

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY  
JANUARY 24, 2018

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The Regular Public Meeting 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 10:06 a.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson  
LESYLLEE M. WHITE, Board Member  
CARLTON HART, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

The transcript constitutes the minutes from the Public Meeting held on January 24, 2014.

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

Case No. 19673, Application of Kim Ball . . . . . 3

Case No. 19581, Application of Latin American  
Montessori Bilingual Charter School . . . . . 5

Case No. 19572, Application of SIM  
Development, LLC . . . . . 10

Adjourn . . . . . 21

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

(10:06 a.m.)

1  
2  
3 MR. MOY: All right, thank you, Mr. Chair. So,  
4 we're back to convening the decisionmaking cases, the first  
5 being an expedited review case, which is Application Number  
6 19673 of Kim Ball, captioned and advertise for a special  
7 exception under Subtitle E, Section 5201 from the lot  
8 occupancy requirements of Subtitle E, Section 304.1, rear  
9 yard additional requirements, Subtitle E, Section 205.4.

10 This would construct a two-story rear addition to  
11 an existing one family dwelling, RF-3 Zone at 407-1/2, 4th  
12 Street, Southeast, Square 793, Lot 12.

13 CHAIR HILL: Okay. Is the Board ready to  
14 deliberate? Okay. So, this is again an expedited review and  
15 again, it had something to do with, well, the ten feet  
16 existing rule, the ten feet rule. After reviewing the record  
17 and then also the analysis provided by the Office of  
18 Planning, I didn't really particularly have a lot of issues  
19 with it. I thought that the Office of Planning did a good  
20 job in their analysis and I would agree with it.

21 In addition to that, the ANC 6B was in support.  
22 DDOT had no objection and AOC also had no objection, American  
23 Architect of the Capital. There was a letter in support from  
24 the resident there in 407 4th Street, Southeast. But again,  
25 my analysis will be primarily based on the report that was

1 provided by the Office of Planning, and I would be in  
2 agreement with it. Does anyone have anything to add.

3 MEMBER WHITE: No, I think this case was in order.  
4 The relief they requested was, you know, again for a special  
5 exception under the rear addition and lot occupancy rules,  
6 and there's quite a bit of support, as you said, Mr. Chair,  
7 including from the Capitol Hill Restoration Society.

8 None of the neighbors or the ANC seemed to have  
9 any issues with the relief that the applicant is seeking.  
10 So, I would, I would be in approval as well.

11 CHAIR HILL: Okay. All right. So, then I would  
12 go ahead and make a motion. So this is an expedited review.  
13 This is an expedited review. It's not a hearing, just to let  
14 everyone know who doesn't understand. And so, I would go  
15 ahead and make a motion to approve Application Number 19673  
16 as captioned and read by the Secretary and ask for a second?

17 MEMBER WHITE: Second.

18 CHAIR HILL: Motion made and seconded. All those  
19 in favor, aye? All those opposed? Motion passed, Mr. Moy.

20 MR. MOY: The staff would record the vote as  
21 three, to zero, to two. This is on the motion of Chairman  
22 Hill to approve the application for the relief being  
23 requested. Seconded the motion, Ms. White. Also, in support  
24 of the motion, Vice Chair Hart. We have a Board seat vacant.  
25 Mr. Shapiro is not participating. The motion carries.

1 CHAIR HILL: Is that it, Mr. Moy?

2 MR. MOY: Thank you.

3 CHAIR HILL: Thank you.

4 MR. MOY: Okay. I believe, Mr. Chair, going in  
5 order here, unless you tell me otherwise, the next case for  
6 a decision is Application Number 19581 of Latin American  
7 Montessori Bilingual Charter School. Captioned advertised  
8 for special exception under Subtitle U, Section 205.1(a), as  
9 in alpha.

10 This would establish a public charter school in  
11 R16 Zone at premise 5014 Street Northwest, Square 2711, Lot  
12 802. There's a preliminary matter in this application, Mr.  
13 Chair. There was a filing from a party opposition and that  
14 is in the case records under the title of, I don't have the  
15 copy in front of me, but the motion is to reopen the record.

16 VICE CHAIR HART: It's a motion to reopen the  
17 closed case.

18 CHAIR HILL: Okay. Great. Thank you, Mr. Moy.  
19 Let's see. So, normally I ask whether the Board's ready to  
20 deliberate. I'm not ready to deliberate, so we'll see what  
21 you all think about this. So, we are, Mr. Shapiro's not on  
22 this or the decision case, but he's welcome to sit here. I  
23 mean the next two decision cases but he's welcome to sit  
24 here. Oh no, well, he just left.

25 So, there's a motion to reopen the record, reopen

1 a closed case, I should say. And last, and this was, you  
2 know, the Board last week, I believe it was last week we were  
3 having deliberations, or it was a meeting, and I had asked,  
4 there was some discussions about some of the conditions that  
5 had been put forward.

6 In particular there was a discussion about the  
7 amount of time that one of the conditions had put forward  
8 before the applicant could apply to the Zoning Administrator  
9 to increase the certificate of occupancy to 600 people. Now,  
10 we had discussed taking it from 30-day notice to 90-day  
11 notice for the people that were in opposition, which was  
12 Cindy Law.

13 So, I thought, and this was an error on my part,  
14 I believe, and so I thought that bringing up people to  
15 clarify that was going to provide the Board with clarity, and  
16 therefore, you know, an expeditious manner with which to  
17 continue deliberations.

18 What that ended up doing was bringing up other  
19 people from the opposition, and, you know, I did not know it  
20 at the time, but there was the representative from the  
21 opposition was not there. And, also then, there were other  
22 people that hadn't been in the previous hearings and so they  
23 were also testifying.

24 And so, that turned into a whole, you know, an  
25 error on my part. So, to rectify that, I would be in

1 agreement with reopening the record in order to allow this  
2 motion to, and just OAG, if I'm doing this right, and we have  
3 to open the record to allow the motion in?

4 MS. GLAZER: Yes. You would reopen the record to  
5 allow filings and depending on what you wanted to do then  
6 allow responsive filings and set another date.

7 CHAIR HILL: So, I would go ahead and reopen the  
8 record to allow the motion to reopen a closed case into the  
9 record. I would also then based upon, you know, Subtitle Y,  
10 602.4, the Board may at its own motion reopen the record  
11 prior to making a final decision for the purposes of  
12 requesting additional submissions or conducting a further  
13 hearing on the designated issues.

14 The other regulation that is Subtitle Y, 602.5,  
15 notice of any further hearing need only be provided to the  
16 parties, only the parties. Notice of the reopened record and  
17 any further hearing, plus a designation of the issues shall  
18 be forwarded to any party who appeared and participated in  
19 the earlier hearing.

20 If only additional submission are requested, the  
21 notice shall identify which parties are required to make the  
22 submissions, which parties that may reply, and the time for  
23 doing so. If a further hearing is to be held, the notice of  
24 such hearings shall be sent at least ten days prior to the  
25 date set for the future hearing, further hearing.

1           So, what I believe the issues were that we were  
2 trying to find further clarification on were the conditions.  
3 And, in particular, there was the condition that was the 90-  
4 day. I mean, part of what, at least I was having the  
5 discussion on, and please, you know, with any other member  
6 would like to clarify or set forward, let me know, but was  
7 the clarification on the 90 days, as well as there was some  
8 discussion about adding the SMD, a parent from the SMD. So,  
9 I think it was 4, I can't remember, 02.

10           Yeah, so anyway, I can clarify when we're talking  
11 about, as well the next time. But the SMD, adding a parent  
12 from the SMD. So those are the only issues that I would be,  
13 and so it would be a limited hearing based upon the  
14 conditions that we started to again discuss at the last  
15 decision meeting.

16           And again, I'm going forward with this for, I  
17 think that, you know, I made an error in terms of asking for  
18 further discussion in what I thought was going to be  
19 something that would have been more efficient for the Board.  
20 And so, in order to again rectify that and add an abundance  
21 of caution, I want to make sure that we do this correctly.

22           So, that would be, since it's ten days, the  
23 closest we'd be able to do is ten days. So, that means the  
24 soonest we'd be able to be back here would be 14 days.  
25 However, it just so happens that Chairman Hood, who was the

1 person who's been here the whole time is going to be here on  
2 the following week. Okay?

3 So, I would then suggest to the Board that we just  
4 go ahead and do a continued hearing the following week. I  
5 feel that we would be able to get enough information that  
6 hopefully, we'd be able to make a bench decision that day,  
7 is what my thoughts would be. Mr. Secretary, you had a  
8 comment?

9 MR. MOY: Two things, Mr. Chair. The first one  
10 is the one that you were just speaking about. Mr. Hood would  
11 be returning back to the Board actually on February 14th.  
12 Right? And the second thing is, I just wanted to be sure,  
13 and I know the Board is aware of it, but I just want this,  
14 to note this into the record that there is a filing from the  
15 applicant opposed to the motion to reopen a closed case. So,  
16 I just want to state that for the record, that the Board is  
17 aware of, which is the response to the party opposition.  
18 That's all. Thirty, actually 166, that came in last night.

19 CHAIR HILL: All right. So, Mr. Moy, if the  
20 Board's all right, I would go ahead and allow that into the  
21 record, as well, although we're reopening the record now, so.

22 MR. MOY: We will return back to dates, so, we're  
23 looking at February 14th.

24 CHAIR HILL: Okay. So, again, I'm sorry that this  
25 happened the way it happened, but we want to make sure we're

1 doing this the right way. So, the 14th, we'll have a, we'll  
2 reopen the hearing and it will be limited. It will be a  
3 continued hearing limited to the issues that we had, as the  
4 Board had kind of discussed at the last decision meeting,  
5 which were the conditions.

6 Is that good, Mr. Moy? Ms. Glazer? Okay. All  
7 right. Okay. Any other comment? All right, thank you.  
8 We're just going to take a quick two-minute break.

9 (Whereupon, the above-entitled matter went off the  
10 record at 10:19 a.m. and resumed at 10:26 a.m.)

11 CHAIR HILL: All right, Mr. Moy, you ready to get  
12 back started here? I believe this next case is my  
13 colleague's. I was not here to chair but have read in and  
14 I'm ready to go whenever Mr. Moy calls it.

15 MR. MOY: Thank you, Mr. Chairman. It is 10:29  
16 reconvene. So, the next and last application for  
17 decisionmaking by the Board is Application Number 19572.  
18 This is of SIM, S-I-M, Development LLC. And as I read, this  
19 was captioned and advertised for variances from the  
20 nonconforming structure requirements, Subtitle C, 202.2, and  
21 the parking requirements of Subtitle C, Section 701.5.

22 No? I see shaking of the heads. Well, I'm going  
23 to, I'm going to consult with our General Counsel here  
24 whether it's 701.5 or 703.2. But anyways, this would add  
25 two-stories, containing 16 units to an existing two-story,

1 nine-unit mixed use building in the MU-4, at premises 1916  
2 15th Street, Southeast, Square 5766, Lot 842. And, Mr.  
3 Anthony Hood's participating. I have an absentee ballot from  
4 him.

5 VICE CHAIR HART: Thank you, Mr. Moy. It looks  
6 like this is Subtitle 703.2? Supposed to be?

7 MR. MOY: That's what I have but I just wanted to  
8 tee that up for discussion.

9 VICE CHAIR HART: Yeah, I was just looking at the  
10 agenda from the back of the room and I guess that one has  
11 701.5. So anyhow. Excuse me. So, is the, is the Board  
12 ready to deliberate? I can start.

13 This case, and I understand that the, that the  
14 applicant has reached out to some of the community through  
15 the ANC Subcommittee process. And they believed that was  
16 sufficient with understanding what the community needs were.

17 There was a larger community and they came out to  
18 this particular case, and they were vocal about some  
19 opposition to the development. And this was really around  
20 the issue of kind of height and density. I will say that the  
21 applicant is seeking relief from nonconforming structure,  
22 which is a variant and the parking requirements, which is a,  
23 which is a special exception. I think, that is a special  
24 exception, right? Yes.

25 So, the issue that I realized with this was, the

1 opposition's, the folks that came in that were opposing the  
2 project, they were really opposed to some issues that were  
3 not really being sought as relief. The height issue, the  
4 building's actually being constructed that is below the, or  
5 at or below the actual allowable height for the, for the  
6 area, and the comprehensive plan for the District also  
7 includes this information, as well.

8           So, this type of development was foreseen in both  
9 the zoning regulations and the comprehensive plan. And our  
10 job as a Board members is to look at the zoning regulations  
11 to, for us to understand what is being, what is allowed, and  
12 the applicant has sought relief from that zoning regulation  
13 and has gone through the process to do that.

14           We are supposed to be giving great weight to the  
15 Office of Planning report, as well as the ANC reports. The  
16 Office of Planning actually recommended to approve the  
17 project. ANC originally recommended to approve the project  
18 or support the project, but subsequently came back and  
19 revoked their support and came and testified to the project,  
20 and described how there were some issues with the, with a  
21 project that was being, with the application, itself.

22           So, regarding the lot occupancy relief, I agree  
23 with the Office of Planning report, which is Exhibit 35, that  
24 this is an existing building and that they are expanding an  
25 existing nonconformity, which is the exceptional condition.

1 And I believe that it met the first prong of the variance  
2 test.

3 I also believe that and agreed with OP report  
4 regarding the other two prongs, because, that they were met.  
5 And I felt that the applicant had made its burden of proof  
6 for the special exception for parking under Subtitle C, 702,  
7 excuse me, 702, gosh, I can't remember what the number is  
8 now. Yes, 702, I'm sorry, 701.5. Why do I have two  
9 different numbers here? Okay. I see it. Evidently the  
10 Office of Planning report had two different numbers in it.  
11 So, it is 703.2. I apologize for that.

12 I did believe that they met that burden as well,  
13 and the applicant did provide a TDM plan to DDOT. And DDOT  
14 accepted the plan and that was in Exhibit 57. And the DDOT  
15 also provided a condition for the BZA to include the TDM for  
16 the, in the BZA order, if we were to approve the application.

17 And I'll also bring up one other issue and that  
18 is that the, one of the people in opposition stated that they  
19 would, there might be an impact on the, from the Frederick  
20 Douglass house, which is a history property. And that OP had  
21 not examined this issue. Upon questions from the Board, OP  
22 responded that this wasn't a history district and OP didn't  
23 need to do an analysis.

24 I'll also bring up that the opposition didn't,  
25 hadn't actually provided any information supporting the

1 concern. They just noted that there might be an impact. The  
2 Frederick Douglass House is not an adjacent property, as it  
3 is a number of blocks south of the applicant's property.

4 And finally, I'll note that the applicant is not  
5 requesting height relief, and so that the relevance of the  
6 concern, well understood, is not as great in my mind.

7 The OP testimony also noted that the comprehensive  
8 plan called for this area to have a moderate density and the  
9 50-foot height limit is part of that. And so, therefore, I  
10 would be in support of the application that is moved, that  
11 has been put forward between, put forward to us. And that's  
12 it. Do any of the other Board members have any comments?

13 MEMBER WHITE: I would concur with your comments  
14 with respect to applicant meeting the variants test. I mean  
15 this was an application to construct two additional stories  
16 containing 16 units to an existing two-store, 19-unit mixed  
17 use building located on 1916 15th Street, Southeast.

18 And as you mentioned, the request was both for an  
19 area variance and a special exception. You know, the  
20 building is currently vacant and is currently configured as  
21 a nine-unit building. And it is nonconforming as it relates  
22 to lot occupancy at 91 percent.

23 Now, the ANC had a number of representatives here  
24 and I was very, I did give weight to what they said, and I  
25 could understand their concerns about some of the changes

1 that were going to be taking place, especially with respect  
2 to parking issues and just, you know, just overall changes  
3 with respect to the height. But as you noted, the applicant  
4 did have the ability to go up vertical in terms of adding the  
5 additional stories by right.

6 And, you know, there were a number of people that  
7 testified that lived near the property, and they expressed  
8 concerns about, you know, the increased density of the  
9 property, the ability of the surrounding neighborhood to  
10 adequately absorb the new demands for on street parking, and  
11 also there's a school across the street.

12 So, obviously in the city we all have to deal with  
13 parking issues, but it, there, you know, there will be some  
14 impacts as far as parking. But DDOT did review it and had  
15 recommended approval of the application.

16 Some other comments I had was that the applicant  
17 indicated that they were willing to abide by the community's  
18 benefit package that was in, I believe Exhibit 54, which is  
19 in the record, that included a number of things to  
20 accommodate some of the concerns that the community had, you  
21 know, providing three affordable units for inclusionary  
22 zoning, I think was one of them providing road and abatement.  
23 I think they're also willing to do some modifications on the  
24 brick color.

25 So, while I know that some of the things that they

1 suggested were good, it definitely did not reach the level  
2 of making the people that were here representing the ANC  
3 supportive of the application.

4           So, just taking in consideration the comments that  
5 were made, reading the record and reading the standards under  
6 the area variance test, I think also looking at OP's  
7 analysis, I would also concur that they did meet the standard  
8 of indicating that there were exceptional situations  
9 surrounding this particular property, and that they should  
10 be given the relief that they're seeking for this particular  
11 application.

12           CHAIR HILL: So, thank you. I thought that you  
13 all said it pretty well. It is obviously disappointing when  
14 everyone is not in favor of a project, but that's not usually  
15 what happens with us here. I thought that, you know, we  
16 heard a lot of testimony from the community and what I was  
17 again going to was, as what we always do, which is reviewing  
18 the standards as to whether or not the relief requested can  
19 be granted.

20           The variance test that I was kind of going through  
21 in terms of the application again, in terms of adding to a  
22 nonconforming structure, the structure is at 91 percent  
23 already. And so, you know, in order for them to build  
24 anything on top of it, they would have to get the variance  
25 approved.

1           And I thought that the height, they're within  
2 their height to go up to as high as they were going. The FAR  
3 wasn't going over, and then so I agreed with the first prong  
4 in terms of how the practical difficulty was being met. And  
5 I also agreed with OP's analysis in terms of the second and  
6 third prong.

7           The parking special exception, I was kind of  
8 looking at, you know, whether three additional spots were  
9 going to add much to the, or actually I was looking at DDOT's  
10 report and the information that was provided from the  
11 applicant as to how the three parking spaces should be also  
12 approved from the special exception.

13           I don't need to repeat all the things that you all  
14 did say, in terms, I did agree with your, you all's analysis.  
15 The one thing I would mention again, as you did, Ms. White,  
16 like the applicant on the last hearing did agree to honor the  
17 community benefits package that they had gone through, and  
18 then had also agreed to doing brick for the building, in  
19 order there was some concern about like historic Anacostia,  
20 and some discussions. And I believe that the applicant  
21 agreed to that.

22           I would go a little bit farther in terms that it's  
23 not something that we're putting in as a condition, but if,  
24 you know, the applicant could work with the community in  
25 order to, you know, if it's fully brick, or if it's, you

1 know, if they need to add different aspects of it but to make  
2 it so that they can do their best to make the community,  
3 working with the community on the design.

4           So, I didn't, again have any other further  
5 comments other than what you all have mentioned. And so, I  
6 do believe that they have met the standards for us to grant  
7 the relief requested and I would again like them to, you  
8 know, the developer to honor what they had said they would  
9 honor in their last hearing here. And, you know, again, note  
10 that we see these people every now and again, over and over  
11 again, and so we kind of find out whether people do, do what  
12 they say they're going to do, I'll move forward.

13           So, Mr. Vice Chair, I'm also in agreement with the  
14 application. Sure.

15           MEMBER WHITE: One question I have is whether or  
16 not we would incorporate the conditions from DDOT as part of  
17 the order, or whether or not that would be separate?

18           VICE CHAIR HART: Separate, what do you mean  
19 separate?

20           MEMBER WHITE: Whether or not they would interface  
21 with DDOT directly in order to make sure that the TDM package  
22 was followed?

23           VICE CHAIR HART: DDOT actually in their report  
24 requested that they would approve this. They would be in  
25 support of the application if the BZA included a condition

1 that the TDM would be incorporated into the order, but I'll  
2 look at the, I'll look at our AG's, OAG's office to make sure  
3 that --

4 MS. GLAZER: Yes, actually the regulations now  
5 require the TDM to be imposed as a condition of approval.

6 VICE CHAIR HART: And we would have a condition,  
7 a kind of bulleted condition that says that, that we would  
8 be incorporating it, as opposed to actually having the  
9 document.

10 MS. GLAZER: I don't think you need the document  
11 attached, but you need to reference it perhaps as an exhibit.  
12 Thank you. So, it sounds like, I can make a motion to  
13 approve Application 19572 of SIM Development. And this is  
14 pursuant to 11 DCMR, Subtitle X, Chapter 10, for variances  
15 for the nonconforming structure requirements of Subtitle C,  
16 202 and the parking requirement for Subtitle C, 703.2, to add  
17 two stories containing 16 units to an existing two-story,  
18 nine-unit mixed use building in the  
19 MU-4 at zone, at premises 1916 15th Street, Southeast, Square  
20 5766, Lot 845, with the condition that the TDM plan be  
21 included in the BZA order.

22 And do I have a second?

23 MEMBER WHITE: Second.

24 VICE CHAIR HART: All in favor say, aye? Any  
25 opposed? Mr. Moy, I think we have an absentee ballot, as

1 well?

2 MR. MOY: Yes, before I record the vote, Mr. Vice  
3 Chair, we have, in my hands an absentee ballot from Anthony  
4 Hood, who is participating on this application, and his  
5 absentee vote is to approve the application for the relief  
6 with any such conditions as the Board may impose.

7 I'd like to read into the record his written  
8 comments, if I may?

9 VICE CHAIR HART: That would be fine.

10 MR. MOY: It reads as follows, "The TDM measures  
11 are sufficient for only the amount of spaces asked for,  
12 period. This is unheard of for an application to provide an  
13 amenities package in a variance and special exception case.  
14 I ask that the applicant continue to work with the community  
15 for a win-win."

16 So, with that, Mr. Vice Chair, I would record the  
17 vote as four, to zero, to one. This is on your motion to  
18 approve the approve the application for the relief being  
19 requested including the TDM plan. Second of the motion, Ms.  
20 White, also in support. Chairman Hill and of course, Mr.  
21 Anthony Hood. We have a Board seat vacant. The motion  
22 carries.

23 VICE CHAIR HART: And this will be a for order,  
24 Mr. Moy?

25 MR. MOY: Yes, sir.

1                   VICE CHAIR HART: Thank you. Turn it back over  
2 to the Chair.

3                   (Whereupon, the above-entitled matter went off the  
4 record at 10:45 p.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: BZA

Date: 01-24-18

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.



-----  
Court Reporter

**NEAL R. GROSS**

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