

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY  
APRIL 18, 2018

+ + + + +

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 9:30 a.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson  
CARLTON HART, Vice Chairperson (NCPC)  
LORNA JOHN, Board Member  
LESYLLEE WHITE, Board Member  
MARCEL ACOSTA, NCPC

ZONING COMMISSION MEMBER PRESENT:

PETER MAY, Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

HILLARY LOVICK, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

The transcript constitutes the minutes from the Public Hearing or held on April 18, 2018.

A-G-E-N-D-A

Application 19134A of the Embassy of Zambia . . . . . 3

Application 18701C of 1247 ESE LLC . . . . . 12

Application 19659 of Federation of  
State Medical Boards . . . . . 15

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

9:42 a.m.

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CHAIR HILL: Good morning, everybody. The hearing will please come to order.

We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street NW. This is the April 18th public meeting of the Board of Zoning Adjustment, District of Columbia.

We are convening to act on a chancery application pursuant to the Foreign Missions Act 22 USC 4301-4316 and chapter 10 of the zoning regulations.

My name is Fred Hill, chairperson. Joining me today are mayoral appointees Lesyllee White and Lorna John. The federal representatives are Marcel Acosta representing the National Capital Planning Commission and Peter May representing the U.S. National Park Service.

Copies of today's meeting agenda are available to you and located to my left in the wall bin near the entrance door.

Please be advised this proceeding is being recorded by a court reporter and is also webcast live.

We must ask you to refrain from any disruptive noises or actions in the hearing room.

When presenting information to the Board please turn on and speak into the microphone first stating your name

1 and home address. When you're finished speaking please turn  
2 your microphone off so that your microphone is no longer  
3 picking up sound or background noise.

4 All persons planning to testify either in support  
5 or opposition are to fill out two witness cards. These cards  
6 are located to my left on the table near the entrance door  
7 and on the witness table.

8 Upon coming forward to speak to the Board please  
9 give both cards to the reporter sitting to my right.

10 Also if you wish to file written testimony or  
11 additional supporting documents today please submit 12 copies  
12 to the secretary for distribution.

13 If you do not have the requisite number of copies  
14 you can reproduce copies on a machine in the Office of Zoning  
15 located across the hall.

16 The order of procedure for Foreign Mission cases,  
17 statement of witness to the applicant, government reporting  
18 including U.S. Secretary of State, District of Columbia  
19 planning on behalf of the Mayor, reports and recommendations  
20 by public agencies, report of advisory neighborhood  
21 commissions, persons in support, persons in opposition.

22 Due to time constraints we are going to try to  
23 maintain those and further restrictions on time might be  
24 placed by the Board.

25 Because this is a rulemaking procedure no parties

1 and therefore no cross examination.

2           The decision of the Board in this legislative  
3 proceeding must be based exclusively on the public record.  
4 To avoid any appearance to the contrary the Board requests  
5 that persons not present engage the members of the Board in  
6 conversation.

7           Please turn off all beepers and cell phones at  
8 this time so as not to disrupt the proceeding.

9           At this time the Board will consider any  
10 preliminary matters as to whether a case should or shouldn't  
11 be heard today. Mr. Secretary, do we have any preliminary  
12 matters?

13           MR. MOY: Good morning, Mr. Chairman, members of  
14 the Board.

15           My understanding is we're going to start off with  
16 the Foreign Missions portion of the BZA but since I have the  
17 microphone for today's I'm going to say regular docket there  
18 are three cases that originally were scheduled for April 18.

19           They've been postponed and rescheduled to May 30,  
20 2018 and the three cases are case application number 19728  
21 of Patrick and Becky McGeehan, 19735 of Mi Casa Incorporated,  
22 19736 of Mi Casa Incorporated. So those are the three cases  
23 rescheduled to May 30.

24           And other preliminary matters can be addressed by  
25 the Board when that particular case application is called.

1 CHAIR HILL: All right, thank you, Mr. Secretary.  
2 So do you want to go ahead and call -- do you need to call  
3 the decision in front of us?

4 MR. MOY: Yes. This would be a request for  
5 modification of consequence to case application number 19134A  
6 as in alpha of the Embassy of Zambia.

7 This request for modification of consequence is  
8 to the time limit condition of BZA order number 19134 which  
9 would allow the temporary location of a chancery in the R-3  
10 zone at premises 2200 R Street NW, square 2512, lot 808.

11 And participating of course is yourself, Mr.  
12 Chairman, Ms. White, Ms. John, Mr. Peter May and Mr. Marcel  
13 Acosta.

14 CHAIR HILL: Okay, thank you, Mr. Moy. Is the  
15 Board ready to deliberate? Okay. I can go ahead and start.

16 I thought that this was relatively straightforward  
17 in terms of what the applicant the Embassy of Zambia is  
18 trying to accomplish.

19 They need a modification of consequence to the  
20 time limit so that they can finish their permanent chancery  
21 address and continue to use this location.

22 The Office of Planning submitted a report and I  
23 thought it was pretty detailed in terms of their thoughts as  
24 to how to continue the operation of the embassy there.

25 The ANC was served and we hadn't received any

1 reports from the ANC at this time.

2 DDOT is not required to be served on modifications  
3 of consequence and therefore we don't have any from DDOT.

4 The modification again is for an additional two  
5 years. So as I mentioned to allow them to complete their  
6 permanent chancery at 2419 Mass Ave.

7 I didn't really have a lot of thoughts. If anyone  
8 wanted to join. I thought that the embassy or the Zambian  
9 government had provided a statement to us.

10 And I also thought that the statement was very  
11 thorough. They again continued to mention the United States  
12 and Zambia has a successful relationship and when the U.S.  
13 wanted to expand its chancery's diplomatic compound in their  
14 capital Lusaka the Zambian government was generous and  
15 helpful and presented no obstacles for the American concept  
16 for altering and growing their embassy location.

17 I would also not want to be in the way of their  
18 being able to do this. So does the Board have anything else  
19 to add?

20 MEMBER WHITE: No, I agree with you, Mr. Chair.  
21 I think the point that they needed additional time in order  
22 to put together their financing for construction financing  
23 was a good line in terms of why they needed the additional  
24 time. So I would be in support of the application to not  
25 disapprove the modification.

1 CHAIR HILL: Okay, great. So I'm going to go  
2 ahead and make a motion not to disapprove the application  
3 number 19134A of the Embassy of Zambia as captioned and read  
4 by the secretary and ask for a second.

5 MEMBER WHITE: Second.

6 CHAIR HILL: The motion made and seconded. All  
7 those in favor aye.

8 (Chorus of ayes)

9 CHAIR HILL: All those opposed? The motion  
10 passes, Mr. Moy.

11 MR. MOY: Staff would record the vote as 5-0-0.  
12 This is on your motion, Chairman Hill, to not disapprove the  
13 modification of consequence. Seconding the motion is Ms.  
14 White. Also in support Mr. Peter May, Mr. Marcel Acosta and  
15 Ms. Lorna John. The motion carries.

16 CHAIR HILL: Is summary order -- I don't remember  
17 if we do a summary order.

18 MR. MOY: It's an order. This is a rulemaking.

19 CHAIR HILL: Okay. All right, thank you. Mr.  
20 Acosta, thank you for coming in. We're going to switch you  
21 out now for Vice Chair Hart and get on with the normal day.

22 I have to read this again, right? That's okay,  
23 I'll read it again.

24 So the first thing was the Foreign Missions and  
25 the embassy and now we're going back to our regular business.



1 But you get to hear all this again.

2 The hearing will please come to order. Good  
3 morning, ladies and gentlemen. It's a little different.

4 We're located in the Jerrily R. Kress Memorial  
5 Hearing Room at 441 4th Street NW. This is the April 18th  
6 public hearing of the Board of Zoning Adjustment, District  
7 of Columbia.

8 My name is Fred Hill, chairperson. Joining me  
9 today is Carlton Hart, vice chair, Lesyllee White and Lorna  
10 John, Board members. Representing the Zoning Commission is  
11 Peter May.

12 Copies of today's hearing and agenda are available  
13 to you and located in the wall bin near the door.

14 Please be advised this proceeding is being  
15 recorded by a court reporter and also webcast live.

16 Accordingly we must ask you to refrain from any  
17 disruptive noises or actions in the hearing room.

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19 turn on and speak into the microphone first stating your name  
20 and home address. When you're finished speaking please turn  
21 your microphone off so that your microphone is no longer  
22 picking up sound or background noise.

23 All persons planning to testify either in favor  
24 or opposition must have raised their hand and been sworn in  
25 by the secretary.

1           Also each witness must fill out two witness cards.  
2 These cards are located on the table near the door and on the  
3 witness table.

4           Upon coming forward to speak to the Board please  
5 give both cards to the reporter sitting to the table at my  
6 right.

7           If you wish to file written testimony or  
8 additional supporting documents today please submit 1  
9 original and 12 copies to the secretary for distribution.

10           If you do not have the requisite number of copies  
11 you can reproduce copies on a office printer in the Office  
12 of Zoning located across the hall.

13           The order of procedures for special exceptions and  
14 variances as well as appeals is also located in the bin as  
15 you enter the door.

16           The record shall be closed at the conclusion of  
17 each case except for any material specifically requested by  
18 the Board.

19           The Board and the staff will specify at the end  
20 of the hearing exactly what is expected and the date when the  
21 persons must submit the evidence to the Office of Zoning.

22           After the record is closed no other information  
23 shall be accepted by the Board.

24           The District of Columbia Administrative Procedures  
25 Act requires that the public hearing on each case be held in

1 the open before the public pursuant to section 405(b) and 406  
2 of that act.

3 The Board may consistent with its rules and  
4 procedures and the act enter into a closed meeting on a case  
5 for purposes of seeking legal counsel pursuant to D.C.  
6 Official Code 2-575(b)(4) and/or deliberating on a case  
7 pursuant to D.C. Official Code 2-575(b)(13) but only after  
8 providing the necessary public notice and in the case of an  
9 emergency closed meeting after taking a roll call vote.

10 The decision of the Board in cases must be  
11 exclusively based on the public record. To avoid any  
12 appearance to the contrary the Board requests that persons  
13 present not engage the members of the Board in conversation.

14 Please turn off all beepers and cell phones at  
15 this time so as not to disrupt the proceedings.

16 Preliminary matters are those which relate to  
17 whether a case will or should be heard today such as requests  
18 for postponement, continuance, or withdrawal, or whether  
19 proper and adequate notice of the hearing has been given.

20 If you're not prepared to go forward with the case  
21 today or if you believe that the Board should not proceed now  
22 is the time to raise such a matter.

23 Mr. Secretary, I think you already went through  
24 the preliminary matters, correct?

25 MR. MOY: Yes, I did, sir.

1 CHAIR HILL: So if anyone is here wishing to --  
2 whether or not we do take testimony or not, if you're wishing  
3 to testify either in support or in opposition if you could  
4 please stand and raise your hand and take the oath  
5 administered by the secretary to my left.

6 (Whereupon, the witnesses were sworn)

7 CHAIR HILL: All right, just so everyone knows  
8 here we are going to go in the order in terms of the agenda  
9 that was in the bin. We're not changing anything in terms  
10 of the order today.

11 Mr. Moy, whenever you like you can call our first  
12 decision case.

13 MR. MOY: All right. This is the second of three  
14 decision cases this morning.

15 This is case application number 18701C of 1247 ESE  
16 LLC.

17 This is a request for a two-year time extension  
18 of BZA order number 18701A approving a variance from the use  
19 provisions to operate a restaurant in the first floor space  
20 within an existing apartment house under section 330.5 in the  
21 R-4 district. This is at 1247 E Street SE square 1019 lot  
22 43.

23 The Board's decision was originally scheduled for  
24 April 4, 2018 but was postponed to today's date at the  
25 applicant's request.

1 CHAIR HILL: Okay, great. Thank you, Mr. Moy.  
2 Is the Board ready to deliberate? Okay. I can start if you  
3 like.

4 After reading through the record I did not  
5 particularly have an issue in terms of the time extension.  
6 The applicant had stated that they have an inability to  
7 locate a restaurant tenant yet in that area, but that several  
8 new residential developments are under construction in one  
9 of the exhibits.

10 And they also mentioned in one of the exhibits  
11 that there's like 700 units that might be coming online in  
12 the next two to three years.

13 From OP's report the application cites intense  
14 residential development within the surrounding neighborhood  
15 as potentially improving market conditions to better enable  
16 the applicant to find a tenant.

17 The space was originally designed and continues  
18 to be designed for commercial use. It was never used  
19 residentially and the space is not designed for such use.

20 The applicant has endeavored to rent the space and  
21 will continue to do so.

22 Again I thought that the argument that the  
23 applicant had made was justified. I was comfortable with the  
24 time extension.

25 One of the items that OP noted and I would also

1 agree with was that this -- I think this is their second time  
2 extension. I can't remember.

3 So they've had numerous time extensions. So this  
4 would be, thank you, the third. But if there are or could  
5 be possible extensions in the future they're going to have  
6 to really kind of provide extensive documentation as to how  
7 I think we could get to the point where we would approve  
8 that.

9 So does the Board have anything else they would  
10 like to add?

11 MEMBER JOHN: No, Mr. Chairman.

12 CHAIR HILL: I'm all alone up here today. All  
13 right. I'm going to go ahead and then make a motion to  
14 approve application number 18701C as captioned and read by  
15 the secretary and ask for a second.

16 MEMBER WHITE: Second.

17 CHAIR HILL: Motion has been made and seconded.  
18 All those in favor?

19 (Chorus of ayes)

20 CHAIR HILL: All those opposed? Motion passes,  
21 Mr. Moy.

22 MR. MOY: Staff would record the vote as 5-0-0.  
23 This is on the motion of Chairman Hill to approve the request  
24 for the two-year time extension.

25 Seconding the motion is Ms. White. Also in

1 support is Mr. Peter May, Ms. Lorna John and Vice Chair Hart.  
2 The motion carries.

3 CHAIR HILL: Thank you. Summary order.

4 MR. MOY: Yes, sir. The third case application  
5 for decision in this meeting session is case application  
6 number 19659 of the Federation of State Medical Boards. And  
7 this application as amended for special exception from the  
8 use provisions under subtitle U section 203.1(n) to use the  
9 existing residential building as an office building for a  
10 non-profit organization in the R-3 zone at premises 2118  
11 Leroy Place NW square 2531, lot 49.

12 This was last heard by the Board on February 21,  
13 2018. The Board closed the record and requested proposed  
14 findings of fact and conclusions of law from the parties as  
15 well as proffered conditions from the parties and the Office  
16 of Planning's response to the filings.

17 And those are in your case records, the draft  
18 findings of fact and conclusions of law from the applicant  
19 under exhibit 150. Also from the Sheridan-Kalorama  
20 Neighborhood Council and the Sheridan-Kalorama Historical  
21 Association under exhibit 152 and OP supplemental report  
22 under exhibit 153.

23 CHAIR HILL: Okay. Is the Board ready to  
24 deliberate? Okay. I don't think I'll be alone on this  
25 conversation, right?

1           COMMISSIONER MAY: You practically took yesterday  
2 off.

3           CHAIR HILL: Yes, I was. The vice chair was the  
4 chair yesterday. We had a long day yesterday.

5           Let's see. Okay. So we're again just so everyone  
6 knows we're here for a decision case. We're not going to be  
7 taking any testimony or hearing from anyone.

8           I guess I'd start -- it took a long time to even  
9 get kind of caught back up again in this for me meaning it  
10 was kind of like three hours of reviewing everything to get  
11 back to the point where I was able to kind of like process  
12 or continue to process.

13           I'd like to start by saying again that this was  
14 very contentious. It had a lot of community opposition and  
15 the ANC was opposed.

16           I again thought -- the ANC, there's two members  
17 of the ANC. But they were opposed to the application.

18           I can understand why the community would want to  
19 try and oppose this because they I guess might have a perfect  
20 or I shouldn't say perfect. They have an idea as to how this  
21 property could be used and who they might want to be there  
22 in terms of adverse impact to the neighborhood.

23           And so I was kind of just -- I continued to go  
24 back to the regulations in terms of how I was trying to  
25 process this.



1           And I guess what I was thinking was that we could  
2 kind of get through, or if we could get through kind of the  
3 threshold questions and issues and then see if we get to  
4 where we might be talking about whatever further discussion  
5 or deliberations in terms of the conditions.

6           And just again for the record Ms. John is not on  
7 this. She wasn't here at the very beginning so it's just the  
8 four of us here.

9           I guess the first threshold question was is it a  
10 non-profit organization. And I thought, I mean this was  
11 hours and hours of testimony that we took and the threshold  
12 issues were things that we focused a lot on.

13           And I thought that the applicant through the  
14 record and the testimony had shown that they were a non-  
15 profit organization. They provided their articles of  
16 incorporation, the testimony of the mission statement, and  
17 that FSMB is a 501(c)(6) organization and there's nothing  
18 within our zoning regulations that say that the non-profit  
19 had to be a 501(c)(3).

20           Even under the ZR '16 definition of the non-  
21 profits I wouldn't want us to now kind of lock ourselves into  
22 a 501(c)(3) definition. So I was comfortable with that first  
23 threshold question in terms of whether or not they were a  
24 non-profit.

25           The next was whether or not the building was over

1 10,000 square feet. I again thought that in the record and  
2 through the testimony the applicant had shown that they're  
3 meeting the 10,000 square feet requirement and that was also  
4 in exhibit 138A was showing how they're meeting the 10,000  
5 square feet.

6 And then in addition OP testified that the  
7 materials that they presented demonstrated how they're  
8 meeting the 10,000 square feet minimum, that threshold issue.

9 Then the other was that the zoning administrator  
10 at the end of the day will also determine whether or not  
11 they're over the 10,000 square feet and if not then they'll  
12 be back before us for a variance which turned this into a  
13 whole 'nother thing in terms of whether or not you get past  
14 that issue.

15 The third was is the building -- the residential  
16 property. I thought again through the record and the  
17 testimony that the applicant has proved the building is an  
18 existing residential property because it is in a residential  
19 zone.

20 So those were the three issues in terms of just  
21 the threshold questions in terms of whether or not we can get  
22 to the next round of deliberations.

23 And so does anyone want to participate in the  
24 threshold questions?

25 MEMBER WHITE: Thanks, Mr. Chair. I would concur

1 with your assessment. I'm not going to just rapidly repeat  
2 what you just said, but I would like to note that this was  
3 a case that we put a lot of time into.

4 I think the testimony was like five hours  
5 altogether because it was a number of days. So I think we  
6 were very methodical, thoughtful, gave everyone a chance to  
7 be heard.

8 There were two party status requests in  
9 opposition. There were also a number of neighbors in that  
10 block that had serious concerns about having a non-profit  
11 organization work out of that building.

12 But one thing I would note also is that that  
13 particular building had been used as a chancery and an office  
14 for many years, but that doesn't erase the fact that the  
15 neighbors and the community had a right to weigh in on what  
16 comes in.

17 We also reviewed a number of the conditions so I  
18 won't get into that. I think you just wanted to kind of get  
19 a sense of whether or not from my perspective that they were  
20 able to meet the special exception criteria as a non-profit  
21 use in an existing residential building under subtitle U  
22 203.1(n). It's also 203.1.

23 And I do concur that I believe that the Federation  
24 of State Medical Boards provided ample testimony to show that  
25 they were indeed meeting that threshold.

1 I would also note that the ANC submitted some  
2 opposition. I gave it weight, but they didn't really get  
3 into specific issues I believe that they had some concerns  
4 with. So obviously we give ANCs great weight but they have  
5 to state specific issues of concerns that they have and I did  
6 not pick up in the record unless I'm mistaken that they  
7 expressed some specific things in writing that they had  
8 concerns with.

9 They just had concerns about the project overall.

10 I have other comments regarding the conditions but  
11 I'll just stop here just with respect to the threshold  
12 special exception criteria.

13 CHAIR HILL: I appreciate that. Thank you.

14 COMMISSIONER MAY: So just on the threshold  
15 question I agree with your conclusion that it's a residential  
16 building for the purposes of this case because it's in a  
17 residential zone.

18 With regard to the non-profit status I would also  
19 agree with that conclusion. I think there are parallels  
20 between the IRS regulations and the zoning regulations that  
21 could give the impression that it really should just be  
22 501(c)(3) but it is not in the regulations that way and I  
23 think that for the purposes of zoning I think that this  
24 organization does meet the standard for being a non-profit.

25 It is a valid question about whether the zoning

1 regulations should be tightened up a little bit to make sure  
2 that the use is appropriately limited and to maybe address  
3 the question of whether it should be 501(c)(3) but of course  
4 the BZA is not the Zoning Commission and BZA has to go by  
5 what the Zoning Commission has written and I think that this  
6 meets that standard.

7           And I agree on the square footage issue. That  
8 seems pretty clear to me and ultimately is up to the zoning  
9 administrator to concur so we leave that. We can accept that  
10 what's been certified to us and then for the applicant's sake  
11 they'll have to make sure that they're right, that the zoning  
12 administrator agrees with that. So that's it.

13           CHAIR HILL: Mr. Hart.

14           VICE CHAIR HART: Just to add my two cents. I  
15 have also thought that these were threshold questions and I  
16 thought both parties laid out their cases for each one of  
17 them.

18           After reading through all of it I would also  
19 concur that the applicant has met the -- they have met the  
20 burden to prove that they are a non-profit, that the building  
21 does have 10,000 square feet and that it is an existing  
22 residential building.

23           Because you all have actually already discussed  
24 the things I was going to discuss I won't continue any  
25 further.

1 CHAIR HILL: Okay, great. And I appreciate some  
2 of the comments that just got brought up in terms of I  
3 thought that both parties have spent a tremendous amount of  
4 time and energy in getting us to this point in terms of the  
5 findings of fact and conclusions of law, in terms of all the  
6 testimony and both again parties I thought put together a  
7 good case.

8 Again what Commissioner May mentions is that we're  
9 not the Zoning Commission and so we follow what the Zoning  
10 Commission does and what the regulations state.

11 And so whether or not we personally would want  
12 something like this to happen in our neighborhood is really  
13 kind of not at issue here. It's the analysis of the  
14 standards within the regulations.

15 So we've gotten through the threshold questions  
16 and now I kind of wanted to talk about the conditions I  
17 suppose in terms of there was a big list of conditions and  
18 there were some discrepancies in terms of what the applicant  
19 had provided and also what the party in opposition had  
20 provided and then also what the Office of Planning had  
21 provided.

22 I thought that again for the party in opposition  
23 this is where kind of the rubber met the road for me in terms  
24 of what they as a community could possibly hope to help  
25 alleviate any adverse impact that they might see in terms of

1 this application.

2 To your point, Ms. White, again that this was a  
3 chancery before and there was a lot of discussion as to how  
4 actually -- how at use that chancery was, like how many  
5 people actually came in and out of there and I think there  
6 was some testimony that like 40 people or something, I can't  
7 remember, I think something like that.

8 But it was just testimony and it didn't sound to  
9 me also that like there was 40 people there all the time or  
10 anything like that at least from the community standpoint.

11 So I'm going to kind of walk through I guess these  
12 conditions just because I want to make sure we're all on the  
13 same page and hear what your all's thoughts are.

14 I basically thought that -- well, cutting to the  
15 chase for me all the conditions we can kind of walk through  
16 and they seemed more or less similar except for kind of what  
17 I had always been curious about was how many employees are  
18 actually going to be able to be there onsite.

19 The applicant had asked for 15 I think and then  
20 5 temporary. And the temporary people as we were going  
21 through the testimony how do you know they're temporary.  
22 Somebody might be there for a three-month period and then  
23 that person gets replaced so ultimately you're still going  
24 to have maybe 20 people there.

25 And then the party in opposition, the answer to

1 the Office of Planning, they were requesting or put a maximum  
2 at 15.

3 Now, as we were going through the testimony itself  
4 how the applicant got to 15 seemed somewhat random I guess.  
5 They said that they had so many people that they were trying  
6 to bring in to this location from their I think offices in  
7 Texas I think.

8 But again what I was trying to figure out was the  
9 adverse impact. And since there are people here and we're  
10 basically walking through this together that street -- the  
11 street is a one-way street. It's a narrow one-way street and  
12 so it's kind of like -- I'm sorry.

13 And then the other thing that I was trying to  
14 figure out was meetings and receptions and things that might  
15 take up in the evening or what have you. People kind of  
16 coming and going.

17 And that one-way street, people parking, getting  
18 out and making that kind of congested.

19 Again in terms of my thoughts as far as adverse  
20 impact I kind of just thought about who might have moved into  
21 that property also at another time. If this actually was a  
22 single family and they were able to use up the amount of  
23 space, 10,000 square foot home they might have receptions or  
24 fundraisers and those things actually have the valet parking  
25 out front. And then you're going to have even maybe more



1 issues.

2 I guess I'm going to kind of offer it up. I'm  
3 kind of torn between the 15-20 people. I don't think 20 is  
4 necessary because the applicant said that 15 was appropriate  
5 at one point.

6 And whether or not they had -- and I don't know  
7 whether an additional five people is really going to -- I'm  
8 going to wait to hear what the Board has to say, what you  
9 guys think as far as that issue.

10 I was kind of like 15 people and then 3 temporary,  
11 and then the temporary actually could be temporary.  
12 Somebody's microphone is on so someone else can go next.

13 And then the receptions at the end and the  
14 meetings. And I wasn't a big fan of the receptions. The  
15 thing in the evening. If they're going to get an opportunity  
16 to use this office, I'm sorry, this non-profit here then  
17 there's the hotel at the end of the block that they can rent  
18 space at.

19 And as has been testified this is a good thing for  
20 the organization if they can occupy this space. And I think  
21 they will be -- hopefully they will be a good neighbor  
22 because of all these things.

23 So I'm stuck on those two big issues and let  
24 anyone else go next.

25 COMMISSIONER MAY: So Mr. Chairman, having

1 absorbed all the different testimony about the number of  
2 people who might be working there I am quite comfortable with  
3 the notion that there would be a limit of 20 people.

4 The difference between 15 and 20 isn't that  
5 significant. It's a 10,000 square foot building which is an  
6 extremely generous amount of space for that number of people  
7 working in an office environment. I won't go into other  
8 commentary on this but that's 500 square feet per person, 20  
9 people.

10 They're not exactly overburdening the building and  
11 I can't believe that they would overburden the street. And  
12 I think that having people coming and going provided they are  
13 not all coming and going by car and blocking up the street  
14 and things like that I don't think it's really an issue.

15 Certainly the difference between 15 and 20 is not  
16 going to be a really huge difference.

17 So I'm very comfortable granting the applicant  
18 their request for 20. I think they started at 25 and then  
19 in the various discussions went to the 15 plus 5 temporary.

20 I think sorting out who's temporary and who's not  
21 is a challenging thing as a condition so I'm okay with 20.

22 Now, you want to talk about the receptions?

23 CHAIR HILL: No, let's do the number first. Okay.  
24 I still am stuck on the number but okay.

25 MEMBER WHITE: I mean I was actually willing to

1 kind of go down on the number but that's not an issue I think  
2 that I could go either way because the building is so large.

3           Obviously the community wants to have the number  
4 15. OP also weighed in and recommended the 15 number. So  
5 I was kind of stuck on 15 but I'll see what my other fellow  
6 Board members have to say about it.

7           CHAIR HILL: Mr. May, what do you think of 18?

8           MEMBER WHITE: Eighteen and a half.

9           CHAIR HILL: Okay.

10           VICE CHAIR HART: I did not have a strong feeling  
11 on 15 or 20. I'm sorry to be -- not to be definitive but I  
12 didn't think that 20 was an outrageous number. I'd be  
13 supportive of 20.

14           CHAIR HILL: I mean it took four hours just for  
15 me to get to this point. I'm just saying I think that's  
16 great. We're having this deliberation and this took hours  
17 and hours and hours of all of our lives.

18           And so I feel as though I'm more comfortable with  
19 like -- I know even though we're splitting hairs just an 18  
20 number only because the -- I guess there's a variety of  
21 reasons.

22           How they got to 15 was down from 25 and so I feel  
23 as though the community has put in a lot of time. They're  
24 concerned about a lot of things. And again whether or not  
25 two people does anything, does anyone have an opinion

1 strongly?

2 COMMISSIONER MAY: Well, I don't know. I forget,  
3 is the applicant going to not do the project if it's only 15?  
4 They're going to live with 15?

5 CHAIR HILL: Yes. I don't mind 18.

6 COMMISSIONER MAY: I don't mind 18 either.

7 CHAIR HILL: Okay. All right. So we're fine with  
8 18? Okay.

9 So now if somebody wants to talk about the  
10 receptions and the meetings and stuff then we can go there.

11 MEMBER WHITE: So there were some conditions that  
12 were set with respect to the meetings and events that they're  
13 having. And obviously there are concerns.

14 The community doesn't want to have parties going  
15 on there every day. That's understandable.

16 But I think based upon the testimony it doesn't  
17 appear that this non-profit is that kind of organization.  
18 This is a Federation of State Medical Boards.

19 So OP, the applicant as well as the opposition  
20 party weighed in on a condition with respect to annual  
21 meetings and events it read will not be held at the subject  
22 property and will be held offsite. Annual meetings and  
23 events will not be held at the subject property and will be  
24 held offsite.

25 The premises will not be rented out or used by

1 anyone other than the Federation of State Medical Boards for  
2 any types of parties or similar events. Fundraisers are also  
3 prohibited.

4 They can hold a maximum of 3 committee meetings  
5 per quarter during business hours not to exceed more than 15  
6 invitees per meeting.

7 One of these meetings per quarter may include a  
8 reception for the 15 invitees that will end by 8 p.m.

9 For me I thought that -- I'm pretty flexible on  
10 it but I still understand why the community wants to have  
11 some restrictions with respect to the level of meetings and  
12 events that are going on.

13 And if it was something on a larger scale then the  
14 applicant would be required to hold the event offsite.

15 I thought the opposition party's language was also  
16 good. It was a little bit more restrictive. But I was  
17 leaning towards the Office of Planning's language.

18 COMMISSIONER MAY: So the difference between the  
19 Office of Planning's language and the applicant's request  
20 seems to be for the quarterly meetings the applicant wanted  
21 25 invitees versus 15 and they wanted to have a reception.  
22 The same restrictions on reception except that Office of  
23 Planning wanted to limit it to the 15 invitees to the  
24 quarterly business meeting and they wanted the reception to  
25 be limited to no more than 50 guests.

1           MEMBER WHITE: So I guess the question is if that  
2 50 number. I had some issues with the 50 number but I'm  
3 willing to listen to your --

4           COMMISSIONER MAY: Well, I don't recall  
5 specifically what the idea was behind the 50 but it seems  
6 like it has to do with spouses or guests or things like that  
7 that would be in town for the meetings as well.

8           It seems like it's potentially a lot, that there  
9 would be one meeting per quarter that would have a reception  
10 with 50 people. So that means every three months there's  
11 potentially a big party that could be blocking up the street  
12 with valet parking and everything else. So I think that's  
13 problematic.

14           But I'm not sure that there should never be a  
15 meeting of that size. So I mean one reception per quarter,  
16 maybe the way to do it is to keep with the Office of  
17 Planning's conditions but allow them to have one reception  
18 per year that goes up to 50.

19           CHAIR HILL: So again -- and normally we don't go  
20 through this to this level. And again we're going through  
21 it to this level because we've been involved in this for  
22 quite some time.

23           I don't necessarily think the receptions are  
24 something that I would want to get involved in. The Office  
25 of Planning -- and 15 to me sounds like kind of a low number

1 in terms of having your quarterly meetings. Like they could  
2 do the quarterly meetings at 25 people and do the reception  
3 for 25 people that ends at 8 p.m. and I don't think that --  
4 if you're going to have a reception for 25 people if you  
5 really want to have a reception you're going to go offsite  
6 anyway then and have it.

7           And again I'm kind of looking at this that it's  
8 a great benefit for the non-profit to be there in the first  
9 place. As testimony was provided there was like commercial  
10 buildings and commercial things.

11           So again we're kind of getting to a splitting hair  
12 type of situation. But I even think that as the community  
13 was really talking about the adverse impact the evening stuff  
14 with the -- again that narrow one-way street with the valet  
15 parking and all that, that's really where I'm -- I don't want  
16 to do the evening stuff. At least I can't get onBoard  
17 necessarily with it so I could do 25.

18           If we did 25 people rather than 15 for just their  
19 committee meetings then I don't know what your all's thoughts  
20 are.

21           COMMISSIONER MAY: And then no evening receptions.

22           CHAIR HILL: No evening receptions.

23           COMMISSIONER MAY: Again I have to ask the  
24 question is the applicant going to live with that.

25           I mean I could go to 25 invitees per meeting and

1 no receptions. But it seems a shame that they would not be  
2 able to take advantage of that house to be able to use it for  
3 that purpose.

4 If they can live with it in order to get the  
5 approval then I could live with that.

6 VICE CHAIR HART: I look at it like this. The  
7 residents were very vocal about having traffic impacts that  
8 were associated with this building. This is one of them.

9 And I would think that we would be looking at this  
10 to be more restrictive. But -- more restrictive in terms of  
11 -- more restrictive in many ways but understanding that there  
12 may be once a year.

13 And I'm kind of okay with the once a year. The  
14 once a quarter seems a little bit frequent to me. So I would  
15 be more supportive of this if there were an annual meeting  
16 that they could have. I don't know if you want to go to the  
17 50 that's fine that will end by 8 p.m.

18 But it seems as though they could do that and the  
19 neighborhood would at least understand that that was  
20 happening once a year as opposed to once every three months.  
21 That's where I am.

22 CHAIR HILL: -- of the 25.

23 VICE CHAIR HART: Twenty-five is fine.

24 CHAIR HILL: What do you all think of the 25?

25 COMMISSIONER MAY: I'm fine with 25. That's



1 basically, that's the OP condition but change 15 to 25.

2 CHAIR HILL: Yes. And then an annual meeting once  
3 per year with 50 people.

4 COMMISSIONER MAY: Yes. Ending by 8 p.m.

5 CHAIR HILL: Ending by 8 p.m. Okay. Then the  
6 next one is the non-profit use will be approved for a period  
7 of five years.

8 The applicant was requesting that if we did --  
9 well, they don't want it to happen at all actually, but if  
10 the time limit did happen. And we were here yesterday for  
11 that time limit thing and like the time limit was the people  
12 -- well, anyway, it's good to be represented. That's what  
13 I'll say.

14 So the applicant was saying if the five years  
15 which I'm in favor of the five years so they have to come  
16 back and we can see how it happened, but if it happens that  
17 the request would run from the date of issuance of the C of  
18 O, the certificate of occupancy and so I'm fine with that.

19 COMMISSIONER MAY: Absolutely. I think this is  
20 the true test. The federation has to prove they're going to  
21 be a good neighbor in that five years.

22 CHAIR HILL: It sounds like a Star Trek episode.

23 Okay. All right. Then after that we get into  
24 kind of -- I don't even really know in terms of. So they  
25 talk about lighting. I don't really understand the

1 difference in terms of what the applicant had proposed.

2 COMMISSIONER MAY: Well, I think if there was  
3 lighting, security and window treatments under the opponents  
4 as opposed to FSMB will maintain security lighting at the  
5 rear of the property.

6 Lighting, security, window treatments shall be  
7 consistent with the style customary. Window treatments I  
8 just think is a little bit much. Security, lighting --  
9 sorry.

10 It says FSMB will maintain security lighting in  
11 the rear of the property and the neighbors are saying any  
12 lighting security and window treatments at the property shall  
13 be consistent with the style.

14 I mean, I think I'm okay with sort of combining  
15 those two because the one requirement is that they shall  
16 maintain security lighting in the rear of the property.

17 And I think that we can just add to that exterior  
18 lighting and security equipment will be consistent with the  
19 style customary for the neighborhood and leave it at that.  
20 I mean I just think window treatments are a little bit too  
21 much.

22 Does that make sense?

23 CHAIR HILL: Say that again.

24 COMMISSIONER MAY: So essentially taking the  
25 condition as the applicant had suggested it and adding to

1 that exterior lighting -- where it says exterior lighting in  
2 the second sentence add also and security equipment.  
3 Exterior lighting and security equipment will be consistent  
4 with the style customary to Sheridan-Kalorama and will be  
5 selected with neighborhood liaison.

6 Security equipment can be ugly. That's all I'm  
7 saying.

8 VICE CHAIR HART: Do we know -- style customary.  
9 Do we know what customary is?

10 COMMISSIONER MAY: Again it's going to be selected  
11 with the cooperation of the neighborhood liaison. I think  
12 that we'll get advice on customary.

13 VICE CHAIR HART: It's fine I just wanted to make  
14 sure that that was, you know.

15 CHAIR HILL: Okay. So the next one.

16 MEMBER WHITE: Obviously the whole issue of  
17 maintaining -- yes, we weren't going to do that, having a 24-  
18 hour person living in the house.

19 CHAIR HILL: So we're going with the applicant on  
20 number 11.

21 MEMBER WHITE: Yes, where they have 24-hour  
22 contact.

23 CHAIR HILL: All right. So number 12. Number 12  
24 seems the same.

25 COMMISSIONER MAY: Yes, highly similar.

1 CHAIR HILL: So we'll go with the opposition on  
2 number 12. It's just more language.

3 MEMBER WHITE: Well, the question is are you  
4 adding in the transportation demand management plan as part  
5 of a condition.

6 COMMISSIONER MAY: I think the TDM plan is already  
7 part -- is already a condition.

8 CHAIR HILL: Yes, I think it is. Okay, so what  
9 are we going with? The applicant, opposition?

10 COMMISSIONER MAY: Actually the opposition party  
11 is a little bit more flexible in that it doesn't state  
12 specifically that it has to be in the lower basement or the  
13 garage, it just has to be covered.

14 I mean I don't think it really matters.

15 VICE CHAIR HART: I don't have an opinion either  
16 way.

17 CHAIR HILL: All right, so then go with the  
18 opposition. I'm just going to read through all these at the  
19 end anyway. So number 13.

20 The opposition just want notices posted in the  
21 front and rear of the building. I would think that that  
22 looks bad. I would say the applicant's number 13.

23 COMMISSIONER MAY: Right. And they also --  
24 they're saying smokers have to smoke on Connecticut Avenue  
25 which I think is problematic.

1 CHAIR HILL: Well, they're medical Boards. They  
2 shouldn't be smoking anyway. I would think that that would  
3 be frowned upon.

4 COMMISSIONER MAY: Right.

5 CHAIR HILL: You would be shunned. All right, is  
6 that all of them?

7 COMMISSIONER MAY: There's a condition 14 about  
8 giving notice of plans to the ANC SK, SKHA and the two  
9 abutting properties. That's the applicant's condition.

10 CHAIR HILL: I thought the 14 from the applicant  
11 covered everything.

12 COMMISSIONER MAY: Yes.

13 CHAIR HILL: Okay.

14 COMMISSIONER MAY: It covers 15. There's a  
15 different number 14 under the opposition party which says  
16 that they'll be prohibited from administering any  
17 examinations on the property.

18 I don't think that's really necessary to include  
19 that prohibition. I mean I don't know if that's what the  
20 intention is.

21 CHAIR HILL: Okay. So are we just sticking with  
22 14 from the applicant?

23 COMMISSIONER MAY: Fourteen from the applicant and  
24 not 14 or 15 from the opposition.

25 CHAIR HILL: Okay. All right. All right, we're

1 going to take a quick break.

2 (Whereupon, the above-entitled matter went off the  
3 record at 10:33 a.m. and resumed at 10:42 a.m.)

4 CHAIR HILL: Okay, let's get started again. So  
5 where we were was -- so to kind of recap in terms of the  
6 deliberations here. And I'm repeating myself to a certain  
7 extent but there are standards that we use to examine whether  
8 or not cases should or shouldn't be approved.

9 And we are all in agreement that this applicant  
10 has met the standards with which to approve this agreement --  
11 I'm sorry, this application. And we've gone through some of  
12 those standards in detail in terms of how we believe that  
13 they meet the criteria.

14 And I clearly think they meet the criteria and we  
15 all seem to agree with that.

16 And now we're kind of going through the  
17 conditions. And I think the places where we are kind of  
18 changing some of those conditions, where -- and again this  
19 was trying to mitigate adverse impact on the community which  
20 also I think -- again the difference between 20 and 18 or 15  
21 I don't really think also is necessarily going to be a big  
22 difference.

23 However, we're trying to make sure that we can  
24 mitigate any possible issues that might happen there with the  
25 community as this project were it to move forward.

1           And I do also want to clarify in terms of kind of  
2 my position with the 15 that there was -- there was something  
3 about the Office of Planning and I thought there was even 25  
4 at one point on the table that the Office of Planning was  
5 approved.

6           In any case we're at 18 people for full-time  
7 employees onsite. Then the evening events or I should say  
8 the quarterly during business hour meetings are going to be  
9 the 25 invitees, 25 from 15.

10           And then there's going to be an annual evening  
11 reception that's going to end at 8 p.m. that the 25 people  
12 can bring a friend. And so there's going to be 50 people for  
13 their annual meeting once a year, or they can use it once a  
14 year.

15           And then also there's all of the discussions  
16 that's going to take place between the applicant and the  
17 community to make sure that all of this takes place.

18           There's also then the -- in terms of when -- and  
19 this is also good for the community to know that they're  
20 going to come back to us again in five years where we'll know  
21 whether or not -- whoever's here on the Board in five years.  
22 And we'll know if this actually was successful in terms of --  
23 and I don't see why FSMB wouldn't be successful in living up  
24 to the expectations that they are a good neighbor. It sounds  
25 like they're going to definitely do their best.

1           And I think that was it. Okay. Then I'm going  
2 to read through the conditions so that Mr. Moy you can know  
3 what we're doing.

4           And I guess I can read through the conditions  
5 first and then make a motion.

6           So the first condition again was we're going with  
7 the Office of Planning and I'm going to read through all of  
8 them.

9           There is to be no expansion of the existing  
10 building footprint and other external alterations are subject  
11 to approval by the D.C. Historic Preservation Office.

12           The second condition is the office hours of  
13 operation will be 8 a.m. to 6 p.m. Monday through Friday.

14           Staff and visitor parking will be in nearby  
15 garages only and on-street parking will not be allowed.

16           FSMB shall memorialize the restriction on street  
17 parking in the employee handbook. FSMB may utilize the two  
18 spaces in its own garage accessed from the rear of the  
19 property for its senior staff from time to time.

20           Condition number 4, a maximum of 18 people may  
21 work onsite.

22           Condition number 5, all deliveries will be  
23 restricted to weekday office hours.

24           Condition number 6, loading will be restricted to  
25 the alley.



1           Condition number 7, annual meetings and events  
2 will not be held on the subject property and will be held  
3 offsite. The premises will not be rented out or used by  
4 anyone other than FSMB for any type of party or similar  
5 event.

6           Fundraisers are also prohibited. FSMB may hold  
7 a maximum of three committee meetings per quarter during  
8 business hours not to exceed more than 25 invitees per  
9 meeting.

10           There will be an annual meeting or reception,  
11 whatever you want to call it, where it will end by 8 p.m. and  
12 will not exceed 50 guests.

13           Condition number 8, the applicant and the ANC  
14 shall establish a neighborhood liaison to provide a forum for  
15 concerns and provide information about activities to property  
16 owners within 200 feet of the subject property.

17           And the applicant shall designate one of its  
18 executive officers as its liaison to the forum which shall  
19 convene no less frequently than on a quarterly basis.

20           The proposed non-profit office use -- condition  
21 number 9. The proposed non-profit office use shall be  
22 approved for a period of five years.

23           However, the Board requests that this run from the  
24 date of issuance of the certificate of occupancy.

25           Number 10, FSMB will maintain security lighting

1 in the rear of the property. Exterior lighting and security  
2 equipment will be consistent with the style customary to  
3 Sheridan-Kalorama and will be selected with the neighborhood  
4 liaison.

5 Condition number 11, FSMB shall maintain a 24-hour  
6 emergency response service and provide contact numbers to the  
7 ANC neighborhood liaison and to all neighbors within 200 feet  
8 of the property.

9 Condition number 12, FSMB agrees to provide a  
10 dedicated space for at least three bicycles in the garage or  
11 lower basement area of the building.

12 Condition number 13, no smoking will be allowed  
13 anywhere on the premises and employees will be subject to the  
14 smoking policies contained in the FSMB employee handbook.

15 Condition number 14, applicant shall give notice  
16 and a copy of plans to the liaison, ANC, the SKNC, the SKHA  
17 and the two abutting neighbors whose properties abut the  
18 site, and to Mr. Guinee. And to Mr. Guinee.

19 So those are all the conditions. Okay. All  
20 right. So that being the case then I'm going to make a  
21 motion to approve application number 19659 as captioned and  
22 read by the secretary including all of the conditions that  
23 I just read and ask for a second.

24 VICE CHAIR HART: Second.

25 CHAIR HILL: The motion made and seconded. All

1 those in favor?

2 (Chorus of ayes)

3 CHAIR HILL: All those opposed? The motion  
4 passes, Mr. Moy.

5 MR. MOY: Staff would record the vote as 4-0-1.  
6 This is on the motion of Chairman Hill to approve the  
7 application for the relief requested along with the  
8 conditions as cited in your motion.

9 Seconding the motion is Vice Chair Hart. Also in  
10 support Mr. Peter May, Ms. Lesyllee White. No other member  
11 participating. The motion carries 4-0-1.

12 CHAIR HILL: Okay. Full order, Mr. Moy.

13 MR. MOY: Yes, sir.

14 CHAIR HILL: Thank you.

15 COMMISSIONER MAY: So, Mr. Chairman, the one thing  
16 that was not totally clear to me is the reference to the TDM  
17 plan as a condition. I mean it's referenced in one of the  
18 conditions but I thought that we had -- isn't adherence to  
19 the TDM plan, shouldn't that be a condition?

20 CHAIR HILL: All right. So do I need to remake  
21 the motion, Mr. Moy? We're going to add the TDM plan as one  
22 of the conditions.

23 MR. MOY: Mr. May can make a friendly amendment  
24 to that motion.

25 CHAIR HILL: All right, Mr. May.

1           COMMISSIONER MAY:     I would make a friendly  
2 amendment to include the TDM plan as an additional condition  
3 of the order.

4           CHAIR HILL:   All right, second?

5           VICE CHAIR HART:   Second.

6           CHAIR HILL:   All those in favor?

7           (Chorus of ayes)

8           CHAIR HILL:   All those opposed?   All right, Mr.  
9 Moy, if you'd add that to the conditions.

10          MR. MOY:   Thank you, sir.

11          CHAIR HILL:   And then still a full order.

12          MR. MOY:   Yes, sir.

13          CHAIR HILL:   Thank you.   Thank you.

14          (Whereupon, the above-entitled matter went off the  
15 record at 10:51 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DC BZA

Date: 04-18-18

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

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