neighbors. We

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1 actually visited each of the neighbors in the 200-foot radius  
2 and had a conversation with them showing the plans and went  
3 through the whole building and they actually -- most of them  
4 signed the letter of support which is on the record.

5 So our lot is 7,500 square foot and we're still  
6 meeting the lot coverage. And the homes on either side of  
7 our building are two stories structures on similarly large  
8 lots. The garage structure will not be -- directly above to  
9 any adjacent residential structures and therefore the privacy  
10 and use of the enjoyment of neighboring properties will not  
11 be compromised.

12 And then the building, the garage as its envisioned, will be  
13 built in the same style and look and feel as the existing  
14 building and will not stand out.

15 In terms of the pervious area -- so we worked with  
16 the Office of Planning and we've changed some of the  
17 additional driveway that is planned into a pervious material  
18 so that we have enough driveway to be able to turn the cars  
19 on our lot, which was why we were originally planning to add  
20 it. So that would help with the pervious surface.

21 We also foresaw a trench drain at the front of the  
22 building that will actually accept all the rainwater runoff  
23 from the house down the driveway to the building and will  
24 return it back to the soil.

25 So those are the two mitigation that we had

1 foreseen.

2 I guess that's all I have to say.

3 MR. SALTANI: The only thing I would add to that is  
4 the only paved area we're proposing would be pervious.

5 CHAIRPERSON HILL: Okay. Yes, well, I mean, and  
6 Mr. Segers --

7 MEMBER WHITE: Yes.

8 CHAIRPERSON HILL: -- did speak to this, but again  
9 that -- and I'm going to speak specifically with the Office  
10 of Planning, but the -- one of the conditions -- and I don't  
11 -- it seems as though this has been addressed, but the  
12 expanded area of the driveway as shown on Exhibit 30 shall  
13 be covered by pervious materials. So you're in agreement  
14 with that condition?

15 MR. SEGERS: Yes, we are.

16 CHAIRPERSON HILL: Okay. All right.

17 Okay. Does the Board have any questions for the  
18 Applicant?

19 MEMBER WHITE: Just verifying, the variance request  
20 was withdrawn?

21 MR. SEGERS: That's correct.

22 MEMBER WHITE: Okay.

23 CHAIRPERSON HILL: Okay. Going to turn to the  
24 Office of Planning.

25 MS. BROWN-ROBERTS: Good morning, Mr. Chairman and

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1 Members of the Board. My name is Maxine Brown-Roberts from  
2 the Office of Planning.

3 The Applicant is seeking a special exception for  
4 the accessory garage that exceeds the maximum building area  
5 for an accessory building, and the Office of Planning is  
6 supportive of that special exception. The building, as the  
7 Applicant says, will not be adjacent to any residential  
8 portion of the adjacent properties and therefore will have  
9 no impact on the light and air and privacy of those  
10 properties.

11 Regarding the pervious surface, the requirement is  
12 50 percent in this zone and the amount that's provided  
13 exceeds that and is at 55 percent. With the addition of the  
14 house -- I'm sorry, of the garage and also the covered area  
15 that went to 38 percent. And at that time that's what we  
16 requested that the additional portion that is being covered  
17 be done with some pervious materials.

18 We also talked to the Applicant some more about how  
19 we could further mitigate this. And as he explained, there  
20 is the runoff in front of the structure that helps to channel  
21 the water directly on site and not onto the road or on any  
22 adjacent properties.

23 And based on this, we recommend approval.

24 One of the things that we also spoke to the  
25 Applicant about was that there's an expansive driveway of

1 non-pervious surface and he explained that doing that with  
2 pervious materials -- it's existing. They'd have to take it  
3 up and that could be an expensive proposition. So we're  
4 in support of both special exceptions and I'm  
5 available for questions.

6 CHAIRPERSON HILL: Does the Board have any  
7 questions for the Office of Planning?

8 MEMBER WHITE: The one question I have is so the  
9 runoff discussion that you had with the Applicant, is that  
10 also part of the condition that OP is recommending?

11 MS. BROWN-ROBERTS: It's shown on the plans.

12 MEMBER WHITE: Okay.

13 MS. BROWN-ROBERTS: So I didn't think I had to go  
14 into that. I wanted the other portion of the -- I just  
15 wanted to make sure that the expanded area is -- just a note  
16 to the Zoning Administrator's Office that this is something  
17 that sort of they need to check to make sure that that is  
18 being provided.

19 MEMBER WHITE: Okay.

20 CHAIRPERSON HILL: Okay. So just to kind of  
21 piggyback on Ms. White. So again, the condition still  
22 remains the same?

23 MS. BROWN-ROBERTS: Yes, it does.

24 CHAIRPERSON HILL: Okay. As I had read earlier?

25 MS. BROWN-ROBERTS: Yes, it does.

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1 CHAIRPERSON HILL: Okay. All right.

2 Mr. Hart?

3 VICE CHAIRPERSON HART: Ms. Brown-Roberts, do you  
4 believe that the Applicant has reduced the -- do you think  
5 the Applicant could reduce this even further? I mean, right  
6 now we're looking at the previous surface. The regulation  
7 is 50 percent. They're above that of course existing. But  
8 the proposed is 38 percent?

9 MS. BROWN-ROBERTS: Yes.

10 VICE CHAIRPERSON HART: And so, I just -- is there  
11 a way which they could get closer to the 50 percent or -- I  
12 mean, do you think that what they proposed is the closest  
13 that they can get to that?

14 MS. BROWN-ROBERTS: Well, if they did the driveway,  
15 okay, or a portion of the driveway I'm sure, I think they  
16 would be much closer to the 50 percent, but as I said, in a  
17 conversation with the Applicant that's an existing situation.  
18 They would have to take up all of that. And he said that  
19 that's an expense, so I think that's a judgment I'll leave  
20 for you to make.

21 VICE CHAIRPERSON HART: Thank you.

22 CHAIRPERSON HILL: Okay. Does the Applicant have  
23 any questions for the Office of Planning?

24 MR. SEGERS: No, I don't.

25 CHAIRPERSON HILL: Okay. Is there anyone here from

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1 the ANC?

2 (No audible response.)

3 CHAIRPERSON HILL: Is there anyone here wishing to  
4 speak in support?

5 (No audible response.)

6 CHAIRPERSON HILL: Is there anyone here wishing to  
7 speak in opposition?

8 (No audible response.)

9 CHAIRPERSON HILL: All right. Going to turn back  
10 to the Applicant. Is there anything else you'd like to add?

11 MR. SEGERS: I don't.

12 CHAIRPERSON HILL: All right. Does the Board have  
13 any final questions?

14 VICE CHAIRPERSON HART: Yes, Mr. Chairman. With  
15 regard to -- I mean, I just asked the Office of Planning this  
16 question. The structure that you're proposing is  
17 approximately the same size square footage as your -- as the  
18 residence, in terms of the footprint? Looks like maybe a  
19 little larger.

20 MR. SEGERS: I have not checked that, but I don't  
21 believe it's quite that big. The -- what's important to know  
22 is that two-thirds of the proposed garage and storage area  
23 is actually already being installed on an impervious area.  
24 So the -- when we bought the house 10 years ago, the back  
25 yard was pretty much asphalt. And so the two-thirds of it

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1 replaces that asphalt with the building that we propose. And  
2 the addition will overlap with the grass that is actually  
3 increasing -- the impervious area is being compensated by the  
4 trash -- the trench drain. So I think the -- if you look at  
5 the situation before and after in terms of runoff, it won't  
6 really change the situation as it was before we would build.

7 VICE CHAIRPERSON HART: And you -- Mr. Segers, you  
8 noted that the -- that you -- that part of the structure is  
9 to be used for storage of just various things that are around  
10 the house. And are you -- is this the smallest structure you  
11 were -- are proposing for this site? I mean, are you --

12 MR. SEGERS: That's right.

13 VICE CHAIRPERSON HART: Can it get -- can it be  
14 reduced any? That's what I'm trying to get to.

15 MR. SEGERS: The -- well, if the footprint would be  
16 reduced, there would be difficulty to store the patio  
17 furniture, the snow blower, the lawn mower and all the other  
18 garden equipment that we still use since we still have a  
19 reasonable amount of garden left to maintain.

20 VICE CHAIRPERSON HART: Okay. Thank you.

21 CHAIRPERSON HILL: Okay. Actually I did have one  
22 quick question. So how did the presentation go with the ANC  
23 when you were down there? I'm just curious as to how it  
24 went.

25 MR. SEGERS: They were in full support and there

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1 was no opposition and all ANC members were in support of the  
2 special exception.

3 CHAIRPERSON HILL: They didn't have any concern  
4 about anything?

5 MR. SEGERS: They did not.

6 CHAIRPERSON HILL: Okay.

7 Okay. Any further questions from us?

8 (No audible response.)

9 CHAIRPERSON HILL: All right. I'm going to close  
10 the hearing. Is the Board ready to deliberate?

11 (No audible response.)

12 CHAIRPERSON HILL: Okay. All right. I can start.  
13 I -- after again reviewing the record as well as really kind  
14 of going through the Office of Planning's analysis as to how  
15 they're meeting the criteria for us to grant the special  
16 exception, I would agree with their report. I would also  
17 agree with their one condition that was originally read and  
18 agreed to by the Applicant, which was the expanded area of  
19 the driveway as shown on Exhibit 30 shall be covered by  
20 previous material. I didn't really have a lot of issues with  
21 it.

22 Does the Board have any further discussion?

23 MEMBER WHITE: No, Mr. Chairman. I think they met  
24 the criteria for a special exception and they've agreed to  
25 include the condition regarding the previous material for the

1 driveway. So I think they've met that -- they've met the  
2 criteria for the relief that they're seeking today.

3 CHAIRPERSON HILL: Vice Chair Hart, nothing to add?

4 (No audible response.)

5 CHAIRPERSON HILL: Okay. All right. So I'm going  
6 to go ahead and make a motion to approve Application No.  
7 19595 as read by the secretary with the condition that I read  
8 into the record and ask for a second.

9 MEMBER WHITE: Second.

10 CHAIRPERSON HILL: Motion made and seconded. All  
11 those in favor?

12 (Chorus of aye.)

13 CHAIRPERSON HILL: All those opposed?

14 (No audible response.)

15 CHAIRPERSON HILL: The motion passes. Mr. Moy?

16 SECRETARY MOY: Staff would record the vote as 3 to  
17 0 to 2. This is on the motion of Chairman Hill to approve  
18 or grant the application for the relief requested along with  
19 a condition. Seconded the motion, Ms. White. Also in  
20 support of the motion Vice Chair Hart. We have a Board  
21 Member not participating today nor present and we have a  
22 Board seat vacant. The motion carries, sir.

23 CHAIRPERSON HILL: All right. Thank you, Mr. Moy.  
24 Summary order?

25 SECRETARY MOY: Yes, sir.

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1 CHAIRPERSON HILL: Thank you.

2 MR. SEGERS: Thank you very much.

3 MR. SALTANI: Thank you.

4 CHAIRPERSON HILL: Thank you.

5 (Pause.)

6 CHAIRPERSON HILL: All right. In accordance with  
7 405(c) of the Open Meetings Act, D.C. Official Code 2-575(c)  
8 I move that the Board of Zoning Adjustment hold closed  
9 meetings on Monday, October 30th, November 6th, November 13th  
10 and November 27th.

11 These closed meetings start at 3:00 p.m. and are  
12 held for the purpose of obtaining legal advice from our  
13 counsel and deliberating upon but not voting on the cases  
14 scheduled to be publicly heard or decided by the Board on the  
15 day two days after the closed meetings. Those meetings --  
16 those cases are identified on the Board's public decision  
17 meeting and hearing agendas for November 1st, November 8th,  
18 November 15th and November 29th. A closed meeting for these  
19 purposes is permitted by 405(b)(4) and (b)(13) of the Act.

20 Is there a second?

21 VICE CHAIRPERSON HART: Second.

22 CHAIRPERSON HILL: The motion has been made and  
23 seconded. Will the secretary please take a roll call vote  
24 on the motion?

25 SECRETARY MOY: Yes, thank you, Mr. Chairman.

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1           When I read the member's name, if you would reply  
2 with a yes or a no.

3           Ms. White?

4           MEMBER WHITE: Yes.

5           SECRETARY MOY: Chairman Hill?

6           CHAIRPERSON HILL: Yes.

7           SECRETARY MOY: Vice Chair Hart?

8           VICE CHAIRPERSON HART: Yes.

9           SECRETARY MOY: We have no other member present  
10 today. The motion carries, sir.

11           CHAIRPERSON HILL: Great. Thank you, Mr. Moy.

12           I request that the Office of Zoning provide notice  
13 of these closed meetings in accordance with the Act.

14           All right. Mr. Moy, is there anything else needed  
15 from the Board today?

16           SECRETARY MOY: Well, there's nothing else coming  
17 from the staff.

18           CHAIRPERSON HILL: Okay. Well, then there's  
19 nothing else coming from me.

20           Okay. We stand adjourned. Thank you.

21           (Whereupon, the hearing was concluded at 11:28  
22 a.m.)

23

24

25

**NEAL R. GROSS**

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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 Hearing

Before: DCBZA

Date: 10-25-17

Place: Washington, DC

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

*Neal R Gross*  
Court Reporter

**NEAL R. GROSS**

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