

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA

2 Office of Zoning

3 Board of Zoning Adjustment

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9 PUBLIC HEARING

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13 9:50 a.m. to 4:08 p.m.

14

Tuesday, May 24, 2016

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19 441 4th Street, N.W.

20

Jerrily R. Kress Memorial Room

21

Second Floor Hearing Room, Suite 220 South

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Washington, D.C. 20001

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4 FREDERICK L. HILL, Board Member
5 JEFFREY L. HINKLE, Board Member
6 ANTHONY HOOD, Zoning Commission
7 CLIFFORD MOY, Board Secretary

8

9

10 Office of Planning:

11 STEPHEN GYOR
12 STEPHEN MORDFIN
13 ANNA CAHMBERLIN
14 ELISA VITALE
15 MEGAN RAPPOLT
16 STEVE COCHRAN

17

18 Other:

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20 MARLENE MCGUIRL
21 ANDREW P. MILLER
22 JOHN AQUINO
23 WILBERT WASHINGTON
24 RICHARD GROSSMAN
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1 Appearances Cont'd:

2

3 Other:

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5 JENNIFER WISDOM

6 JIM MARTIN

7 ERWIN ANDRES

8 SAMANTHA MAZO

9 TAALIB DIN UQDAH

10 STEPHEN DUPONT

11 JOHN LINAM

12 ANDRE BURWELL

13 MARTIN SULLIVAN

14 FRANK PROSCHAN

15 ROBERT HOLZBACH

16 KIRK SALPINI

17 CHRISTINE SHIKER

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

2 CHAIRPERSON HEATH: All right. The hearing
3 will please come to order. Good morning, ladies and
4 gentlemen. We're located in the Jerrily R. Kress
5 Memorial Hearing Room at 441 4th Street Northwest.
6 Today's date is May 24th, 2016, and we are here for
7 the public meeting and hearings of the Board of
8 Zoning Adjustment of the District of Columbia.

9 My name is Marnique Heath, Chairperson.
10 Joining me today is Anita Butani-D'Souza, Vice
11 Chairperson, Fred Hill, board member, Jeffrey Hinkle,
12 also board member, and Anthony Hood, a member of the
13 Zoning Commission sitting in as a member of the board
14 today.

15 Please be advised that this proceeding is
16 being recorded by a court reporter and is also being
17 webcast live. Accordingly, we must ask you to
18 refrain from any disruptive noises or actions while
19 in the hearing room. The Board's hearing procedures
20 and how we will process applications can be found on
21 the table by the back door.

22 All individuals wishing to testify today will
23 need to do two things prior to testifying. The first
24 is, anybody who wants to address the Board must
25 complete two witness cards. That's two witness cards

1 per person, and give those cards to the court
2 reporter seated to my right prior to testifying.

3 The second is you will now need to stand and
4 take the oath as administered by the board secretary,
5 Mr. Moy.

6 [Oath administered to the participants.]

7 CHAIRPERSON HEATH: Good morning, Mr. Moy.

8 MR. MOY: Good morning, Madam Chair and
9 members of the board. Full board today.

10 CHAIRPERSON HEATH: Yes.

11 MR. MOY: Yes. Well, thank you. I'd like to
12 say a few words for the record in reference to the
13 docket for today.

14 First, Madam Chair, we have a withdrawal on
15 Application No. 18916A. This is of 49th Street
16 Developer, LLC. And another case that has been
17 withdrawn is Application No. 19243. This is of S2
18 Florida Avenue, LLC. We have two cases postponed and
19 rescheduled to June the 14th, 2016. These cases are
20 19244 of Club Monaco, 19205 of William McGrath and
21 Susan Chen, and Application No. 19266 of Elonda
22 Edwards has been rescheduled to July 6th, 2016.

23 And that's it, Madam Chair.

24 CHAIRPERSON HEATH: All right. Thank you,
25 Mr. Moy. So we have two cases on our decision docket

1 today. Do you want to call the first, the expedited
2 review?

3 MR. MOY: That would be Application No. 19260
4 of Elizabeth and Phil Ash.

5 CHAIRPERSON HEATH: All right. Thank you.
6 So this is, as I said, on our expedited review
7 calendar, and so this applicant has waived their
8 right to a hearing. Is the Board ready to deliberate
9 on this? All right.

10 So I think this request seems pretty
11 straightforward, and from what I reviewed the
12 application is complete. They have support from
13 Office of Planning, ANC 1D, provided -- or gave
14 unanimous support and no objection from DDOT. There
15 are also no letters of support or opposition on this
16 case, so I would move that we approve the request for
17 special exception under 223, not meeting the lot
18 occupancy requirements under 403.2 to construct a
19 rear deck addition to an existing one-family dwelling
20 at 3240 19th Street Northwest.

21 MR. HILL: Second.

22 CHAIRPERSON HEATH: The motion has been made
23 and seconded. Any further discussion?

24 [Vote taken.]

25 CHAIRPERSON HEATH: The motion carries.

1 MR. MOY: Staff would record the vote as five
2 to zero. This would be on the motion of Chairperson
3 Heath to approve per the relief requested. Seconding
4 the motion, Mr. Hill. Also in support, Vice
5 Chairperson Butani, Mr. Hood, and Mr. Hinkle. Motion
6 carries, Madam Chair.

7 CHAIRPERSON HEATH: Thank you. Summary, Mr.
8 Moy.

9 MR. MOY: Thank you.

10 CHAIRPERSON HEATH: All right. So our time
11 extension case, if you would call that?

12 MR. MOY: Okay. That would be Application
13 No. 18511A, A as in Alpha. This is of Alleyoop, LLC.
14 And this is a request for a time extension for
15 property located at the rear of 1018 Irving Street
16 Northwest, Square 2851, Lot 837.

17 CHAIRPERSON HEATH: All right. Thank you.
18 This is a case that I know we asked questions of the
19 applicant back in January when this case was before
20 us, and we got some additional information. Some
21 things changed with some of the rationale behind the
22 request for time extension. But I still think that,
23 for me anyway, I don't know where the Board stands, I
24 still have a lot of questions here.

25 And so if the applicant could come forward I

1 think that would be helpful for the Board.

2 All right. Good morning.

3 MR. SULLIVAN: Good morning.

4 CHAIRPERSON HEATH: If you could introduce
5 yourselves?

6 MR. SULLIVAN: Thank you, Madam Chair. My
7 name is Marty Sullivan with the law firm of Sullivan
8 and Barros.

9 MR. GARDENER: And Greg Gardner, 753
10 Development, and also Alleyoop, the property owner.

11 CHAIRPERSON HEATH: Okay. All right. So
12 when this time extension request was before us in
13 January we asked that you strengthen your argument.
14 At that time, you talked about the lack of ability to
15 secure tenants based on market conditions, for artist
16 lofts, that there just wasn't that demand. And so I
17 think the first question that I have is whether or
18 not that still is the case, and whether you've come
19 up with another -- really, you made that a secondary
20 argument.

21 MR. SULLIVAN: Yes.

22 CHAIRPERSON HEATH: And your primary argument
23 is this permit.

24 MR. SULLIVAN: Yes. The primary argument is
25 the permit issue. And I have one other thing that I

1 could pass out on that, a little additional
2 information. It's a statement from the Office of the
3 Councilmember Nadeau, which specifically talks about
4 the project not being able to move forward because of
5 the legislation, if that helps secure --

6 CHAIRPERSON HEATH: Regarding the lack of
7 address?

8 MR. SULLIVAN: Yes.

9 CHAIRPERSON HEATH: Okay.

10 MR. SULLIVAN: I also have a list of 10 or so
11 of the most recent extension cases, just pointing out
12 almost all of them relate to financing
13 considerations, and the burden of proof is usually
14 just a statement from the applicant saying that it's
15 tough economic conditions.

16 The demand for the artist studio issue is
17 there, but not as easily verifiable as this was.

18 CHAIRPERSON HEATH: So before you distribute
19 that have you all been out in the market looking? Or
20 have you looked -- like, how have you determined that
21 the artist lofts are not really viable at this time?
22 I think that was the information that we were looking
23 for originally. What have you done? Have you
24 marketed and not found any -- not received any
25 responses? Or like, what's been the effort that

1 you've put forward?

2 MR. GARDENER: Well, our primary problem with
3 obtaining artists is the rate at which we need to
4 lease based on the cost of the renovations. So we
5 are working on other artist space in Northeast D.C.
6 and we know what the market rate is, and we are
7 almost twice that for a lease rate to recoup our
8 costs.

9 But really the primary reason from back in
10 August when we tried to file a building permit is
11 we're not able to, because we're not able to obtain
12 addresses for the property.

13 MS. BUTANI-D'SOUZA: Can you clarify when you
14 say that you tried to file a building permit? What
15 does that mean, exactly?

16 MR. GARDENER: I took paperwork to DCRA to --

17 MS. BUTANI-D'SOUZA: What kind of paperwork?

18 MR. GARDENER: Drawings.

19 MS. BUTANI-D'SOUZA: Did you submit those
20 drawings?

21 MR. GARDENER: I was not able to submit the
22 drawings because --

23 MS. BUTANI-D'SOUZA: It would be helpful if
24 you're going to put forward an argument that you
25 couldn't submit for a permit, that you actually

1 provided some evidence that you couldn't submit for a
2 permit rather than just stating it.

3 MR. SULLIVAN: That's what I want to submit
4 here. I believe I submitted some --

5 MS. BUTANI-D'SOUZA: It would have been
6 helpful if you --

7 MR. SULLIVAN: -- a couple weeks ago, but I
8 have some additional evidence here.

9 MS. BUTANI-D'SOUZA: It would have been
10 helpful if you could have submitted that to the
11 record prior to this morning.

12 MR. HOOD: Madam Chair, can I ask a question?

13 CHAIRPERSON HEATH: Sure.

14 MR. HOOD: You mentioned that you were
15 working in Northeast D.C. I'm just curious, is the
16 artist studio folks on New York Avenue, you're
17 working with?

18 MR. GARDENER: No, we have a building on
19 Montana Avenue Northeast.

20 MR. HOOD: 1800 block of --

21 MR. GARDENER: Yes.

22 MR. HOOD: -- Montana? 1800 block of
23 Montana?

24 MR. GARDENER: Yeah, actual 1800 Montana
25 Avenue Northeast.

1 MR. HOOD: And how far -- what's going on
2 with that?

3 MR. GARDENER: We have been under a contract
4 to the building since January, but we've actually
5 closed on the building about six weeks ago. So now
6 we're working on drawings to get a permit to renovate
7 the building.

8 MR. HOOD: So you're familiar with this
9 location of another group --

10 MR. GARDENER: I am.

11 MR. HOOD: -- on New York Avenue. You're
12 familiar with that whole process?

13 MR. GARDENER: I am.

14 MR. HOOD: And have you tried to solicit some
15 to come over there but I guess the resents maybe too
16 high for them? I'm just curious of what's going on
17 with all that.

18 MR. GARDENER: Sure. We did speak with the
19 people at, is it 411 --

20 MR. HOOD: Yeah.

21 MR. GARDENER: -- New York Avenue.

22 MR. HOOD: So, you know, you were at those
23 hearings with --

24 MR. GARDENER: I did not go --

25 MR. HOOD: Were you at those hearings --

1 MR. GARDENER: -- to the Zoning Commission
2 hearings.

3 MR. HOOD: -- where 300 people came down
4 there in front of us? Okay. Okay.

5 MR. GARDENER: But I actually have met with
6 two groups of tenants --

7 MR. HOOD: Okay.

8 MR. GARDENER: -- from 411.

9 MR. HOOD: Are you still --

10 MR. GARDENER: Our lease rates are higher
11 than what they're paying now, but they're still
12 around the \$12 per square footage.

13 MR. HOOD: Okay. And just for the record,
14 the folks over at 1800 Montana do care about what
15 goes on in the neighborhood. That was stated to me
16 at a hearing and I took that to be very offensive.
17 But anyway, I just wanted to let you know that since
18 you are the person who is at 1800 Montana. Thank
19 you. Thank you, Madam Chair.

20 CHAIRPERSON HEATH: Sure. So, another
21 question regarding this information that you just
22 gave us. So, application was approved by the Board
23 two years ago. What was happening during the time
24 period between when you gained your initial approval
25 and when you submitted the time extension request?

1 MR. GARDENER: After we gained approval on
2 the project it was a negotiation down to the smaller
3 two story, three-lot structure. And it was, for us,
4 it was not financially viable to build. We actually
5 marketed the building with the variance for sale for
6 about four months. And we did not have any offers
7 that were accepted. We ended up changing out some of
8 the investors on the project for the goal of
9 eventually building the project as approved.

10 CHAIRPERSON HEATH: With the artist lofts?

11 MR. GARDENER: The artist lofts.

12 CHAIRPERSON HEATH: Okay.

13 MR. GARDENER: We then tried to market
14 specifically the office space inside the building
15 because we felt it was the most valuable and it was
16 financially feasible. But we never have marketed the
17 artist space as artist space, on an MRIS listing.
18 Only on signage on the property.

19 MS. BUTANI-D'SOUZA: What did you market it
20 as? What did you market it as?

21 MR. GARDENER: As office flex space.

22 MS. BUTANI-D'SOUZA: Okay.

23 MR. GARDENER: So we were able to direct
24 traffic to the property location and discuss with
25 people the uses. With the alley property, even when

1 we were trying to market the property for sales, it
2 is very difficult of what people wanted to use it for
3 and what they thought they could use it for, and the
4 reality of what was allowed by zoning.

5 MS. BUTANI-D'SOUZA: So can you help me
6 understand, is it your intention to ever build artist
7 space here?

8 MR. GARDENER: I do not see financially how I
9 can build artist space here, no.

10 MS. BUTANI-D'SOUZA: So then why are you
11 asking us to extend this order? It seems to me that
12 you've submitted a separate order for a completely
13 different use and you're asking us to extend
14 something that you have, by your own admission, no
15 intention of building. It just seems like you're
16 trying to preserve an option that you're not actually
17 going to use.

18 MR. SULLIVAN: I think that's it, we are
19 trying to preserve a development option that's better
20 than no option. So he may not prefer --

21 MS. BUTANI-D'SOUZA: How is it better than no
22 option if it's upside down?

23 MR. GARDENER: The space may be marketable to
24 another user, an end-user may be able to take on the
25 space. Nonprofits may be able to buy the space and

1 then give it out to artist use. So us, as an
2 owner/landlord, probably not. But to build the bulk
3 as approved is an option I want to move forward with
4 if given no other options.

5 MS. BUTANI-D'SOUZA: So you do intend on
6 building this even though you don't have tenants?

7 MR. GARDENER: Correct.

8 CHAIRPERSON HEATH: If this is your only
9 option.

10 MR. GARDENER: If this is my only option.

11 CHAIRPERSON HEATH: What sort of due
12 diligence did you do before buying this property?
13 Any?

14 MR. GARDENER: It was a very quick purchase.
15 We were aware of some environmental conditions. We
16 were aware there was fire damage on the building.
17 The extent of the environmental remediation, we did
18 not know. And the condition of half the building's
19 roof is a concrete structure. We did not realize it
20 was not salvageable. Water infiltration, rebar
21 deterioration. It's a solid concrete beam and solid
22 concrete roof structure on about two-thirds of the
23 lot. We weren't aware that it wasn't salvageable.

24 MS. BUTANI-D'SOUZA: So, sorry. So what kind
25 of investigations did you do prior to purchasing?

1 Did you know that it was previously used as an auto
2 repair shop?

3 MR. GARDENER: Oh, so we were aware that it
4 was used as an automotive repair shop. We were aware
5 that it had a C of O active for automotive repair.
6 And we were aware -- we did a phase 1 environmental
7 and had contracted a phase 2 environmental. So we
8 were aware of the environmental conditions.

9 MS. BUTANI-D'SOUZA: Okay. So that's not a
10 surprise, so you should have factored that into your
11 pro forma.

12 So did you have a structural engineer or any
13 kind of inspection done on the actual structure?

14 MR. GARDENER: Post acquisition. It's in the
15 record of the original case as well.

16 MS. BUTANI-D'SOUZA: Can you help me
17 understand. When you originally submitted this
18 request for extension, in the letter that you've
19 submitted you called your previous request a very
20 preliminary statement that did not include nearly
21 enough information to justify an extension. Can you
22 help me understand why you waited until days before
23 this expired to put this extension in?

24 MR. SULLIVAN: I think we filed -- I don't
25 know why we filed, when we filed. I know the

1 deadline is to file prior to the order's deadline.
2 And I'm not aware of any requirement to file earlier
3 than that. But we filed the request prior to the
4 deadline and then that tolls the expiration of the
5 order.

6 MS. BUTANI-D'SOUZA: What I'm troubled by is
7 that you filed before the deadline but you filed with
8 something that, by your own admission, is not nearly
9 enough information to justify an extension. And that
10 troubles me because it doesn't seem to me to be
11 appropriate to put forth an argument that you know is
12 essentially --

13 MR. SULLIVAN: I said that after the fact,
14 not when we filed. When we filed, I filed a general
15 statement, and then the Board told me that that was
16 not enough information. And so and then I agreed
17 with the Board, yes, it was not enough information.

18 And in the meantime I had information that
19 the applicant had already given to me but I had
20 failed to notice about the alley naming. And I said,
21 well, that's a much more clear-cut example.

22 When it comes to extensions I don't believe
23 the Board in the past, has considered the due
24 diligence of a purchaser before purchase because if
25 they did then you wouldn't grant a time extension

1 ever, because almost all of them are granted based on
2 things that are different market conditions. It's
3 difficult to get financing.

4 I was under the impression that not being
5 able to actually get a building permit, and having
6 that documented, was far and away better evidence
7 than coming in here and saying, it's a tough market
8 out there and we're having difficulty getting
9 financing or getting tenants. So I wanted to
10 strengthen the argument and that's what I had. And
11 it was my fault, not the applicant's fault for not
12 having that information in the original request.

13 MS. BUTANI-D'SOUZA: I find it a little bit
14 difficult to evaluate your argument that you couldn't
15 get a permit because you haven't really demonstrated,
16 you haven't provided us with anything that shows that
17 you actually applied for a permit or attempted to
18 apply for a permit. What you've given us is some
19 captions from the legislation. You've stated that it
20 changed recently, but we have a letter in the record
21 stating that it actually did not change recently.
22 And then you've handed us this article which is I
23 guess it's a press release.

24 MR. SULLIVAN: It's a press release from the
25 Councilmember --

1 MS. BUTANI-D'SOUZA: Which talks --

2 MR. SULLIVAN: -- yes.

3 MS. BUTANI-D'SOUZA: Okay.

4 MR. SULLIVAN: That says the project cannot
5 move forward unless the council names the alley in
6 which it is located.

7 MS. BUTANI-D'SOUZA: There's a difference
8 between cannot move forward and cannot get a permit.
9 And I am asking about, cannot get a permit, which is
10 the assertion that you're making to justify the time
11 extension. So, you know, that's my issue here is
12 that you've given us an argument first, which you've
13 provided no evidence behind. And now you're giving
14 us a second argument where again, I'm just looking
15 for something simple. Permit drawings, a permit
16 application, some communications with DCRA where you
17 said, can we get a building permit, and they said no.
18 Any of those things would, to me, be reasonable. And
19 we gave you essentially what amounts to an extension
20 to provide us with documentation. And you haven't
21 done that.

22 And now by your own admission you're saying
23 that this is not something that you intend on
24 pursuing. Or, I'm a little bit confused about
25 whether this is actually ever going to happen.

1 MR. SULLIVAN: Okay. I would say the
2 intention is -- he said he does intend to pursue the
3 extension. What he does with the property and that
4 approval, it's still more valuable with the approval.
5 So if we weren't intending to pursue the extension we
6 wouldn't be here. Based on past requests I thought
7 this was a lot of documentation, but we're happy to
8 provide more if the Board so requests. But I thought
9 a councilmember's testimony in effect, saying that
10 the project can't move forward, would normally meet
11 the standard that's practiced in the time extensions.

12 MS. BUTANI-D'SOUZA: I don't think a press
13 release is the same as council testimony.

14 MR. SULLIVAN: Okay. We're happy to provide
15 more if that's the new standard.

16 MR. GARDENER: I'd like to talk a little bit
17 through at least this timeline and the understanding
18 of trying to obtain a building permit.

19 MS. BUTANI-D'SOUZA: Uh-huh.

20 MR. GARDENER: Getting something in writing,
21 an e-mail from DCRA is a very difficult task. Most
22 of my conversations are done in person with the Chief
23 Building Inspector on this project, three separate
24 instances. Originally prior to the subdivision of
25 the property to understand what can be filed and

1 when, and obtaining lot numbers was his initial
2 comments that addressed this could be issued. That
3 was back in early 2014.

4 My next conversation with him was in the
5 summer of 2015 when I had lot numbers, I met with him
6 to get addresses issued on the properties, and he
7 said, I can't give you addresses. He pulled out D.C.
8 Code, which would be DCMR 12A of 2013, which became
9 effective in March of 2014, section 118.6.6. And
10 that no street numbers shall be assigned to a premise
11 that its only access on an unnamed street or alley.

12 It continues on but that is the part of
13 importance. This section did not exist in previous
14 DCMR 12A. DCMR 12A of 2008, which was in effect when
15 we received our variance and when I had my initial
16 conversation with him, allows for, in Section
17 124.6.4.4 in that a new structure on a property
18 already containing one or more structures that have
19 addresses, the code official is responsible for
20 assigning a new address.

21 So this is while, and speaking to the party
22 of opposition who said that all properties need
23 addresses in order to get permits prior to 2014.
24 He's correct. But the method at which those
25 addresses are issued has changed.

1 Regarding trying to obtain a permit, that was
2 in the summer of '15. I originally -- I'm sorry, not
3 trying to obtain a permit of why we filed within
4 weeks of our BZA expiring. Originally in August I
5 met with my council person to discuss the issue. She
6 did not believe it would be a problem to propose a
7 bill and have it approved prior to January 1st so
8 that I could file a building permit.

9 We did not realize that the Board was going
10 to table that bill so that they could readdress the
11 law for naming streets and alleys, which is a
12 separate law, separate bill that has been proposed
13 and is still in a holding pattern from all we can
14 tell. Just not have another hearing date. So the
15 city council has chosen to address the process in
16 which alleys are named before they revisit the bill
17 for naming our particular alley.

18 So we really thought we were going to have
19 approval of the bill in the alley naming so that we
20 could have addresses prior to our BZA expiring. And
21 as that got tabled we really had few weeks between
22 that point and when we filed for our extension.

23 CHAIRPERSON HEATH: All right. One other
24 thing on this case, too that I want to address, the
25 first is that you know, Office of Planning's original

1 position based on your initial reasoning for the time
2 extension was that they couldn't support this because
3 there wasn't enough evidence as to the difficulty of
4 finding a tenant. Have you had any other
5 conversations with Office of Planning since
6 developing this new rationale?

7 MR. SULLIVAN: No, I sent them the
8 information but I haven't had a conversation with
9 them. I'm not sure if Steven is here today or not.

10 CHAIRPERSON HEATH: It looks like he is. I'd
11 just like to hear from him on --

12 MR. SULLIVAN: I didn't follow up.

13 CHAIRPERSON HEATH: -- just to officially
14 understand Office of Planning's position currently
15 based on the new information.

16 MR. GYOR: Good morning, Madam Chair and
17 Members of the Board. Stephen Gyor with the Office
18 of Planning.

19 Our position is initially we did request that
20 the applicant provide the Board with documentation as
21 to their efforts to pursue the artist studio space.
22 Currently we're not opposed to the extension. As you
23 are aware in Case 18511B, we did recommend denial of
24 the residential use of the space.

25 CHAIRPERSON HEATH: Okay. All right. Thank

1 you. Did you have any -- did Board have any
2 questions of Office of Planning?

3 Does the applicant have any questions of
4 Office of Planning?

5 MR. SULLIVAN: No, thank you.

6 CHAIRPERSON HEATH: Okay. All right. Thank
7 you, Mr. Gyor.

8 The second thing that I wanted to address was
9 the request for party status on this time extension
10 filing. And because this is a time extension and not
11 a hearing, there are no rules in the regulations
12 regarding party status on an application, or on a
13 time extension. This is not an application. And so
14 we can't accept a party status request on this time
15 extension. And so unless the Board has any other
16 comments to make regarding that, I would move that we
17 deny the request for party status on the time
18 extension.

19 MR. HOOD: Second.

20 CHAIRPERSON HEATH: Okay. Okay. All right.
21 So, then just -- oh, you seconded? Okay. So the
22 motion has been made and seconded. Any further
23 discussion?

24 [Vote taken.]

25 CHAIRPERSON HEATH: Okay. So that motion

1 carries. So I just wanted to make sure that we dealt
2 with that issue that was still before the Board.
3 Does the Board have any other questions of -- not on
4 this? All right. Any other questions of the
5 applicant?

6 All right. Then is the Board ready to make a
7 decision on the time extension?

8 MR. HILL: Sure.

9 CHAIRPERSON HEATH: Did you have another --
10 does OAG have another --

11 MS. GLAZER: Madam Chair, did the Board
12 address the ANC's filing in this?

13 CHAIRPERSON HEATH: Let me look.

14 MS. GLAZER: The ANC was a party.

15 MR. SULLIVAN: I don't think -- I don't know
16 that they filed anything regarding the extension
17 itself.

18 CHAIRPERSON HEATH: They recommended
19 approval.

20 MR. SULLIVAN: Did they? Okay.

21 CHAIRPERSON HEATH: Yeah, that was an
22 approval that they made for the time extension. They
23 filed an approval back in March. And it seems that
24 you met with them again in May. They did not comment
25 on this time extension. They commented on the other

1 application regarding this project. But we do have a
2 letter recommending approval from the ANC. ANC 1A.
3 So, any other points of discussion from the Board?

4 All right. Then I know we've asked a lot of
5 questions on this today, and this project has a lot
6 of complexity around it generally, and I think that's
7 given members of the Board reason for pause and
8 questioning regardless of how the applicant decides
9 to move forward beyond this. I do think that the
10 justification that you've given regarding the
11 inability to permit the project, I think is
12 sufficient. It's something that's new that I've
13 never heard of before, other members of the Board
14 haven't heard of before. But we do see in the zoning
15 -- or in the building code, where that language is
16 there. So, I feel that you've justified the request.

17 We do now have Office of Planning's support,
18 and as I stated, we have support from ANC 1A,
19 strictly on the request for time extension so I would
20 be in support of granting this.

21 MR. HOOD: Madam Chair, I just wonder if the
22 Board would entertain the fact of making the time,
23 instead of a two-year time extension, a one-year time
24 extension. And I'm not clear if the BZA rules say
25 that you can only do so many times. I know one time

1 we had it where you could only do so many times. I
2 think we've changed that. So, I don't know if that
3 would inconvenience anyone, but that would keep
4 things moving. So I just threw that out there for
5 discussion. If not, we can move on.

6 MS. BUTANI-D'SOUZA: I think that's a great
7 idea. You know, I think my issue with this is that
8 when we -- when the original continuation of this
9 hearing was put forth we gave the applicant an
10 opportunity to provide documentation in evidence on
11 their assertion that they could not find tenants. So
12 when I reopened the case and found zero documentation
13 of that and what appears to be a total change in
14 direction for the justification, you know, it appears
15 that the applicant is kind of grasping at straws to
16 come up with a reason to justify something. And when
17 you take that in addition to the fact that they've
18 also separately submitted a request to completely
19 alter this approval, it raises the question of okay,
20 well, why are we even extending this order in the
21 first place. It seems that we should just let it
22 expire.

23 I appreciate the applicant's testimony that
24 they do intend on pursuing this, assuming that they
25 cannot get a residential option. I know you didn't

1 say it that way but I would assume that that's what
2 you're referring to. So, you know, I appreciate that
3 but I think in the future it is -- I don't think that
4 it's -- I don't think that they have provided the
5 level of information in the record that would be
6 needed to justify the request. I think that if they
7 had put forth something as simple as permit documents
8 that were prepared or even a simple permit
9 application that was put together to show that, yes,
10 we did make this effort, we signed it, we dated it,
11 hey, here is an affidavit saying that I did try to do
12 this. Anything that we could hang our hat on and say
13 yes, this is legitimate, I think that that would go a
14 long way towards making this request feel you know,
15 more justified.

16 So I appreciate the Office of Planning's
17 support for this and I actually agree with Chairman
18 Hood's --

19 CHAIRPERSON HEATH: Uh-huh. Uh-huh.

20 MS. BUTANI-D'SOUZA: Chairman Hood's
21 suggestion that we only extend this for one year.

22 MR. HILL: What does that do to the
23 applicant?

24 MR. SULLIVAN: One year is difficult.

25 MR. HILL: Why so?

1 MR. GARDENER: Well, we have an open BZA case
2 that we're hearing on a separate version, so
3 preparing drawings for permitting and also ZRR is
4 about to be implemented which would change likely
5 many things related to zoning on this filing, so I
6 would have to revisit some of my assumptions just to
7 make sure that other building related things would
8 fit into the new zoning requirement.

9 MR. HILL: Okay. So I respectfully disagree
10 with my colleagues insofar as I don't see the
11 difference in terms of one year, two year. I don't
12 know what's going to happen with the next 111B or --
13 I'm sorry, whatever the B version is.

14 And so keeping an option open so that
15 development can happen rather than we being back here
16 again later is kind of where I'm standing. But you
17 know, depending upon how the Board would like to go,
18 I could go either way. However I would be happy with
19 the two -- I would be fine with the two years so I'm
20 just giving my opinion.

21 MR. HOOD: I've been hearing it either way
22 quite a bit the last two days, and so I'm not going
23 to take the privilege I took last night, either way
24 so --

25 CHAIRPERSON HEATH: I know how you dealt with

1 that last night.

2 MR. HOOD: Either way, yeah. I'm done with
3 that different way last night.

4 I just want to ask the applicant this, you
5 filed -- I'm not a whole lot familiar with what I see
6 here of the other case. You filed up under the 58
7 regulations or regulations 2016.

8 MR. SULLIVAN: On the revision, the
9 modification, we filed under 58.

10 MR. HOOD: Oh, 58.

11 MR. SULLIVAN: Yeah, because we filed -- this
12 was filed in January, I believe.

13 MR. HOOD: So subsequently you may want to
14 make a change because of the new regulations and you
15 might want to revisit the relief or whatever you're
16 asking for. Am I correct? Is that what you're
17 saying?

18 MR. SULLIVAN: No, No, I don't think he wants
19 to change the structure at all. He's just wondering
20 if some changes in the regulations affect how
21 something is designed. But the shell of the
22 building, the intention is to do exactly what he's
23 proposing.

24 MR. HOOD: But you already have a file and
25 appointed the 58, and you did your notice of intent

1 of the 1958 regulations, right? So I'm just not
2 following your argument.

3 MR. SULLIVAN: That was prior -- it was filed
4 in January, so it was even before that.

5 MR. HOOD: Right. So I'm not understanding
6 what you're saying about the new regs which is going
7 to take place possibly in September. I'm not
8 following that argument.

9 MR. GARDENER: I misspoke relating to zoning
10 related issues.

11 MR. HOOD: Okay. All right. All right. I
12 got you. So really, one has nothing to do with the
13 other.

14 MR. GARDENER: No, it does not.

15 MR. HOOD: Okay. All right. I'm going to
16 join my colleague. I can go either way.

17 CHAIRPERSON HEATH: Okay.

18 MR. HOOD: But I don't want to put a burden
19 on the applicant, I want to give him as much time --
20 but I also know with the artist studios and I know
21 there may be some issues with rent cutoffs, but I
22 know this city has a high demand with artist studios.
23 I've spent many nights down here hearing about it, so
24 I'm an advocate now for it. So I know. That's why I
25 wanted to press the pedal to the medal. One year,

1 let's make it work and move forward. But if you have
2 some other issues, then I can go either way. I'll
3 leave it to the Board.

4 CHAIRPERSON HEATH: Okay, any --

5 MR. HINKLE: Yeah, thank you, Madam Chair. I
6 think I am going to put Mr. Hood in the position of
7 being a tie breaker. I tend to agree with my fellow
8 board member, Mr. Hill. The one year seems a little
9 bit burdensome. This site is really difficult, it
10 was a difficult case to hear in the beginning.
11 Obviously there's been some difficulty in trying to
12 develop it and so I'm not sure what we get with one
13 year, but certainly support a two-year extension.

14 CHAIRPERSON HEATH: Okay. I also -- yeah, I
15 also would be in favor of moving forward with the
16 two-year. Again, I'm not sure what we get with the
17 one year because I'm not sure that that's really
18 going to move things forward any faster, particularly
19 on this building permit issue. And who knows how
20 fast you'll get any council approval. They have much
21 bigger issues on their plate. And so I would move
22 then that we approve the request for a two-year time
23 extension on Order No. 18511.

24 MR. HOOD: Second.

25 CHAIRPERSON HEATH: The motion has been made

1 and seconded. Any further discussion?

2 [Vote taken.]

3 CHAIRPERSON HEATH: All right. So the motion
4 carries.

5 MR. MOY: Staff would --

6 CHAIRPERSON HEATH: Please remain.

7 MR. MOY: Staff would record the vote as five
8 to zero. This is on the motion of Chairperson Heath
9 to approve the request for a time extension for two
10 years. Seconding the motion, Mr. Hood. Also in
11 support, Mr. Hill, Vice Chair Butani, and Mr. Hinkle.

12 CHAIRPERSON HEATH: All right. So we're
13 going to -- we have quite a full docket for our
14 hearing cases. And so we're going to call the next,
15 the B side of this application next, which is why I'm
16 saying, Mr. Sullivan, you should stay.

17 So, Mr. Moy, if you could call, what is that?
18 Case No. 18511B.

19 MR. MOY: Yes. Thank you, Madam Chair. That
20 would be Application No. 18511B, of Alleyoop, LLC.
21 The amended caption that's been advertised is as
22 amended for variances from the alley width
23 requirements under Section 2507.3, height
24 requirements under 2507.4, nonconforming structure
25 requirements under Section 2001.3, and a special

1 exception from the rooftop structure requirements
2 under 411.5. This would allow an office and
3 residential use in the R-4 District, 1018 Irving
4 Street Northwest, Square 2851, Lot 219.

5 CHAIRPERSON HEATH: All right. Okay. There
6 is also someone requesting party status on this
7 application. If you could come forward? And then
8 I'll have each of you introduce yourselves.

9 MR. GARDENER: Greg Gardner, architect, 753
10 Development, and Alleyoop, LLC.

11 MR. SULLIVAN: Marty Sullivan, Sullivan and
12 Barros.

13 MS. WILSON: Alexandra Wilson with Sullivan
14 and Barros.

15 MR. PROSCHAN: Frank Proschan, and I'm a
16 neighbor at 3015 11th Street Northwest.

17 CHAIRPERSON HEATH: Okay. All right. And
18 Mr. Proschan, we've received your request for party
19 status and a number of -- several statements from you
20 regarding your opposition on this application. I
21 think given your proximity to this project and the
22 issues that you've raised around this project, I
23 would be in support of granting the party status
24 request. So I see members of the Board shaking their
25 heads. I think by --

1 MR. HILL: I'm fine with that, Madam Chair.

2 CHAIRPERSON HEATH: So by consensus the Board
3 will accept your party status request. So as a party
4 to this application you will be able to cross-
5 examine, to bring witnesses to support your
6 testimony. You'll also be included in all notices or
7 correspondence regarding this case going forward, and
8 so you'll be made aware of the progress on this case.

9 One matter that's come before the Board as
10 recently as yesterday evening was a request for a
11 postponement from the applicant. And I'll let the
12 applicant address that request and then we'll hear
13 from you, Mr. Proschan.

14 MR. SULLIVAN: Thank you, Madam Chair, and I
15 apologize for the late request on that but in
16 response to the Office of Planning report and
17 additional information requested, I had originally --
18 all right, I am addressing this as a modification to
19 an originally approved order and some of the things
20 that OP has requested are in the original file, and I
21 was going to address this as the changes, just the
22 changes to the original approval. But based on OP's
23 report I think it would be helpful if we took a step
24 back and also in light of Chairman Hood's comments
25 about the artist studios and his advocacy for them, I

1 think the Board, it would be helpful if we had more
2 information on that as well, because the key issue
3 here, when it comes to the height, the height changes
4 is literally it's a change of about seven inches.
5 Part of the difference in the height change is the
6 change in measuring point from the regulations in
7 place at the time of the original application, and
8 now in place. And that changed the height a few
9 feet.

10 The actual height changes only about seven
11 inches, so I don't think that's a big change. But
12 obviously the issue that everybody is interested in
13 is residences here, rather than artist studio. So,
14 we do think we can provide more information on that
15 and it would be a more efficient hearing if we had a
16 little more time to do that.

17 CHAIRPERSON HEATH: So two things you said,
18 one was that a lot of the information that OP
19 requested was in the previous application. What
20 documents were in the previous application that --

21 MR. SULLIVAN: I was speaking specifically of
22 the traffic plan and the pedestrian plan and the
23 waste management plan.

24 CHAIRPERSON HEATH: Okay.

25 MR. SULLIVAN: And I think they may have

1 originally been submitted for a five-unit condo. So
2 there was a lot of discussion in the last case of
3 this case as five residential units. So this would
4 be a reduction in that.

5 CHAIRPERSON HEATH: So those documents would
6 need to be modified --

7 MR. SULLIVAN: This one too.

8 CHAIRPERSON HEATH: -- based on the different
9 use.

10 MR. SULLIVAN: We should modify those for
11 them to be right on point, yes.

12 CHAIRPERSON HEATH: Okay. And then, let's
13 see, what was my -- I lost my train of thought.

14 MR. SULLIVAN: And I do have a revised shadow
15 study for the revised seven inches. But that,
16 unfortunately, we just have that with us.

17 CHAIRPERSON HEATH: Okay.

18 MR. SULLIVAN: Here.

19 CHAIRPERSON HEATH: All right. And I had one
20 more question but I'll come back to it. Do you want
21 to ask your questions?

22 MS. BUTANI-D'SOUZA: I also have questions of
23 OP. Do we -- can we go there now or --

24 CHAIRPERSON HEATH: Just a moment. Let me
25 see if anybody else has any questions. Okay. So any

1 questions from the Board of the applicant regarding
2 his postponement request? Okay. So then, Mr.
3 Proschan, I don't know that you've seen the document
4 that's been submitted to the record, but do you have
5 any thoughts regarding the request for postponement?

6 MR. PROSCHAN: I would contest it. I think
7 the application has shown a persistent pattern of
8 brinksmanship of waiting until the last minute to
9 submit documents and then he turns around and says,
10 well, he has no time to react to, for example, the
11 OP, when he had months to submit the revised
12 architectural drawings and the revised additional
13 submission.

14 It's a chutzpah of the extreme as shown in
15 the previous case of inaction, inaction, inaction,
16 waiting until the last minute, submitting documents,
17 and then expecting the world to dance to his tune.
18 It's really, it's shocking that he should abuse the
19 goodwill and the good faith of the Board in this
20 manner.

21 CHAIRPERSON HEATH: One question for you, Mr.
22 Proschan. Would you -- is your opposition on this
23 really around the residential use or do you oppose
24 the project in its totality even as artist studios?

25 MR. PROSCHAN: The project as proposed, which

1 the applicant has given very ambiguous testimony as
2 to whether he intends to -- as originally proposed in
3 the revised statement of 2013. He's given out very
4 ambiguous testimony as to whether in deed he will
5 proceed with that or not.

6 CHAIRPERSON HEATH: Right. But regardless,
7 what was your --

8 MR. PROSCHAN: I opposed that. I think you
9 had the opportunity to put that to rest and I regret
10 that you granted this extension. I'm opposed both to
11 the height of the building, and the residential use
12 and the impact in terms of the automobile traffic
13 through the 10-foot wide alleys.

14 MR. HILL: I'm sorry. So just to be clear,
15 so you're opposed to the artist studio concept as
16 well?

17 MR. PROSCHAN: Yes.

18 MR. HILL: Okay. Thank you.

19 CHAIRPERSON HEATH: All right. Any other
20 questions of the party opponent?

21 Okay. So does the Board have any issues with
22 postponing this?

23 MS. BUTANI-D'SOUZA: I have a couple
24 questions for the Office of Planning. So, in your
25 report you noted that the code for -- or the statute

1 for structures located on alleys that are less than
2 30 feet wide states that nonresidential structures
3 located on these alleys shall not be converted,
4 altered, remodeled, restored, or repaired for human
5 habitation regardless of cost. So I guess with
6 regard to the postponement, as I read that, that's
7 pretty -- I mean, in your report you've asked for a
8 lot of other things after this statement. But it
9 seems that the first statement is that this is not a
10 allowed on alleys that are, for example, 10 feet
11 wide.

12 So what I'm trying to understand is, can you
13 envision a scenario where the applicant could go back
14 and make modifications to this proposal, if given
15 additional time, where they could come up with an
16 argument, or has there ever been a situation where OP
17 would support a residential structure on an alley of
18 this width?

19 MR. GYOR: Sure. I think the -- this is an
20 example of a -- and if you look at the regulations
21 it's a -- in the prior case it was considered a use
22 variance given an alley less than 30 feet. And now
23 the regulations has since been amended, so it is an
24 area variance that the applicant can pursue this as
25 an area of variance. Now, provided that the

1 applicant has reached out to FEMS, for example, and
2 gotten their approval, that's something that we would
3 require as part of our support. The applicant, to my
4 knowledge, has not done that in this particular case
5 and it's something that we would strongly urge the
6 applicant to pursue.

7 MS. BUTANI-D'SOUZA: So I guess my question
8 is, so FEMS, have they ever approved an alley
9 dwelling for an alley that's 10 feet wide?

10 MR. GYOR: I believe so. I think the
11 question is how close the dwelling would -- or how
12 close the lot would be to the street.

13 MS. BUTANI-D'SOUZA: Uh-huh.

14 MR. GYOR: And whether or not fire hoses and
15 things could be extended into the alley, but that's
16 really a question for FEMS. And I have reached out
17 to FEMS as well a couple of times. I haven't
18 received a response as of yet. But I will continue
19 to do that.

20 MS. BUTANI-D'SOUZA: Okay. Thanks.

21 CHAIRPERSON HEATH: Question regarding that
22 for the applicant. Did you contact FEMS on the
23 original application for artist studio?

24 MR. GARDENER: Yes, I did. I met with him
25 onsite, discussed what the difficulties were, and the

1 fact that we would be able to provide sprinklers and
2 stand pipes in the building because we had a water
3 service of adequate size within the alley, existing.
4 They never followed up with a full report prior to
5 our site meeting, post site meeting.

6 CHAIRPERSON HEATH: Okay.

7 MR. GARDENER: But we continued to make the
8 commitment that we would provide sprinklers and stand
9 pipes in the building whether they were required by
10 code or not.

11 CHAIRPERSON HEATH: Okay.

12 MR. HOOD: Madam Chair, can I just follow up
13 back to Mr. Gyor? Mr. Gyor, there's a form letter
14 the fire department uses. I'm not going to use FEMS.
15 I'm going to say the fire department uses, from a
16 main thoroughfare to where they can run hoses. Is it
17 300 feet or 100? I can't remember.

18 MR. GYOR: I believe that it's 300, you
19 know, .

20 MR. HOOD: It's 300?

21 MR. GYOR: I'm looking to the gallery and
22 they have confirmed that.

23 MR. HOOD: Okay. All right. Thank you.

24 CHAIRPERSON HEATH: Okay. All right. Any
25 other questions from the Board? All right. Well,

1 I'll just say that where I stand is that I appreciate
2 efficiency in our cases, and I feel like this
3 application is -- has a really big lift as it stands
4 right now, and I don't think that it's a good use of
5 the Board's time for us to go through and ask a ton
6 of questions because there's so little information in
7 this application.

8 I appreciate the comments from Mr. Proschan,
9 because I agree that this application and this
10 applicant continues to send little bits and pieces of
11 information at the last minute, and while the Board
12 has certainly expressed our displeasure with that on
13 numerous occasions prior to this application, I do
14 think that it would be a waste of the Board's time to
15 move forward with this hearing with so little
16 information. We wouldn't be able to decide this
17 today because as the applicant has testified, a lot
18 of this documentation doesn't exist in the proper
19 form for us to evaluate this particular application.
20 It existed on a previous to some degree, but it
21 doesn't exist on this one.

22 And so I am in support of postponing this.

23 MS. BUTANI-D'SOUZA: I'm okay with postponing
24 it given the Office of Planning's testimony that this
25 is an obstacle that could be overcome. I don't know

1 if you're going to be able to overcome the obstacles
2 with the neighborhood and all of the other
3 difficulties here in terms of proving the exceptional
4 situation that would justify a residential use here.
5 Or I guess it's an area variance, so I should be
6 careful about how I phrase that. But I do agree with
7 the chair that there's a huge lift here.

8 I think when this case does come back I would
9 consider it to be absolutely critical and necessary
10 for there to be some statement from FEMS on whether
11 they would allow this to move forward. I think that
12 that's a threshold question. It's the first step.

13 So if this case were to come back and not
14 have that question answered, you know, I don't think
15 that -- I don't think that that -- or if it was
16 answered no, I would say that this would not be
17 acceptable.

18 So I would say that although I appreciate
19 that you have followed up with FEMS and that you
20 follow up with DCRA and all of those follow-ups that
21 occur, I would encourage you to aggressively follow
22 up with the fire department on this because I don't
23 see this moving forward at all without something from
24 them.

25 CHAIRPERSON HEATH: All right. The other

1 thing that I'll just stress is the importance of
2 deadlines. And so as we move forward it's going to
3 be -- it will be critical that you collect the --
4 that we take the appropriate time with this
5 postponement so that you can collect all of the
6 information that is necessary, including the FEMS
7 statement. I would be willing to accept e-mails
8 confirming their position on this if you can't get a
9 formal letter. The Board has accepted e-mail
10 communication in the past, so something from them
11 that substantiates the ability to move forward with
12 residential use on this alley.

13 But you'll also need to go back to the ANC
14 and I know you've got some letters of support, but
15 you do have significant opposition from the OP, from
16 the ANC, and the opposition party. So I encourage
17 you to continue working with the community and Office
18 of Planning on this, in addition to collecting the
19 information that's been requested from Office of
20 Planning and from the board.

21 MR. SULLIVAN: Thank you. Madam Chair, in
22 light of that comment and our concerns about getting
23 a good response from FEMS, we had asked for June
24 21st, but June 28th would be better. I know July is
25 very crowded, but it --

1 MS. BUTANI-D'SOUZA: I would recommend that
2 if you're going to come back with this case, it
3 should be completely buttoned up. So, you know --

4 MR. SULLIVAN: That's right too. Yeah.

5 CHAIRPERSON HEATH: yeah, take the time you
6 need.

7 MS. BUTANI-D'SOUZA: -- you should have, your
8 arguments should be pretty strong here. And I don't
9 think that they're anywhere close.

10 CHAIRPERSON HEATH: Yeah. I mean, given that
11 this has lagged for two years, a few more months --

12 MR. SULLIVAN: So maybe mid-July if there's
13 anything available.

14 MS. BUTANI-D'SOUZA: So again, I don't think
15 -- if you're not confident that every piece of paper
16 that you need to justify your case --

17 MR. SULLIVAN: Yeah.

18 MS. BUTANI-D'SOUZA: -- is going to be in by
19 that time, if you come back again with another Monday
20 evening submission --

21 MR. SULLIVAN: Yeah, I won't do that.

22 MS. BUTANI-D'SOUZA: You said that last time
23 and I'm starting to keep track here. But it's, you
24 know, it's not going to help your case if you're not
25 really proving it and you're wasting this Board's

1 time by coming back in July --

2 MR. SULLIVAN: I understand.

3 MS. BUTANI-D'SOUZA: -- when that's not going
4 to give you enough time.

5 MR. SULLIVAN: Yeah, understood.

6 MR. GARDENER: Understood. And I also have
7 already spoken with ANC about presenting at their
8 next monthly meeting.

9 CHAIRPERSON HEATH: Okay. When is that
10 meeting?

11 MR. SULLIVAN: It is June 8th.

12 MR. GARDENER: 8th.

13 MR. SULLIVAN: But we're comfortable with
14 July. If we go to September we're in special
15 exception territory then and we -- with this request
16 under the new regs. But you know, we certainly don't
17 want to fall to September, so we think this second or
18 third week in July is a solid date for us to wrap
19 this up.

20 CHAIRPERSON HEATH: Yeah. Why would you not
21 want to be under a special exception rather than a
22 variance?

23 MR. SULLIVAN: We may at that point, but
24 we're currently filed here and --

25 CHAIRPERSON HEATH: Uh-huh.

1 MR. SULLIVAN: I mean, I don't know that the
2 issues will be that much different. I mean, so --
3 the standard is different of course.

4 CHAIRPERSON HEATH: All right. You have
5 another comment?

6 MR. PROSCHAN: Yes, with regard to the ANC
7 meeting on June the 8th, in fact as again there is no
8 case of record for which the ANC can consider. The
9 documents here went online only May the 11th, I
10 believe. That's less than 30 days before the June
11 8th meeting of the ANC. Once again, it's just
12 brinkmanships and delays and delays that the ANC will
13 not be able to take a position on whatever revisions
14 are put forward. They'll come forward with more oral
15 promises that are going to be broken later and it's
16 just going to prolong this process.

17 MR. SULLIVAN: So we can go to the July ANC
18 meeting if that works better for the ANC. But the
19 ANC is well aware of every aspect of this project and
20 -- but we're giving ourselves enough time for two
21 possible dates with the ANC.

22 CHAIRPERSON HEATH: All right. It's
23 obviously incumbent upon you to get the information
24 that you need and to take the time that you need to
25 do so. So if you say you're going to be ready by the

1 end of July then it's on you to make sure that you
2 are. So, I would -- end of July?

3 MR. MOY: Madam Chair, I was going to suggest
4 two possible dates in July, July 19th or July 26th.
5 For the Board I've been holding July 26th for
6 continued cases. So this would fit, but no --

7 CHAIRPERSON HEATH: Does that mean we have no
8 cases on that date right now?

9 MR. MOY: At the moment this would be the
10 first.

11 CHAIRPERSON HEATH: Okay.

12 MR. MOY: But bear in mind this is the last
13 hearing in July --

14 CHAIRPERSON HEATH: Right.

15 MR. MOY: -- before we head into recess. And
16 then we begin with ZR-16 cases in September.

17 CHAIRPERSON HEATH: Understood.

18 MR. MOY: So I'm hoping that this case will
19 continue again after the 26th.

20 MR. HILL: Okay, Mr. Sullivan, now I have a
21 question.

22 So, I have no problems doing this at the end
23 of July. We're making things happen, okay? If you
24 think you're going to pull this now into September,
25 I'd like to know now. Okay? And so if I'm doing all

1 this so that there's going to be an extension or
2 whatever to push me into September, take a minute and
3 decide whether you want to push this into September
4 or you're definitely going to come back here at the
5 end of July. Take a minute.

6 MR. SULLIVAN: Thank you.

7 [Pause.]

8 CHAIRPERSON HEATH: All right. While you do
9 that the Board will take a five-minute break. We'll
10 give you some to talk. We'll be right back.

11 MR. SULLIVAN: Thank you.

12 [Off the record from 10:53 a.m. to 11:00
13 a.m.]

14 CHAIRPERSON HEATH: So, post-discussion what
15 have you concluded in terms of timing?

16 MR. SULLIVAN: So we concluded that it would
17 probably be best and make the most sense to file this
18 or change it to a special exception under the new
19 regs. But so we wouldn't be in July. And I would
20 need to speak to either Board counsel or maybe OZ
21 counsel on exactly how that works, on whether it's a
22 modification or whether it's a withdrawal and a
23 refiling.

24 CHAIRPERSON HEATH: Okay. Sherry, is that
25 something that he would talk to you about?

1 MR. HOOD: I would -- can I put my two cents
2 in? I would recommend that you talk to the Director
3 of the Office of Zoning so you make sure you get it
4 right, because we dealing with that notice of intent
5 to file as you go up to new -- or actually, because I
6 think the office already has a way they're doing it,
7 so I would suggest that.

8 MR. SULLIVAN: That will work.

9 MR. HOOD: Not to take anything away from
10 you, but I know that that's what they were --

11 CHAIRPERSON HEATH: No.

12 MR. HOOD: Okay.

13 CHAIRPERSON HEATH: Okay. All right.

14 MR. SULLIVAN: Thank you.

15 CHAIRPERSON HEATH: So what I would suggest
16 then is we'll conclude this for now and if you could
17 talk to the Director of the Office of Zoning, we're
18 going to be here for a while. So if you could come
19 back with how you've concluded and let the Board
20 Secretary know, we can make a formal announcement of
21 the new date later today.

22 MR. SULLIVAN: Okay. If --

23 CHAIRPERSON HEATH: Yeah. And yes, correct,
24 as party status in opposition you will get notice of
25 when this will be back.

1 MR. HILL: So you don't have to wait around
2 for it, is all I'm saying.

3 MR. PROSCHAN: Could I also ask the Board if
4 it would consider the possibility of imposing
5 deadlines on the submission of documents of part of
6 the --

7 CHAIRPERSON HEATH: There will absolutely be
8 deadlines.

9 MR. PROSCHAN: Thank you.

10 CHAIRPERSON HEATH: And that will be
11 established as a part of this as well. So, there
12 will be --

13 MR. PROSCHAN: The decision to postpone.

14 CHAIRPERSON HEATH: Correct.

15 MR. PROSCHAN: Thank you.

16 CHAIRPERSON HEATH: So we'll put this on for
17 a later date and likely in September. And then we'll
18 back up from there what the deadlines will be for
19 submissions from the applicant in order to allow
20 responses from you or Office of Planning or the ANC.

21 So we'll address all of that. Thank you.

22 MR. SULLIVAN: Thank you.

23 CHAIRPERSON HEATH: All right. Okay. So,
24 let's see where we are. I'm going to just go through
25 the Board's order for today so that everyone here

1 will understand how we're going to manage the docket.
2 Our next case is going to be Application No. 19247 of
3 Karen Tramontano. The next case will be Application
4 No. 19249. That's application of Jennifer Wisdom.
5 The case after that will be 19265 of Marc Ross. The
6 next case will be Application No. 18895A. That's
7 application of James Walker. Next we will have
8 Application No. 19262 of Dr. Barry Fisher. After
9 that we will hear 19230 of Knotts and Hiltner. Next
10 will be Application No. 19259 of GINLIN, LLC. And
11 the last case for today will be 19124, that's of Eye
12 Street JV, LLC.

13 All right, and then we'll have dinner. Yes.
14 Okay.

15 So before we call the second meeting case, or
16 the second hearing case, I would like to call the
17 applicant and those requesting party status on
18 GINLIN, briefly. So that's Application No. 19259,
19 for some brief questions.

20 All right. Once you're seated if I could
21 have you introduce yourselves?

22 MR. SULLIVAN: Thank you, Madam Chair. My
23 name is Marty Sullivan from Sullivan and Barros on
24 behalf of the applicant.

25 MR. WILSON: Paul Wilson with Trout Design.

1 I'm the project architect.

2 CHAIRPERSON HEATH: Make sure your mic is on.

3 Push the -- no, push the button that says push.

4 There you go.

5 MS. MCGUIRL: Oh, Marlene McGuirl. And I am
6 a neighborhood to the apartment.

7 CHAIRPERSON HEATH: Okay.

8 MS. MCGUIRL: Adjacent owner.

9 CHAIRPERSON HEATH: Okay.

10 MR. MEYERS: James Meyers, counsel here for
11 Marlene McGuirl.

12 CHAIRPERSON HEATH: Okay.

13 MR. MILLER: My name is Andrew Miller, I live
14 across the street in 3420 P Street.

15 CHAIRPERSON HEATH: Okay. Now one thing that
16 wasn't clear in the record was, Mr. Miller, what your
17 issue with this application is. What I'm trying to
18 do is understand if your issues and Ms. McGuirl's
19 issues regarding this application are the same, or if
20 you have different interests. As an adjacent
21 neighbor we can certainly see how this case could
22 directly impact you. As somebody who is across the
23 street from a project where all of the work is
24 happening in the back, I just want to understand how
25 this uniquely impacts you differently from the

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1 general public.

2 MR. MILLER: Madam Chairman, it uniquely
3 impacts me in two regards. First of all, the fact
4 that it is proposed that a garage be torn down behind
5 the property. That means that vehicles who otherwise
6 would use that garage would be trying to find a
7 parking place on P Street where parking is, to put it
8 mildly, very difficult to obtain except when
9 Georgetown is out of session. So that is definitely
10 a concern.

11 Another concern is this; the house for
12 decades, as far as anybody can remember that I've
13 talked to, has been rented to college students.
14 There have been two, three, four, colleges students
15 there at a time. I'm confident with the expansion of
16 the kitchen and other facilities within the house,
17 that means that the house can be occupied by as many
18 as six college students which is allowed under R-3.

19 I have tried to get across the message that
20 parties, which spill over into the street, and loud
21 noise as a result of those parties is just not
22 acceptable in the neighborhood.

23 CHAIRPERSON HEATH: Has that happened?

24 MR. MILLER: Has it happened?

25 CHAIRPERSON HEATH: That --

1 MR. MILLER: Yes, ma'am. You sound
2 surprised.

3 CHAIRPERSON HEATH: So that's happening
4 already, not as a result of this?

5 MR. MILLER: Oh, no, no, this is no --

6 CHAIRPERSON HEATH: Okay.

7 MR. MILLER: -- speculation on my part.
8 Within the last year I've called the police twice
9 because of such events. At night, 9:00, 10:00, 11:00
10 at night college students in the street, drinking.
11 And my wife and I, who live directly across the
12 street are not able to sleep as a result. So this is
13 a given fact of the use of that property, and the
14 idea of expanding it to allow larger parties, more
15 noise, more foot traffic, more vehicular traffic, in
16 addition to the question of parking space, which is
17 now off street, being removed, you know, with all
18 respect Madam Chairman, I think I have a definite
19 interest in the outcome of this application.

20 CHAIRPERSON HEATH: Okay. Thank you for
21 explaining that. It was just that your statement or
22 your application submitted to the record did not go
23 into any detail, so it's helpful to hear from you
24 directly as to --

25 MR. MILLER: Yes, ma'am. I'm sorry if I

1 should have provided more detail. I'm not familiar
2 with this procedure.

3 CHAIRPERSON HEATH: Sure.

4 MR. MILLER: But I mentioned the partying.

5 CHAIRPERSON HEATH: Sure.

6 MR. MILLER: I mentioned the razing of the
7 garage.

8 CHAIRPERSON HEATH: Okay.

9 MR. MILLER: But I'm also, and I should add
10 just so there's no misunderstanding, I've been on the
11 property and I fully support Mrs. McGuirl's position
12 with respect to the impact of what is being proposed
13 on the light and air with respect to her property. I
14 don't think I have standing to raise that for reason.
15 I think you suggested --

16 CHAIRPERSON HEATH: Right.

17 MR. MILLER: -- in your original question to
18 me.

19 CHAIRPERSON HEATH: Correct.

20 MR. MILLER: But nonetheless, I want you to
21 know I've been on the property, I've looked at it in
22 the afternoon, and it's absolutely clear to me, if
23 not to the architect and opposing counsel that in the
24 afternoon, as the sun goes down there is a long
25 period of time because of the arc of the sun where

1 this extension to the back of the house is going to
2 block light and air coming in to one of our windows.

3 CHAIRPERSON HEATH: Okay. So we'll talk
4 about that --

5 MR. MILLER: Yes, ma'am.

6 CHAIRPERSON HEATH: -- when we come back to
7 you.

8 MR. HOOD: Can I just interrupt?

9 CHAIRPERSON HEATH: Sure.

10 MR. HOOD: And I know this may be going off a
11 little bit, but I want to talk to the gentleman who
12 was just speaking. Georgetown has a special task
13 force they have, at least that's what they told us
14 when they did a campus plan.

15 MR. MILLER: Yes, sir.

16 MR. HOOD: Does that work? Do you ever call
17 that special number that they have?

18 MR. MILLER: Well, that was the number I
19 called when I said I called the police.

20 MR. HOOD: Okay. That's who you called.

21 MR. MILLER: It's the Georgetown Police.

22 MR. HOOD: Right.

23 MR. MILLER: That is correct.

24 MR. HOOD: Okay.

25 MR. MILLER: And, sir --

1 MR. HOOD: Was there any relief?

2 MR. MILLER: One time there was. The other
3 time, I tried several times and nobody answered the
4 phone. So you'd have to put that in an iffy column.

5 MR. HOOD: Okay. Okay.

6 MR. MILLER: But the fact of the matter is, I
7 know Georgetown is trying to work on this. But to
8 have a situation like this directly across the street
9 which has been -- we lived there 20 years. And
10 recently the situation has gotten much worse. Until
11 the property was vacated, sometime the middle of last
12 year. I can't give you a date on that. Since then
13 there's been nobody residing in the property.

14 MR. HOOD: I think you've answered my
15 question. Thank you.

16 MR. MILLER: Thank you, sir.

17 CHAIRPERSON HEATH: Okay, so we'll come back
18 with this application and we'll address the request
19 for party status. Thank you for making it clear of
20 your interest. You've heard today the order of our
21 agenda, and so what I'll do is allow you most of the
22 rest of today to continue your discussions. I assume
23 you've talked previously with the applicant and the
24 architect. Okay. With the applicant and the
25 architect. But this is your -- another opportunity

1 to voice some of your concerns, or all of your
2 concerns, and have them heard, and potentially
3 addressed in a manner that is mutually beneficial for
4 all of you, prior to the Board making any decisions
5 that usually if we have to make a decision it's not
6 going to make somebody happy. So I would encourage
7 you to use the time that you have today to make it
8 effective, and to work towards resolution on some, if
9 not all, of your issues.

10 So, Mr. Sullivan, you know where there are
11 places to meet and how to go about finding space.
12 So --

13 MR. MILLER: May I say something, Madam
14 Chairman?

15 CHAIRPERSON HEATH: Yes, briefly.

16 MR. MILLER: Thank you. You sound like John
17 Kerry trying to get the Syrians and the Russians and
18 the Iraqis to talk to each other.

19 CHAIRPERSON HEATH: That may be the case, but
20 it's proven to work in the past.

21 MR. MILLER: And what I -- I inject that
22 unfortunate sense of humor into this proceeding
23 because of the fact that the project that the
24 applicant is involved in with respect to 3424 P
25 Street has been going on since October of last year.

1 We're now six months into it. Time and again the
2 workmen who are at 3424 have parked in front of the
3 curb cuts where my wife parks her car and the garage
4 where Nelson Cunningham, who is not here today
5 because of a medical emergency, parks his car.

6 And my wife leaves for work. I hate to admit
7 it, she's a lawyer as well. But she leaves for work
8 and time after time she's had to go and, I'll be
9 brief, and tell these guys to move their trucks.

10 Last week I finally called the police. Not
11 the Georgetown Police, sir, but District Two. And
12 District Two came and read the riot act to the
13 individuals who are involved in 3424, the same
14 involved in 3420.

15 Yesterday I was out there and one of the
16 workmen's trucks who had parked there all day, did
17 not have a permit from District Two to park there and
18 consequently should have been ticketed by somebody in
19 parking enforcement. It's this type of thing --

20 MR. HILL: Madam Chair, may I just interrupt
21 you, sir? Obviously it seems like you guys have a
22 lot of things to talk about.

23 MR. MILLER: Well --

24 MR. HILL: What we normally do, and --

25 MR. MILLER: Right, sir.

1 MR. HILL: -- is ask the parties in
2 opposition to get together with the applicant.
3 Sometimes nothing comes from it, sometimes something
4 does. This is an opportunity actually, and something
5 is going to happen today, right? Now whether this
6 gets built and you get nothing, or whether you know,
7 this doesn't get built, I don't know how this is
8 going to work out. Okay? But if there's some kind
9 of a -- I mean, Mr. Sullivan, you've done this
10 before. You know, if there's any kind of an
11 agreement, any kind of, you know, something about
12 parties or thus, just try to talk to each other
13 during today. And then the Chair is going to ask you
14 to come back.

15 MR. MILLER: Sir --

16 MR. HILL: That's it, that's it, that's it.

17 CHAIRPERSON HEATH: Yeah, we have --

18 MR. MILLER: I appreciate that.

19 CHAIRPERSON HEATH: Excuse me, sir. We have
20 a lot on our docket today so we're --

21 MR. MILLER: Well, I'm sorry. I was just
22 trying to --

23 CHAIRPERSON HEATH: -- going to hear from you
24 later today.

25 MR. MILLER: -- explain.

1 CHAIRPERSON HEATH: We understand. We'll ask
2 for more explanation when you come back.

3 MR. MILLER: Thank you, ma'am.

4 CHAIRPERSON HEATH: So this is your
5 opportunity to speak to each other and no more
6 comments.

7 MR. MEYERS: Just a question.

8 CHAIRPERSON HEATH: Uh-huh.

9 MR. MEYERS: Do you know about what time we
10 would be called back?

11 CHAIRPERSON HEATH: I don't.

12 MR. MEYERS: You put us to the second of the
13 end, is it --

14 CHAIRPERSON HEATH: I have no idea.

15 MR. MEYERS: -- close before the end or --

16 CHAIRPERSON HEATH: I wish I knew, but I
17 don't.

18 So, we'll call you back later today and you
19 can just keep an eye on where we are on the agenda.

20 MR. MILLER: We may have lunch?

21 CHAIRPERSON HEATH: You may. We may too.
22 Who knows. We often don't. But okay. So, we're
23 going to proceed to our next case, but I understand
24 that we do have a representative from DDOT here on
25 Application No. 19230. And it is really important

1 that we be able to hear from them so I'm going to go
2 out of order again and call Application No. 19230 so
3 that we can hear from DDOT before they leave.

4 [Pause.]

5 CHAIRPERSON HEATH: So, Mr. Moy, if you could
6 call our next case?

7 MR. MOY: Okay. Just before I do that for a
8 split second, Madam Chair for the docket. I forgot
9 to mention for the record that Application 18723A of
10 Morning Bright, LLC, that's been rescheduled to June
11 the 7th.

12 So with that then we're with Case 19230 of
13 John Knotts and Richard Hiltner as advertised and
14 captioned for variance relief from the rear yard
15 requirements, 774.1 and the parking requirements
16 under 2101.2, which would permit the construction of
17 a mixed use project in the C-2-A district, 4424
18 Georgia Avenue Northwest, Square 2917, Lot 37.

19 CHAIRPERSON HEATH: Thank you, Mr. Moy. So,
20 this application was before the Board on April 26th,
21 and we completed our hearing procedures at that time.
22 But we requested supplementary information which we
23 have received. So we're going to continue this
24 hearing as a limited hearing.

25 One of the big issues around this case had to

1 do with parking, and specifically RPP. And so I
2 think the Board has reviewed the --

3 MR. HILL: The presentation.

4 CHAIRPERSON HEATH: Right. The presentation.
5 Thank you for submitting that presentation.

6 MS. MAZO: Yeah, sorry. For the record, I
7 also have hard copies of the PowerPoint presentation,
8 the same ones that have been filed in the record if
9 you would need that before you today.

10 CHAIRPERSON HEATH: I don't think we do.
11 Unless we have problems bringing up the documents.
12 But for now I don't think we do.

13 So let's see. I think -- okay. We're going
14 to take questions from the Board regarding the
15 applicant's additional filings. And then we'll hear
16 from DDOT because I do want to specifically hear from
17 DDOT about your proposals around RPP.

18 MS. BUTANI-D'SOUZA: So I just have a couple
19 questions. Have we already done the introductions?

20 CHAIRPERSON HEATH: Oh, did we? No. Okay.
21 So let's start there with introductions.

22 MS. MAZO: Sure. Yeah, sure. Samantha Mazo,
23 the law firm of Griffin, Murphy, Moldenhauer and
24 Wiggins. I'm here on behalf of the applicant.

25 MR. ANDRES: Good morning, Chairwoman Heath,

1 Members of the Board. Irwin Andres with Gorove Slade
2 Associations.

3 MR. DUPONT: Stephen DuPont. I'm the
4 architect.

5 MS. MAZO: And also I'd like to mention, if
6 there are questions in regards to the application of
7 RPP in condo documents, my colleague, Meredith
8 Moldenhauer who handles a lot of our condo
9 documentation at our firm is here to respond to those
10 questions should they arise.

11 CHAIRPERSON HEATH: Okay.

12 MS. BUTANI-D'SOUZA: Okay. So actually my
13 questions do pertain to that. So --

14 MS. MOLDENHAUER: Just for the record,
15 Meredith Moldenhauer.

16 MS. BUTANI-D'SOUZA: Okay. So is the
17 applicant still not certain whether they're going to
18 pursue this as a rental or as a condo building?

19 MS. MAZO: You are correct. I mean, the
20 applicant's intention under the current market
21 conditions is to pursue this as a condo building.
22 However, we're not at a point to know whether we can
23 move forward under that process, or through a rental
24 process.

25 MS. BUTANI-D'SOUZA: The reason that I ask is

1 because I saw in your -- first of all, thank you very
2 much for doing the additional research here on this
3 question. So what concerns me about the
4 enforceability of this as a rental is that I don't
5 actually believe that a tenant could be evicted for
6 getting an RPP. There are very strict rules
7 governing when a tenant can be evicted in the
8 District of Columbia, which you alluded to in your
9 letter. And I do appreciate you being up front about
10 that.

11 So, for that reason I almost don't even think
12 that you could enforce this as a -- if the question
13 that the Board is considering is how do we devise the
14 RPP restriction to enable it to be enforceable, I
15 don't believe that it's enforceable in a rental
16 situation.

17 I do have questions about how the enforcement
18 would work in a condo situation. But that's kind of
19 where I came out on reading this.

20 CHAIRPERSON HEATH: Yeah, around that, is it
21 enforceable by penalty, not eviction, but fines?

22 MS. MAZO: Yeah. So to be clear, the
23 conditions that we've proposed would, in terms of the
24 lease holder, would include a few ways to
25 quote/unquote, penalize an individual who would be a

1 scofflaw and go and obtain RPP. And the first way is
2 that the lease language, as well as condo language,
3 but would authorize the landlord, or whether it be a
4 condo board to be able to go and request that
5 information from the DMV. I think one of the
6 thresholds here that has been brought up in the past
7 is whether an owner or whether a landlord or a condo
8 board even has the legal right to go and ask the
9 question of the DMV.

10 And there is specific District law on this
11 matter that indicates that if in a lease document or
12 a condo document that the tenant or the owner
13 provides that legal right to the landlord or the
14 condo board, then such authorization is enough to get
15 over that initial hurdle. So we have that
16 documentation and that would be one of the conditions
17 that would be part of any approval of that project.
18 So that's number one.

19 Then number two, going to the issue of
20 whether or not penalties could be assessed, we have
21 indicated as one of our conditions that yes, fines
22 and penalties could be assessed in a lease situation
23 as well as a condo situation. So I think the first
24 line of defense here from the landlord standpoint
25 would be that if first of all, we've gotten over the

1 first threshold, they're going to make -- or we have
2 proffered to make biannual requests of the DMV to
3 determine whether or not residents are obtaining RPP
4 and to also provide that information to the ANC for
5 their use. So that's number one.

6 Then number two we have also proffered that
7 the lease language would include that fines would be
8 levied on a tenant or any condo documentation would
9 also include that, so that the fines could be levied.

10 So even if we don't reach the issue of
11 eviction, then there are certainly fines that could
12 be -- that would be required pursuant to these
13 offers.

14 MS. BUTANI-D'SOUZA: Are those -- sorry. Are
15 those fines enforceable in a landlord/tenant
16 situation? Because I'm under the impression that
17 there are very specific laws and precedent governing
18 what fines a landlord can collect from a tenant, and
19 I don't think that this is one of them.

20 MS. MOLDENHAUER: In regards of, you know,
21 have we done specific review I have not. I do
22 believe, though, that this would be permissible and
23 would be enforceable in a landlord/tenant court.
24 There would be one. You would have the lease that
25 would identify it. Two, it would be a fine that

1 would be pursuant to a covenant that would be
2 recorded in the land records so this is not just
3 simply a landlord trying to identify unreasonable
4 levels of penalties that could potentially hinder a
5 tenant to need to be evicted. And obviously a lot of
6 the L and T laws are mostly ensuring that the tenants
7 are not going to be wrongly evicted.

8 And so in this situation it would be in
9 conjunction with a covenant that would then indicate
10 that we would have to provide some degree of
11 enforcement and a monetary penalty. Now that
12 monetary penalty I think would have to be reasonable.
13 I mean, it could not be, you know, equal to or you
14 know, a substantial portion of their current existing
15 rent value. But I think that so long as it is a
16 reasonable penalty, same way there are leases
17 currently that if you have a dog that doesn't comply,
18 you know, you can obviously provide a penalty for
19 those individuals that, you know, are breaching that
20 nonmonetary level of a --

21 MS. BUTANI-D'SOUZA: What kind of fine are
22 you thinking would be reasonable here?

23 MS. MOLDENHAUER: I mean, we have not
24 specifically specified. I think it would be a fine
25 that would then accrue over a month to month period.

1 MS. BUTANI-D'SOUZA: So the reason that I ask
2 is because, you know, if you put yourself in the
3 shoes of somebody that has a car that goes to get RPP
4 for whatever reason, they didn't catch it in the
5 marketing materials, they go to get RPP, they get
6 RPP, they have nowhere else to park their car except
7 for a garage, right? So you have to ask yourself,
8 you know, at what point are they indifferent between
9 paying the fine or paying for a garage. And then you
10 layer on top of that this question of what would a
11 court consider to be reasonable. And then on top of
12 that this question of whether or not a court would
13 even enforce this fine, which I appreciate your
14 statements but I do believe that that is an open
15 question. So, I think where I read this is that
16 there's still a lot of questions about whether this
17 is enforceable as a rental.

18 On the condo side, though, I think that there
19 may be some possibility here for more stringent
20 enforcement because you have a different set of
21 situations, a different set of relationships when
22 you're talking about a condo versus a landlord/tenant
23 situation.

24 MS. MOLDENHAUER: Go ahead.

25 MS. BUTANI-D'SOUZA: Okay. So, couple

1 questions. So you guys mentioned in your submission
2 that potential purchasers would be notified of the
3 RPP restriction in the condo documents, which they
4 would get 15 days to review. So, will they receive a
5 refund on their deposit if they cancel because of
6 this provision?

7 MS. MOLDENHAUER: Absolutely.

8 MS. BUTANI-D'SOUZA: Okay. So that would
9 need to be, I think, noted.

10 MS. MOLDENHAUER: It's -- I mean, you can
11 note it but it's similar to other situations. This
12 is actually part of the Condominium Act, which is
13 code in the District of Columbia. So your -- if you
14 are noting it, you're simply noting other law that
15 previously exists that any declarant would have to
16 comply with.

17 MS. BUTANI-D'SOUZA: Okay. Then I have this
18 question on -- you guys have stated that you're going
19 to market the units as car free, and I suppose that
20 the enforceability of that would be on the
21 potentially -- the potential aggrieved parties to
22 hold you to your word, correct?

23 MS. MOLDENHAUER: Yes, just like there's any
24 other, you know -- if an order says that the owner
25 has to put in tree boxes or, you know, is you know,

1 required to have a certain number of parking spaces,
2 if there's a neighbor or if there's a community that
3 obviously sees that that's not being provided, then
4 you know, it's an enforceability and obviously we are
5 required to comply with that.

6 There would also be the possibility where
7 prior to a C of O being issued the zoning office
8 would typically go through the conditions and want to
9 confirm that those conditions have been met.

10 MS. MAZO: And also I note, on the marketing,
11 that that is probably the easiest thing for the
12 community to track because they could easily look up
13 on MRIS, they could look on Red Fin, they could look
14 at a marketing material. So, I think that that would
15 be the most straight forward aspect of any of these
16 conditions that could be tracked.

17 MS. BUTANI-D'SOUZA: Okay. Do you want to
18 ask questions of DDOT or --

19 CHAIRPERSON HEATH: Sure, if you --

20 MS. BUTANI-D'SOUZA: I'm done.

21 CHAIRPERSON HEATH: Okay. All right.

22 MR. HOOD: Madam Chair, it just seems like
23 this whole discussion, and I'm listening to this
24 because I want to hear from Board Member Butani and
25 her objective view, because I've been around this RPP

1 issue for so long it's been subjective for me now
2 because I don't believe none of it. I really don't.
3 Being frankly honest. I'm not where you all are. I
4 hear it all, I've been hearing it for so long, and I
5 just don't believe it. And it seems like we're
6 putting the burden more on the community as opposed
7 to what we're supposed to be doing in making sure
8 that the order -- so the order is for the community
9 to go out and police, and I just think that's
10 unacceptable. But anyway, let's hear from DDOT. And
11 I think Ms. Chamberlin knows that -- where I stand on
12 this whole RPP issue. But anyway.

13 CHAIRPERSON HEATH: All right. So then with
14 that we will hear from DDOT. Thank you for being
15 here for this.

16 MS. CHAMBERLIN: Yes. Good morning. I guess
17 some history of the RPP system for those who don't
18 know, it was started in the 1970s as a way to protect
19 from commuter parking on residential neighborhoods.
20 So all streets were not automatically included. Once
21 the RPP system was created it's a block by block
22 system where folks have to petition to get put into
23 the RPP restriction. And that requires the 51
24 percent majority of the households on a particular
25 block to opt in.

1 And DDOT's role in this is actually, we
2 receive the applications, we review to ensure they
3 meet the criteria that was set, and then we make a
4 determination if it's allowable, eligible for the
5 RPP, and we send that information to the DMV. So
6 it's a multi-administration project.

7 So the DMV then is in charge of keeping the
8 list of the streets that are eligible, of the blocks
9 and the block faces that are eligible for RPP, and
10 then DPW obviously does the enforcement.

11 Currently as it is, DDOT cannot restrict a
12 particular household or a particular building or
13 address from being in the system because it was set
14 up, under the current regulation it's a block by
15 block system. Legislation would need to be
16 introduced in order to change that. So currently
17 DDOT can remove a block, the entire block, but not
18 the address from the RPP system. But that would also
19 require the same thing. It would have to be an
20 application with the majority support of all those on
21 the particular block, and then we would make the
22 determination and we can pull out that block. But
23 we're not allowed to pull just one particular address
24 or add just one particular address to the RPP.

25 In 2011 --

1 MS. BUTANI-D'SOUZA: I'm sorry, can I just
2 interrupt?

3 MS. CHAMBERLIN: Sure.

4 MS. BUTANI-D'SOUZA: I think that's actually
5 not the question that we're asking here. So the
6 issue at hand is the building has -- the applicant
7 has proffered that none of the residents of this
8 building would be eligible to receive RPP.

9 MS. CHAMBERLIN: Correct.

10 MS. BUTANI-D'SOUZA: So it doesn't have to do
11 with the block. It's just the building itself. The
12 people who live there.

13 MS. CHAMBERLIN: No, I understand. I'm
14 getting there.

15 MS. BUTANI-D'SOUZA: Oh, okay. All right.

16 MS. CHAMBERLIN: I'm getting there. Sorry, I
17 was giving the background for all --

18 MS. BUTANI-D'SOUZA: Got it.

19 MS. CHAMBERLIN: -- for the folks who don't
20 know or who might not know to benefit just from the
21 history of the program.

22 So in 2011 Babe's Billiard, which came before
23 the Zoning Commission, was the first case where the
24 applicant was proposing to remove themselves there.
25 They had zero parking and they were proposing to

1 remove themselves form the RPP system. And at that
2 time we did a legal review to see what's DDOT's
3 position on that. And that's where we determined
4 that we weren't' going to be able to pull out just
5 one particular address from the system. They're
6 already in the system. Once they go to the DMV
7 they'll be able to pull a permit. So nobody at DMV
8 Is going to stop somebody from pulling a permit.

9 And then what was also determined was we
10 weren't going to necessarily oppose those who want to
11 voluntarily withdraw from the system, which is the
12 position we have taken ever since, and the standard
13 language that we put in in our reports for the BZA
14 and the Zoning Commission is, it's not strictly
15 enforceable per se.

16 So under the current regulation if those
17 residing on a block that's eligible for RPP and they
18 go to the DMV and apply for an RPP, yes, they will
19 get an RPP sticker.

20 There can be as it's been discussed today,
21 much like what you guys have been taking about, a
22 homeowner's association agreement where you can have,
23 you know, the condo bylaws state you're not allowed
24 to have political signage on your windows, or you
25 know, blue shutters or whatever it is, and so in that

1 situation folks can enter into agreement saying,
2 we're not going to allow the residents to enter into
3 RPP. But they are the ones who are going to have to
4 enforce that. And they're the ones who are
5 responsible for enforcing under the current
6 regulation and legislation, DDOT cannot enforce that,
7 DMV cannot enforce that, and DPW cannot enforce that.
8 Nor do we want to be a party of that under the
9 existing system.

10 So anecdotally, I know there's been
11 questions, well, how is that working today. I can
12 speak for -- we know an employee who moved from
13 Maryland into the District into one of those
14 buildings that were non RPP. And actually it's a
15 rental building. And she was told up front that she
16 was not going to be allowed to do -- sign up for RPP,
17 and she sold her car.

18 Again, this is just anecdotal, one employee
19 from our office who moved from out of state and was
20 aware that she wasn't going to be eligible for the
21 RPP system. So far there haven't been too many
22 buildings that have come online with the RPP
23 restrictions, so I know there's always a question,
24 well, how is that working. We don't know. We
25 haven't been -- we're not keeping track of these

1 cases at this point, and we've decided that it really
2 is an agreement that has to be from the building,
3 they need to enforce it with whatever penalties they
4 have.

5 In the case of the Babe's Billiard, it was
6 with the ANC where there's financial penalties. The
7 ANC gets a certain amount of money if somebody has
8 violated that RPP. And that's just currently where
9 we are with the system.

10 MS. BUTANI-D'SOUZA: Okay.

11 CHAIRPERSON HEATH: So to Commissioner Hood's
12 point, we would be expecting the community to police
13 this if the landlord or building owner wasn't
14 enforcing their condo or bylaws of the building.
15 There's nobody else. There's no other agency or
16 entity who is going to make sure that the building
17 owner is adhering to --

18 MS. CHAMBERLIN: Currently under the -- yes.
19 Under the --

20 CHAIRPERSON HEATH: Okay.

21 MS. CHAMBERLIN: That's what it is.

22 CHAIRPERSON HEATH: Okay.

23 MR. HILL: I have a question. So, you had
24 mentioned that there would have to be some form of
25 legislation that would have to go through in order to

1 now do it by building. Correct?

2 MS. CHAMBERLIN: Correct, to change it
3 because it's set up as a block by block. So --

4 MR. HILL: So just out of curiosity, though,
5 would that be an easy thing to do? Like if
6 legislation were passed then you would need a
7 different kind of system? Like, do you know how easy
8 it would be for then the DMV to know that that
9 building is not eligible for RPP?

10 MS. CHAMBERLIN: I can't speak on behalf of
11 the DMV but I don't think it would be that difficult.
12 It's just, it would be the introduction of
13 legislation and counsel approval to change it.

14 MR. HILL: Thank you.

15 CHAIRPERSON HEATH: Does the Board have any
16 other questions of DDOT?

17 MS. BUTANI-D'SOUZA: I have a question for
18 OP, I guess.

19 CHAIRPERSON HEATH: Okay.

20 MS. BUTANI-D'SOUZA: Or, I don't know if this
21 is --

22 CHAIRPERSON HEATH: All right. So we'll take
23 questions from Office of Planning as well.

24 MS. BUTANI-D'SOUZA: Does DDOT get to say
25 something first or -- no? Okay.

1 So, it's my understanding that if they were
2 to violate, and I don't know if this is really a
3 question for the Office of Planning or more of a
4 Zoning Administrator type question. But I'm trying
5 to get an idea of how efficiently an ANC could pursue
6 this with the Zoning Administrator and how heavy the
7 fines would be, because I think this goes to Chairman
8 Hood's point that this is going to have -- and the
9 point that the DDOT representative has made here,
10 that this is going to have to be community enforced.
11 And I think before we impose that on the community it
12 would be helpful to understand what -- you know, how
13 that's going to work and whether that's going to be a
14 reasonable burden for them.

15 I mean, it sounds like the RPP program is a
16 community entered agreement, and so this would be a
17 community policed situation, which to me seems
18 parallel such that, you know, if it were in a condo
19 situation where I think you could more reasonably
20 enforce the fines, I could see that working. But I
21 think some of that still depends on how efficient it
22 is for the Zoning Administrator to -- so I don't know
23 if the Office of Planning has any information on
24 that.

25 MR. MORDFIN: I'm Stephen Mordfin with the

1 Office of Planning.

2 If it's a condition of approval that's
3 written into the order, then someone could complain
4 to the Zoning Administrator's office and they could
5 go out and investigate it. I don't know what the
6 fines would be if they were found to be in violation.
7 If it's an agreement between a condo board and its
8 tenants, then the city is out of that and would have
9 no say in it. That would just be between those two
10 parties.

11 MS. BUTANI-D'SOUZA: But it could be both.

12 MR. MORDFIN: They could put it in the condo
13 documents and you could include it as a condition of
14 approval.

15 MS. BUTANI-D'SOUZA: Okay.

16 CHAIRPERSON HEATH: Okay. So, before we do,
17 though, does the applicant have any questions of
18 either DDOT or Office of Planning?

19 MS. MAZO: Sure. To DDOT. Ms. Chamberlin,
20 have you had an opportunity to review the parking
21 studies that were prepared for this application?

22 MS. CHAMBERLIN: Yes.

23 MS. MAZO: And do you also understand that in
24 addition to the RPP restriction which was proffered
25 at the request of the ANC the applicant is also

1 providing other TMD -- sorry, TMD measures such as
2 the installation of a transit screen, three long-term
3 bike spaces, work with DDOT to determine location of
4 a future Capitol BikeShare Station, conditions
5 regrading scheduling and location of deliveries, and
6 the offering of an annual car sharing or Capitol
7 BikeShare membership for all new tenants for a period
8 of five years? Do you understand that?

9 MS. CHAMBERLIN: Yes.

10 MS. MAZO: And then based on your
11 understanding and your review of the parking studies,
12 would you, on behalf of DDOT, continue to have no
13 objection if this Board were to find that the RPP
14 restriction was not an appropriate condition to put
15 on the project?

16 MS. CHAMBERLIN: Yes. The RPP restriction
17 was not a consideration in our review as to if the
18 action is appropriate or not appropriate.

19 MS. MAZO: So accordingly you would say that
20 this list of conditions -- or sorry, the list of
21 proposed TMD measures as proffered by the applicant
22 would be sufficient to satisfy DDOT's requirements
23 without an RPP restriction?

24 MS. CHAMBERLIN: Yes.

25 MR. HOOD: Can I add to that? And the only

1 reason I'll always bring RPP up, because it puts
2 neighborhoods on promised land. And promised land
3 never materializes. That's my whole issue. Whether
4 it's germane or what the other mitigations to
5 satisfy. But I hear applicants come down, and I'm
6 not just picking on you and Ms. Moldenhauer, but I
7 have applicants come down all the time, offer an RPP
8 and everybody thinks it's going to work. This is a
9 grandiose idea. And guess what, once it leaves out
10 the door that's the end of it. And I'm not picking
11 on you all, I'm just hearing it again because I was
12 one who voted on Babe's. And sometimes you have to
13 rethink some of the things that we do up here. So.

14 MS. MAZO: No, we take no offense.

15 MR. UQDAH: Madam Chair, may I ask some
16 questions of DDOT?

17 CHAIRPERSON HEATH: Sure. If the applicant
18 doesn't have any other questions, just as order of
19 procedure.

20 MS. MAZO: Can I hold and see if there are
21 any --

22 CHAIRPERSON HEATH: Sure, until closing?

23 MS. MAZO: -- other further questions that
24 come up --

25 CHAIRPERSON HEATH: Sure.

1 MS. MAZO: -- based on Mr. Uqdah's
2 discussion? Thanks.

3 CHAIRPERSON HEATH: Sure. And, Mr. Uqdah,
4 you weren't here when they introduced themselves, so
5 if you could introduce yourself.

6 MR. UQDAH: Yes. I apologize. I'm Taalib
7 Din Uqdah, single-member district commissioner of 4C-
8 01. My second apology is because when I left the
9 room we were somewhere like number six on the
10 schedule.

11 CHAIRPERSON HEATH: I know. I apologize for
12 that change. It was a late change --

13 MR. UQDAH: Okay.

14 CHAIRPERSON HEATH: -- because we wanted to
15 be able to hear from DDOT while they were here.

16 MR. UQDAH: All right. Yeah, that's fine.

17 CHAIRPERSON HEATH: And so I shifted you.
18 Sorry.

19 MR. UQDAH: No, that's quite all right. I
20 would like to inform the Board, as well as the
21 applicant, that the ANC representative for this case
22 is in the building. He's in a training session so if
23 either of you need him I can text him and he can be
24 here right away.

25 CHAIRPERSON HEATH: Okay.

1 MR. UQDAH: Okay. My question to DDOT is in
2 follow up to the attorney's question. In that same
3 report, didn't DDOT say that what the applicant had
4 submitted was not robust?

5 MS. CHAMBERLIN: In the report we said it
6 wasn't robust but they hadn't put in the memberships,
7 the yearly memberships for the Capitol BikeShare.

8 MR. UQDAH: And what about the enforcement of
9 the installation. In other words, from my reading of
10 the report DDOT stated that because the applicant
11 used the word investigate, that's not really a
12 condition. I mean, I can look into something or I
13 can investigate whether a transit -- with a transit
14 screen. I mean, that's not saying anything.

15 MS. CHAMBERLIN: I would agree, so
16 investigate isn't an actual commitment to install.

17 MR. UQDAH: Okay. And to work with DDOT to
18 determine the location of a future Capitol BikeShare.
19 I mean, I'd like to work with you to do those things
20 as well. I mean, is that enforceable?

21 MS. CHAMBERLIN: No.

22 MR. UQDAH: To work with you?

23 MS. CHAMBERLIN: No.

24 MR. UQDAH: Okay. Schedule and locate
25 deliveries so as not to interfere or restrict parking

1 on Allison Street. I mean, they don't have that
2 authority, do they? Or do they?

3 MS. CHAMBERLIN: Not for FedEx or UPS.

4 MR. UQDAH: Okay.

5 MS. CHAMBERLIN: But they could schedule when
6 the trash gets picked up and where.

7 MR. UQDAH: Okay.

8 MS. CHAMBERLIN: And when tenants move in or
9 owners move in --

10 MR. UQDAH: Right.

11 MS. CHAMBERLIN: -- and where they park.

12 MR. UQDAH: Right. But that -- but UPS,
13 FedEx, pizza deliveries --

14 MS. CHAMBERLIN: No.

15 MR. UQDAH: -- things of that nature would be
16 no restrictions. Okay. That concludes my questions
17 of DDOT.

18 I would like to make this brief statement
19 while you're entertaining what can be done inside of
20 a unit, either apartment or a condo, and what can be
21 done outside. Yes, you can restrict me from having
22 pets in my apartment or in my condo. Perhaps even
23 smoking in my own house because that's inside. But
24 what they're asking for here is outside. You can't
25 restrict me outside. If I want to get RPP, that's

1 what occurs outside of my home. But now you're
2 trying to increase restrictions not only on the
3 interior but on the exterior. And it's creating
4 second-class citizens who all they want to do is live
5 here and you're taking away their option for either
6 having a car or not having a car. And the assumption
7 is that if you're in this home, you purchase it,
8 maybe you're 28 years old. One day you're going to
9 get older and you're going to find that you going to
10 need a car. Biking doesn't get it for you anymore.
11 So now you in a position whether you're going to
12 move, sell your place.

13 I mean, out of respect for you all, I mean, I
14 have to stop short of just calling this whole
15 discussion ridiculous. I mean, you know, in terms of
16 what -- you know, how much time we're taking up to
17 discuss no RPP.

18 The point about the legislation, it's not
19 going to be easy because I can tell you now there are
20 going to be people who are opposed to it. I'll be
21 there to oppose to it. To take away my right to be
22 able to -- that everybody else already has, only
23 because I came in after the deadline I don't get RPP.

24 MS. BUTANI-D'SOUZA: Mr. Uqdah, can I ask you
25 a question? So I appreciate all of your passion

1 about this issue because I agree that it's a very
2 important issue. As I view this, I see this as an
3 opt-in. You see it as a restriction. And the way
4 that I'm hearing it being presented as far as the
5 additional submissions go, is that this is more of an
6 opt-in, that a person who purchases a unit, or wishes
7 to purchase a unit here has a choice to purchase here
8 or purchase elsewhere. And they are notified that if
9 you purchase here, as a condition of your ownership
10 you are agreeing that you will not pursue RPP.

11 So, I guess what I'm wondering is, could you
12 see it from that point of view; that rather than this
13 being a restriction on someone's rights, this is
14 somebody agreeing that as a member of this community
15 I agree that I will not do this.

16 And so I'm just wondering because -- and I
17 want to specifically focus on the ownership
18 situation, rather than the tenant situation.

19 MR. UQDAH: What I see this as, is a slippery
20 slope. If you let this one in, there's going to be a
21 rack of others to follow.

22 I would also invite this Board to review the
23 traffic study that was submitted. I mean, even the
24 traffic study shows, there's ample parking. I mean,
25 so what's the rush to restrict RPP when the

1 applicant's own traffic study shows that there's
2 enough parking?

3 MS. BUTANI-D'SOUZA: So is it your position
4 that this condition should be removed, that there
5 should be no RPP restriction?

6 MR. UQDAH: Right.

7 MS. BUTANI-D'SOUZA: The project should move
8 forward without --

9 MR. UQDAH: Right. Just let --

10 MS. BUTANI-D'SOUZA: -- an RPP restriction.

11 MR. UQDAH: Let the market take care of
12 itself. I mean, the city is already claiming that
13 they have people who are moving here that don't want
14 to have cars.

15 MS. BUTANI-D'SOUZA: So you're saying, give
16 them the right to not have a car, but the right to
17 have a car as well if they choose.

18 MR. UQDAH: Right. If they want to. But
19 don't restrict them, because listen, here's the other
20 thing too I just thought about. If you restrict RPP,
21 you're also restricting VPP, the visitor's parking
22 pass.

23 MS. BUTANI-D'SOUZA: How is that, because I
24 believe that you just have to show your driver's
25 license in order to get a visitor's parking pass.

1 MR. UQDAH: Here's what happens. Yes, you're
2 correct. But that means you have to go to your local
3 police station, show your identification, to get a
4 VPP. Everybody else gets one through an application
5 through DDOT. Am I correct?

6 MS. CHAMBERLIN: You get one mailed, yes.

7 MR. UQDAH: Yes. You get one mailed to you.
8 So that you don't have the inconvenience of having to
9 go to whatever police station you live in, in order
10 to get it. And then be questioned by the officer.
11 The officer may not be there. They may have a
12 civilian there. You've got to wait until the
13 sergeant comes back. That's real world, Mr. Hood.
14 That's what you're talking about. There's a real
15 world application here.

16 CHAIRPERSON HEATH: Well, I think
17 understanding your position on this makes it a lot
18 more clear for me. I thought you were opposed to RPP
19 -- well, I understood that you were opposed to RPP,
20 or the restriction on RPP. But I also thought that
21 you had issues with the lack of availability of
22 parking in your community.

23 MR. UQDAH: Listen, there's --

24 CHAIRPERSON HEATH: So --

25 MR. UQDAH: I've looked at the traffic study.

1 Ask the traffic man.

2 CHAIRPERSON HEATH: Right. We saw it. We
3 saw it.

4 MR. UQDAH: He said.

5 CHAIRPERSON HEATH: We saw it.

6 MR. UQDAH: He said that there's --

7 CHAIRPERSON HEATH: They looked at other
8 dates. So --

9 MR. UQDAH: I don't want to restrict people's
10 right to be able to get RPP and in concert with that
11 VPP. That means --

12 CHAIRPERSON HEATH: Sure.

13 MR. UQDAH: -- they can't have visitors.

14 MS. BUTANI-D'SOUZA: Well, they can have
15 visitors. They just have to inform the police.

16 MR. UQDAH: Yeah, if they want to go up to
17 the police department.

18 MS. BUTANI-D'SOUZA: I mean, I don't think
19 that that's a ridiculous burden as somebody who has
20 done that many times.

21 MR. UQDAH: But ask some of my neighbors who
22 had to do it.

23 CHAIRPERSON HEATH: Right. But I think for a
24 variety of reasons now it seems that this issue about
25 not having RPP I think we're seeing it from different

1 perspectives, but I think we all realize that RPP
2 is --

3 MR. UQDAH: Now in defense of --

4 CHAIRPERSON HEATH: -- ineligibility of RPP
5 is not a --

6 MR. UQDAH: In defense of the ANC --

7 CHAIRPERSON HEATH: -- viable condition.

8 MR. UQDAH: The ANC did vote to support this
9 with the restriction.

10 CHAIRPERSON HEATH: Right.

11 MR. UQDAH: Okay. That's what the ANC did.
12 I'm only here as an opponent, as a single-member
13 district commissioner. You know, I have no great
14 weight. I mean, I'll be the first one to admit that.

15 MS. BUTANI-D'SOUZA: Mr. Uqdah, can I just
16 ask? So, I'm still a little confused about your
17 position here. So, you are opposed to the project.
18 But if the project goes forward you would like it to
19 go forward without the RPP restriction. Is that a
20 correct --

21 MR. UQDAH: You are absolutely correct.

22 MS. BUTANI-D'SOUZA: Okay. Got it. So, I
23 have a couple more question for DDOT, actually.

24 CHAIRPERSON HEATH: Go ahead.

25 MS. BUTANI-D'SOUZA: Okay. So, the

1 conditions -- can you flip back to the conditions,
2 please?

3 MS. MOLDENHAUER: The RPP conditions? Oh.
4 Sure.

5 MS. BUTANI-D'SOUZA: The proffered
6 conditions. Okay. So, the -- can you help me
7 understand, how does it work with Capitol BikeShare
8 and location of Capitol BikeShare stations?

9 MS. CHAMBERLIN: So that's determined through
10 our process. We get submissions. We also look at
11 the network. They have to be within a certain
12 distance from the nearest Capitol BikeShare station
13 since only the first 30 minutes are free.

14 MS. BUTANI-D'SOUZA: Uh-huh.

15 MS. CHAMBERLIN: So we unfortunately can't go
16 really broad yet. I mean, we're going broader and
17 broader and broader. But it's a network analysis.
18 It's a demand analysis. It's something we do take
19 public input when we're asking folks, where would
20 they like to see. But that's not the ultimate
21 decider. It's an overall look at the network itself.

22 MS. BUTANI-D'SOUZA: So can you help us
23 understand how somebody could work with DDOT on the
24 Capitol BikeShare location? What specific steps
25 could someone take to do that?

1 MS. CHAMBERLIN: Well, what we've seen some
2 developers do will help look at the -- it's actually
3 help provide a space. So there are some projects
4 where they actually designate some space in their
5 design for a future BikeShare station. So when we do
6 come through there's already a preset little pad area
7 that's not going to take something away.

8 MS. BUTANI-D'SOUZA: So those aren't in the
9 public space?

10 MS. CHAMBERLIN: We've done both. And either
11 it's how they design the public space or sometimes
12 they actually allow us to put some in private space,
13 like Gallaudet University has a BikeShare station on
14 private space. So does National Park Service and
15 others.

16 MS. BUTANI-D'SOUZA: So in this instance I
17 guess this building fronts Georgia Avenue. I'd have
18 to go back and look at the drawings but is there --
19 from your recollection is there --

20 MS. CHAMBERLIN: Not on Georgia Avenue.
21 Georgia Avenue is really narrow. There's actually
22 the sidewalks narrow. The design, that's something
23 we'll have to work with the building and the public
24 space permits to ensure there's enough sidewalk
25 clearance and spaces for trees because that sidewalk

1 is actually quite narrow.

2 MS. BUTANI-D'SOUZA: Okay. So there is no
3 possibility to put a Capitol BikeShare station on the
4 public space in front of the building and it doesn't
5 seem like there is any private space that would be
6 appropriate for a Capitol BikeShare station in your
7 view, is there, with this?

8 MS. CHAMBERLIN: Not immediately, no.

9 MS. BUTANI-D'SOUZA: Okay. So given that
10 that's off the table what else can a developer do, or
11 an owner do to work with DDOT on Capitol BikeShare?

12 MS. CHAMBERLIN: Sometimes they can put in
13 that they will actually pay, they will fund for the
14 installation and the first year of operation.

15 MS. BUTANI-D'SOUZA: How much does that
16 typically cost?

17 MS. CHAMBERLIN: It's \$80,000.

18 MS. BUTANI-D'SOUZA: Okay. And is there
19 anything else that they can do?

20 MS. CHAMBERLIN: For the BikeShares?

21 MS. BUTANI-D'SOUZA: Yeah.

22 MS. CHAMBERLIN: That would be it. They
23 could put funds to a new station that could be
24 determined by DDOT within -- you can state within a
25 certain distance from the project.

1 MS. BUTANI-D'SOUZA: Okay. And then three
2 long-term BikeShare spaces. Is that number
3 determined by DDOT or was that something that was
4 suggested by the applicant?

5 MS. CHAMBERLIN: So the new ZR has -- well,
6 actually, current regulation requires one long term
7 per three dwelling units.

8 MS. BUTANI-D'SOUZA: Okay. So okay.

9 MS. CHAMBERLIN: So they're already required
10 by law to do two and a half.

11 MS. BUTANI-D'SOUZA: Okay. So let me ask the
12 applicant then. When you stated that you would work
13 with DDOT on the location of a Capitol BikeShare
14 station, what did you have in mind?

15 MS. MAZO: Right. The idea would be that we
16 could start the conversations with DDOT to see
17 whether or not there is a location either around the
18 property, or close by the property, that would be --
19 that they would be interested in locating Capitol
20 BikeShare station. And again, these particular.
21 These specific conditions work with DDOT to determine
22 the location of a future BikeShare station, that
23 language, and investigate the installation of a
24 transit screen were provided by Commissioner
25 Hayworth, the ANC commissioner, the SMD for this

1 property.

2 The other thing I would mention is, and I
3 would have to find a plan of it, but the property
4 does have a BRL area, Building Restriction Line area
5 that is technically kind of treated as public space
6 under which no building can occur along Allison
7 Street. But there could be a potential to discuss
8 with DDOT, the option of being able to have a space
9 for a Capitol BikeShare location.

10 Now based on Ms. Chamberlin's conversation I
11 would be quite frank, \$80,000 is not a sum that can
12 be paid by this developer, and it's not something
13 that we can put forward. But we can look into
14 discussing with DDOT the option of trying to find an
15 area within that BRL area. And I've done the
16 calculation that's approximately 1,200 square feet
17 for the length of the area along Allison Street, that
18 maybe there would be a space there, a location there
19 that could fit the criteria of what could be
20 allocated for a Capitol BikeShare station. We have
21 not had those discussions with DDOT.

22 MS. BUTANI-D'SOUZA: In your view is Allison
23 Street, approximately where this building is, an
24 appropriate place for a Capitol BikeShare station?

25 MS. MAZO: I wouldn't be able to speak to

1 that right now. I'd have to go back to the person in
2 charge to see what their analysis has.

3 MS. BUTANI-D'SOUZA: Okay. Okay. Let's talk
4 about transit screen. So investigate the
5 installation of a transit screen. Can you help us
6 understand what the applicant intends to do with
7 that? It's my understanding that a transit screen
8 has a monthly membership and you set it up and then
9 you pay it every month.

10 MS. MAZO: Right. And my understanding is a
11 little bit fuzzy, but I think the cost of a transit
12 screen are within three -- or I'll let --

13 MR. ANDRES: So you are correct. It's
14 essentially installing a television and it's a
15 subscription service so you also need Wi-Fi service
16 as well. And internet service. So those costs, as
17 well as subscription service specifically to transit
18 screen. There's a company called a Transit Screen
19 where you would subscribe to the service. There are
20 other services that you can -- if you choose not to
21 use Transit Screen as a company, there are other
22 streaming services that can get you real-time
23 information.

24 MS. BUTANI-D'SOUZA: So is the applicant
25 willing to just offer that they would install a

1 transit screen?

2 MS. MAZO: Yes. Yes, we are.

3 MS. BUTANI-D'SOUZA: Just trying to make
4 these a little bit more specific.

5 MS. MAZO: Absolutely.

6 MS. BUTANI-D'SOUZA: Okay. And then it
7 sounds like this -- if we wanted to make the work
8 with DDOT to determine the location of a future
9 Capitol BikeShare station, to make that more specific
10 you would have to specify that you mean the area on
11 Allison Street. Or indicate that you're willing to
12 contribute a certain amount to fund the Capitol
13 BikeShare station, whether that be the full 80,000 or
14 less. That would be a more specific proffer with
15 regard to that. Would the applicant be willing to
16 fund any portion of a Capitol BikeShare station if it
17 were located within a certain distance from the
18 property?

19 MS. MAZO: I don't know the answer to that at
20 this time. I can confer with the applicant to try to
21 figure that out.

22 MS. BUTANI-D'SOUZA: Okay. And then, you
23 know, the other question that I would have is based
24 on again, the submissions, would the applicant be
25 willing to stipulate that, you know, if the Board

1 does agree to this concept of restricting RPP, would
2 the applicant be willing to commit to making this a
3 condo building in order to make that provision
4 enforceable?

5 MS. MAZO: That is something else I'd have to
6 take back to the applicant. I don't know the answer.
7 But I do know that there are concerns about the
8 market and having to be restricted for specific use
9 in order to address the RPP issue. I think that
10 that, right now, is not a determination that I know
11 that we can make.

12 MR. HILL: Thank you, Madam Chair. Ms.
13 Chamberlin, how does one turn in an RPP? Isn't it on
14 the window sticker?

15 MS. CHAMBERLIN: You mean turn it on?

16 MR. HILL: Turn it in. I'm sorry. Like once
17 you've been given permission to park there, how do
18 you surrender it. Thank you.

19 MS. CHAMBERLIN: Well, it's actually, it is
20 part of the sticker that's with your car, so --

21 MR. HILL: Right. So it's part of the
22 sticker that's with the car. This is just -- so then
23 you'd have to take it off the window.

24 MS. MOLDENHAUER: You would have to
25 reregister your car. So, you register your car with

1 DMV every two years or every single year.

2 MR. HILL: Right.

3 MS. MOLDENHAUER: So if you're a renter and
4 you are renting, typically you are renting for a
5 yearly term. Now that's not always.

6 MR. HILL: That's okay. That's okay. I
7 appreciate it. That's okay.

8 MS. MOLDENHAUER: You just like reregister
9 it.

10 MR. HILL: You'd have to take it off the
11 window. So --

12 MS. MOLDENHAUER: And you have to reidentify
13 information when you go back and you reregister. So
14 if you're changing locations when you reregister you
15 could then refill out the form and all the
16 information and take off RPP.

17 MR. HILL: Okay. Now I'm digging down just
18 because we're going to come back here to RPP stuff
19 again, which is if the -- I'm trying to figure out
20 how you get -- the person has now, you know, gotten
21 RPP, they're getting fined. They need to return it
22 to someone, right? To prove that they no longer have
23 RPP. So that would be something I'd like to see in
24 the lease documentation or whatever it is as part of
25 this condition. I think your slides are good in

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1 terms of like actually trying to keep people from
2 doing this, right, from getting RPP. And so just
3 trying to figure out how the end is. You know, how
4 do you get it back? You know they've done it. They
5 no longer have it. And then I guess, and I don't
6 know if this is DDOT or not, but can you go back and
7 reregister again. You don't have to go back every
8 two years. You can go back after another month or
9 something.

10 MS. CHAMBERLIN: Yeah, you have to -- well, I
11 don't know about removing the RPP, but when there's a
12 change in address you're supposed to go and redo your
13 registration.

14 MR. HILL: When there's a change in address.

15 MS. CHAMBERLIN: Correct.

16 MR. HILL: But there's not a change in
17 address. I've now gotten RPP. I'm now getting fined
18 for my RPP. I have to turn in the sticker. Can I
19 reregister again without RPP within a month, or
20 whatever it is?

21 MS. CHAMBERLIN: Yeah, that I'm not certain
22 of.

23 MR. HILL: Okay.

24 MR. UQDAH: Mr. Hill --

25 MS. MAZO: Oh, and sorry, can I just make one

1 quick point to address Vice Chair D'Souza's question?

2 We understand from our applicant that they
3 would be comfortable with making the maximum of a
4 \$10,000 contribution towards the Capitol BikeShare
5 station. You know, I guess looking at it in two
6 ways, one would be investigate whether or not there
7 is an opportunity to put it, to actually have a space
8 for the location on the building. Or to contribute
9 \$10,000 to a nearby, upcoming Capitol BikeShare
10 station once that network gets built out.

11 MS. BUTANI-D'SOUZA: That's terrific. I'm
12 sure that the ANC would appreciate that. So, I don't
13 want to -- I think, you know, what I'm struggling
14 with here is, you know, and I appreciate Commission
15 Uqdah's comments. But we are required to give great
16 weight to the position of the ANC. And the ANC has
17 stated that their approval of this, or their support
18 for this is contingent upon this criteria with regard
19 to RPP.

20 So I struggle because you guys want to stay
21 open to whether this is going to be a rental or a
22 condo. If it is a rental, though, based on the
23 information that you've provided, I don't see that
24 this is actually an enforceable condition. So, in my
25 view I think it would need to be a condo, number one.

1 Number two, I think there's an open question with the
2 additional information on the traffic study. There's
3 a couple open questions.

4 One is, did the traffic study account for
5 street cleaning? It was surprising to me that at the
6 end of each day, that's when you saw the most. I
7 mean, to me, if I were doing the study I would call
8 up and say, hey, we didn't see anything but now it's
9 picking up.

10 MR. ANDRES: Well, Ms. D'Souza, can I respond
11 to that?

12 MS. BUTANI-D'SOUZA: Sure.

13 MR. ANDRES: So we came in and identified our
14 study, which took one snapshot, which we coordinated
15 with DDOT. So it was a Tuesday, that was done.

16 So the street cleaning that's currently out
17 there are street cleaning hours, Tuesday mornings,
18 street cleaning hours Thursday overnight into Friday
19 morning, and Street cleaning hours Wednesday night
20 into Thursday morning. So the day that we chose
21 initially was Tuesday. So with respect to Tuesday
22 our analysis shows that there is a certain level of
23 both RPP and non RPP spaces that are available.

24 Based on our last hearing you had suggested
25 that we look at days towards the weekend to sort of

1 diversify the number of data points. So we chose
2 Friday and Saturday. Saturday is completely
3 unaffected by any of the street cleaning. Friday we
4 chose because we not only did we want to catch the
5 Friday evening, but we also wanted to catch something
6 during the middle of the day because there was some
7 question about availability during the middle of the
8 day. So that's why we chose Friday and Saturday,
9 because we already had a data point in the middle of
10 the week so we just wanted to catch something towards
11 the end of the week.

12 And if you look at our data, our data is
13 actually relatively consistent. You know, Wednesday
14 there's 71 percent maximum availability -- maximum
15 occupancy. On Friday it jumps up to 80 percent. And
16 then on Saturday it drops down to 76 percent. So the
17 relative occupancy of this neighborhood is between 70
18 and 80 percent.

19 MS. BUTANI-D'SOUZA: Okay. So, thanks. We
20 did read -- we read it, so we understand that point.
21 So I guess, I don't know exactly where we should go
22 from here but I think that it would be --

23 CHAIRPERSON HEATH: We're going to hear
24 closing.

25 MS. BUTANI-D'SOUZA: Okay.

1 MS. MOLDENHAUER: Oh, could I just address --
2 I'm sorry. I know that we'll do the closing but I
3 wanted to address your comment about the apartments.
4 Do you mind if I just take a quick second and address
5 that question about the apartments?

6 CHAIRPERSON HEATH: Sure.

7 MS. MOLDENHAUER: Whether or not this is a
8 condominium or an apartment building, you're never
9 going to be able to fully restrict the availability
10 for even a condominium unit owner to want to
11 eventually rent their individual unit. And so I
12 think that while they are different legal standards,
13 the application is still the same. I mean, in a --
14 and I think it's actually better from a policy
15 perspective if it's an apartment building. In an
16 apartment building you have the landlord, the current
17 developer, you have a single entity that owns the
18 building and is then going to be self-enforcing this
19 requirement and ensuring that it is in force. There
20 are other apartment buildings that are doing this.

21 MS. BUTANI-D'SOUZA: Who would get the fines
22 if it was a landlord?

23 MS. MOLDENHAUER: It would be the property
24 owner would get the fines.

25 MS. BUTANI-D'SOUZA: And what would they --

1 MS. MOLDENHAUER: So if OAG --

2 MS. BUTANI-D'SOUZA: So the --

3 MS. MOLDENHAUER: If neighborhood individual
4 said, you're having a problem, you're not complying
5 with this, I saw somebody park their car and then
6 walk into your building, they could go to OAH, Office
7 of Administrative Hearings, challenge this, and they
8 could get civil infractions against the developer,
9 the property owner as the landlord, for violating
10 their certificate of occupancy which would be
11 conditioned upon the Board. So that's actually, I
12 think, even a better situation from, I think a board
13 policy perspective. If it's an HOA you're talking
14 about the Board of Directors who would then have to
15 be doing the enforcement.

16 So I think both are beneficial and I think
17 that a project is going to get developed, it's not
18 going to be two years to build -- restrict a
19 developer from saying, this can either be apartments
20 or condos, I think is, you know, overly restrictive
21 on this project and we would respectfully request
22 that you still provide the applicant the opportunity
23 to do both, or either/or, depending upon the
24 situation.

25 MR. HILL: Madam Chair.

1 CHAIRPERSON HEATH: Uh-huh.

2 MR. HILL: Just real quick of the applicant.
3 You're good with OP's conditions and the ANC's
4 conditions, correct, for clarification?

5 MS. MAZO: Yes. Yes, we are.

6 MR. HILL: Thank you.

7 CHAIRPERSON HEATH: All right. So then with
8 that, we'll turn back to the applicant for closing.

9 MS. MAZO: Sure. And I just want to make a
10 few brief comments and to kind of bring us back to
11 where we are, which is we have an application for a
12 variance request and we're seeking two area variances
13 here. The first is a 10-foot rear yard variance.
14 The project as revised will be able to provide a
15 five-foot rear yard. And then we're also seeking a
16 variance from 2101 from the parking spaces.

17 The legal standard for a variance relief is
18 satisfied in this cases. The Board is well aware of
19 the standard, the property has to be exceptional, the
20 owner would encounter practical difficulties, and the
21 variance would not cause substantial detriment to the
22 public good.

23 In terms of uniqueness, the case law on
24 uniqueness is also well-established that the unique
25 situation may arise from a confluence of factors and

1 an exceptional situation and condition applies not
2 only to the land but also to the existence of the
3 building on the land. In this case OP has opined and
4 we certainly agree that the uniqueness standard is
5 satisfied here. We're at a corner location. We have
6 no rear alley access. Trapezoid or an ice cream
7 shaped property. We've got a 15-foot building
8 restriction area along Allison Street that
9 substantially restricts the ability to build on the
10 property, and there's a ground floor commercial
11 nature of the properties along this portion of
12 Georgia Avenue.

13 This here just demonstrates the property
14 lines. The other thing I want to identify is the
15 property is unique in the square. And if you just
16 look at this capture of the zoning map it makes
17 clear, our property is Lot 37. It's the only
18 property that has this trapezoidal shape that does
19 not have alley access, that has a significant BRL, so
20 the uniqueness standard is satisfied.

21 Next we go to practical difficult, and there
22 the issue is, is there a nexus between this
23 uniqueness and the practical difficulty that is faced
24 by the applicant. And the area variance only
25 required proof of practical difficulties, while use

1 variances, this is not a use variance, required proof
2 of hardship, which is a greater burden.

3 In this instance the practical difficulty
4 resulting from the property's uniqueness is also
5 satisfied. Parking. The property has no rear alley
6 access. Mr. Mordfin from the Office of Planning has
7 also documented that there's no way to run a curb cut
8 from Allison Street to the property. The parking
9 standard is satisfied.

10 Then we go to the rear yard. The rear yard,
11 the requirements to limit the rear yard to five feet
12 are also satisfied here. And they are directly
13 related to the uniqueness of the property. The
14 property has this ice cream cone shaped, and the BRL
15 area that forces the bulk of the building to the
16 rear. And Mr. Mordfin also opined on this in his
17 testimony and in his report.

18 This image was in our prehearing statement
19 and it shows the max developable area without an area
20 variance.

21 Next we go to the no substantial detriment to
22 the public good, or the zone plan. This is also
23 satisfied. I think it's important to note that the
24 project is in line with the C-2-A zoning and goals
25 and it is an appropriate use, and Commissioner

1 Hayworth also indicated in his testimony that the
2 provided commercial and the residential uses were
3 appropriate in this location.

4 As to parking, the property is well served by
5 the surrounding transit network. There is
6 documentation of an ample supply of on-street
7 parking, and we have provided TMD measures, a full
8 complement of TDM measures to satisfy any other
9 additional requirements.

10 With respect to the relief for the rear yard,
11 the project now provides a five-yard rear yard which
12 will provide 11 feet between our property and the
13 property to the west. The sun studies which have
14 been provided, also demonstrate that the shadow
15 impact on the properties to the west will only occur
16 in the morning and that any shadows that are
17 projected by this particular project would not have a
18 substantial detriment to adjoining -- to adjacent
19 property owners.

20 This was a project that has the support of
21 OP. It has the support of the full ANC, and we would
22 also -- and we also understand that the property
23 owner at 4422 Georgia Avenue, the Ethiopian
24 restaurant, also supports this project. So this is a
25 good project, it's appropriate, it's correct for this

1 unique property, and we would hope that we would get
2 your support.

3 CHAIRPERSON HEATH: All right. Thank you.
4 So is the Board ready to deliberate on this?

5 MR. HILL: Sure.

6 CHAIRPERSON HEATH: All right. So, I don't
7 need to restate all that Ms. Mazo has just said. I
8 do think that, you know, we've had a lot of
9 discussion around this project. I do think that the
10 project meets the standard for the relief being
11 requested.

12 My issue here still is with RPP, and while I
13 recognize that that's a condition that was put
14 forward by both Office of Planning and the ANC, I
15 still don't see how it's enforceable. And so I feel
16 like that's just a really weak condition. So, I
17 don't know how other board members feel, but I would
18 be fine to move forward with approval of this request
19 with the conditions that the applicant has put
20 forward, modifying the condition around the transit
21 screen so that it is enforceable and stating that the
22 applicant agrees to install a transit screen on the
23 property. Also modifying the condition around
24 Capitol BikeShare and committing the \$10,000 that the
25 applicant has agreed to in support of Capitol

1 BikeShare station somewhere near the property.

2 I would suggest removing the RPP restriction
3 here, but I'm curious to see what other board members
4 feel.

5 MR. HINKLE: Yeah, Madam Chair, just real
6 quick. In regards to the transit screen, I think I
7 have a question for the applicant. Is there a common
8 lobby for this building that you could provide the
9 transit screen?

10 MS. MAZO: The building provides a retail
11 space on Georgia Avenue, and the idea would be to put
12 the transit screen in the retail space on Georgia
13 Avenue.

14 MR. HINKLE: Okay. I mean, I could live with
15 that. I think it's a technology that's here today
16 and might be gone tomorrow so I struggle with putting
17 these as a condition but --

18 CHAIRPERSON HEATH: Okay.

19 MR. HINKLE: -- if the other board members
20 feel that it's important, I could support it. Excuse
21 me. I think that was it. Yeah.

22 CHAIRPERSON HEATH: Okay. Anybody else? Go
23 ahead.

24 MR. HILL: So this has been very well thought
25 out, I think, and the RPP is something that we've had

1 come before us and we talk about a lot, and the
2 enforcement is something that I have been also just
3 kind of struggling with and to how one goes about
4 this.

5 I find it interesting that again,
6 Commissioner Uqdah is actually in support of, or the
7 opposition is in support of allowing more cars on to
8 the street. The problem that I have, I suppose, is
9 that this has gone through the ANC, they've gone
10 through this with these conditions. That's what they
11 voted on. OP has gone through this with those
12 conditions. That's what they're giving their
13 approval on.

14 So whether or not these people actually --
15 whether or not the future tenants, owners, actually
16 do apply for RPP, you know, if it was a condition in
17 there saying that they're not going to do it, and
18 they go ahead and do it, then to me it doesn't seem
19 that it matters, necessarily to now pull it. You
20 know, so I would --

21 CHAIRPERSON HEATH: Because that's not
22 enforceable anyway.

23 MR. HILL: It's not enforceable anyway. Or
24 we're trying to struggle with how it is enforceable.
25 I like the conditions that they set forth in terms of

1 the applicant. Like, I like what the applicant is
2 saying for the conditions. Like, I'd like those to
3 be in the lease or, you know, again, and then how one
4 actually goes about, as I said before, the language
5 in the lease to returning the permit. I mean, you
6 have to give it back somehow, right? So if you,
7 again -- and I'm just trying to find some teeth,
8 which is something that I think some of the board
9 members were talking about.

10 But I suppose I would not delay this if we
11 did it without the RPP in there, if that's how it
12 went forward. I would be in support of leaving the
13 RPP in there, and also I think the standard has been
14 met. I think that the -- in terms of the lot line
15 and the ice cream cone shape that was mentioned in
16 the rear yard, I think that it meets the standard
17 what has been kind of again, talked a lot about, is
18 this RPP, which again I'm just talking it through now
19 because for future cases that are going to be before
20 us and they're offering it up as something to you
21 know, prevent people.

22 But nonetheless, so that's what I'm saying.
23 I would vote for keeping it in there and I could vote
24 to move forward. And depending upon how the rest of
25 my colleagues go, I can also vote for pulling out.

1 It's just that that's what the ANC and OP had
2 approved.

3 MR. HOOD: I would agree with the former Vice
4 Chair, of leaving it in. I will tell you that
5 there's another case on Georgia Avenue, and one of
6 the thing -- and I'm a realist, Commissioner Uqdah,
7 and I know that I have friends who live on Georgia
8 Avenue and I've been here long enough to vote on
9 stuff that's built, and they invite me to their house
10 and show me that they don't have any parking spaces.
11 So, as one of the recipients who get it down here and
12 also in the community, because I'm not just -- I
13 don't just sit down here, I also live in the city
14 also and go around the community, as others, I really
15 think as the Board Member Hill said, and I'm just
16 joking with you about the former piece, I'm going to
17 probably say that for a while, but I think --

18 MR. HILL: I'm still a board member, Chairman
19 Hood. Thank you.

20 MR. HOOD: But I think he's exactly correct.
21 While we're still struggling with DDOT and others to
22 try to find -- I'm very critical of it because I want
23 it to work like we think it's going to work. I think
24 the applicant has some conditions and they agree to
25 the RPP issue from where I understand it. However it

1 works let's just try to -- you all can be the model
2 to make it work, but I would think we need to leave
3 it in there because Commissioner Uqdah, I've been in
4 that neighborhood and I hear about the parking
5 issues, and I know what Mr. Andres says about the
6 parking. But I've been there. I know what people
7 are saying. I know what your neighbors are saying to
8 us, so we need to try to find a way to mitigate that.
9 And Madam Chair, I would be in favor of leaving it in
10 there.

11 CHAIRPERSON HEATH: Okay.

12 MR. HOOD: Hopefully one day it will work.
13 Okay.

14 CHAIRPERSON HEATH: I hope so. I do think
15 that this is the farthest that we've gone towards
16 answering a lot of the Board's questions around RPP
17 and how to make it enforceable. I just still think
18 there are holes in it. So if you all can be the
19 model, I think that's great and we'll look to this
20 case in the future as to how to make it work.

21 MS. BUTANI-D'SOUZA: I actually would like to
22 thank the applicants because I think you've done a
23 very commendable job of putting together what I view
24 is actually a very enforceable model. You know, I
25 think that this is a community request to -- taking a

1 step back, this is a community program, the RPP,
2 right? Neighbors, blocks opt in to it. The
3 community representative, which is the ANC, has
4 requested that, you know, members of the community
5 who live in this particular building not be a part of
6 this particular community element and the owners as
7 representatives of these future community members
8 have agreed to it, and they've put together, you
9 know, two scenarios. I still have questions about
10 the landlord scenario, but I respect the argument
11 that it takes two years to build a building and the
12 market can be very different in two years, and I
13 respect that that is a definite risk for these guys.

14 So, you know, I think it all hangs together.
15 It's community enforced, the ANC. It's going to be
16 on the ANC to enforce it. That's been made very
17 clear in the record. It's unfortunate that the ANC
18 author -- designated representative for the ANC is
19 not here to comment on that, but you know, I don't
20 think we need him here because I think their not
21 being here is comment enough.

22 So I tend to agree that I think we should
23 keep it in there and, you know, and I appreciate the
24 work that's been done on this. And I also agree with
25 Madam Chair that the other conditions should be made

1 more specific so that they hang together a little bit
2 better in the order. So, install the transit screen
3 and you know, make note that the applicant has -- it
4 sounds like what they're offering is either \$10,000
5 towards the location of a Capitol BikeShare station,
6 or creating a pad for the Capitol BikeShare station
7 on their property, which I think is appropriate.

8 So, and I do believe that they've also met
9 the standard.

10 MR. HILL: Thank you, Madam Chair, just last
11 comment. I don't think anything is going to work
12 until there's legislation and there's some system
13 where the building pops up and then RPP is not there.
14 I just want to get on the record here for me as
15 moving forward, and I don't know, Ms. Chamberlin, how
16 much influence you have to push legislation there
17 because it's something that we're seeing now, more
18 often. And that is the way. I also, however, agree
19 with Vice Chair D'Souza in that it's an opt-in. I
20 think that, you know, you choose to buy this that
21 way. And so it's just an enforcement component that
22 I'm having difficulty with, but so I'm still again in
23 approval. Thank you.

24 CHAIRPERSON HEATH: All right. So then with
25 that I will make a motion that we approve the request

1 for variances from rear yard, the rear yard
2 requirements to permit the construction of a five-
3 story plus cellar, mixed use project with seven
4 residential units at 4424 Georgia Avenue with the
5 conditions as the Board has previously stated.

6 Well, what I'll say is, with the conditions
7 that the applicant has put forward with the
8 modifications that the Board has previously stated.
9 And this is Application No. 19230. And that is to
10 still keep -- still keep the RPP condition.

11 MS. BUTANI-D'SOUZA: I would second. I would
12 just want to make clear that the Capitol BikeShare
13 condition is \$10,000, or work with DDOT and locate
14 the Capitol BikeShare on the Allison Street or on the
15 property as discussed here.

16 CHAIRPERSON HEATH: All right. So the motion
17 has been made and seconded. Any further discussion?

18 [Vote taken.]

19 CHAIRPERSON HEATH: The motion carries.
20 Thank you.

21 MS. MAZO: We would ask for a summary order.

22 CHAIRPERSON HEATH: Yes, we can do a summary.

23 MR. HOOD: Madam Chair, I just want to say
24 this for the record for other cases. I appreciate
25 Commission Uqdah's comment about the bicycles at 28

1 years old, because when we get older we're going to
2 be looking for cars. And I don't know if you've
3 heard me say that or you and I just -- great minds
4 think alike.

5 MR. MOY: To conclude --

6 CHAIRPERSON HEATH: Thank you.

7 MR. MOY: To conclude on this case then,
8 Madam Chair, staff would record the vote as five to
9 zero to zero. This is on the motion of Chairperson
10 Heath to approve the application for the relief
11 requested and revised conditions as cited by the
12 Board. Seconding the motion, Vice Chair Butani, also
13 in support Mr. Hood, Mr. Hill, and Mr. Hinkle.
14 Summary order.

15 CHAIRPERSON HEATH: Thank you. Let's do our
16 next application, Mr. Moy, 19247.

17 [Discussion off the record.]

18 CHAIRPERSON HEATH: Mr. Moy, did you call
19 this case?

20 MR. MOY: I will in a split second.

21 CHAIRPERSON HEATH: Okay. All right. You
22 can have a seat.

23 MR. MOY: Okay. Application No. 19247, Karen
24 Tramontano. And as, let's see, all right. This
25 application has been amended and now it's before the

1 Board for variance relief from the advisory, or
2 rather accessory structure height and story
3 requirements under 2500.4, special exception 223, not
4 meeting the lot occupancy requirements for 03.2, this
5 would allow the construction of a flat in the R-4
6 district, 1007 S Street Northwest, Square 334, Lot
7 22.

8 CHAIRPERSON HEATH: All right. Thank you,
9 Mr. Moy. If you could please introduce yourselves.

10 MS. TRAMONTANO: Sure. Karen Tramontano.

11 MR. MARTIN: Jim Martin, I'm the architect.

12 CHAIRPERSON HEATH: Okay. Thank you. So,
13 the good news here is that I think our case seems
14 pretty straight forward. Right? And as I reviewed
15 the record I think your application is complete. So
16 unless the Board has any questions, which it looks
17 like they don't, would you be okay with us moving
18 forward? I don't think we're going to need a full
19 presentation by any means.

20 MS. TRAMONTANO: Absolutely.

21 CHAIRPERSON HEATH: All right. Okay. So
22 then with that I'd like to hear from Office of
23 Planning if you have any additional comments.

24 MS. VITALE: Good afternoon, Madam Chair,
25 Members of the Board. Alisa Vitale with the Office

1 of Planning. We will rest on the record in support
2 of the requested relief.

3 CHAIRPERSON HEATH: Okay.

4 MS. VITALE: I can answer questions. Thank
5 you.

6 CHAIRPERSON HEATH: Thank you. All right.
7 Board, any questions of Office of Planning?
8 Applicant, I assume you have no questions of Office
9 of Planning.

10 All right. We also have the letter from ANC
11 1B where they recommend approval, and they voted
12 unanimously to support this application. And
13 additionally we have a letter from DDOT recommending
14 no objection.

15 So is there anyone here wishing to speak in
16 support of this application? Anyone in support?
17 Anyone in opposition to this application? No
18 opposition?

19 We didn't have any letters of support or
20 opposition on this but I think with that, is the
21 Board ready to deliberate? All right.

22 Given that this application is complete,
23 meets all the requirements for variance and special
24 exception approval, I will move that we approve the
25 request for variance from the accessory structure

1 height and story requirements under 2500.4, and a
2 special exception under 223, not meeting the lot
3 occupancy requirements under 403.2 to allow the
4 construction of a flat in the R-4 at 1007 S Street
5 Northwest.

6 MS. BUTANI-D'SOUZA: Second.

7 CHAIRPERSON HEATH: The motion has been made
8 and seconded. Any further discussion?

9 [Vote taken.]

10 CHAIRPERSON HEATH: The motion carries.
11 Thank you.

12 MS. TRAMONTANO: Thank you, Madam Chair.

13 MR. MOY: Staff would record the vote as five
14 to zero to zero. This is on the motion of
15 Chairperson Heath to approve the application for the
16 relief requested. Seconding the motion, Vice Chair
17 Butani. Also in support, Mr. Hood, Mr. Hill, and Mr.
18 Hinkle. Motion carries, Madam Chair.

19 Waive requirements for a summary order?

20 CHAIRPERSON HEATH: Summary order.

21 MR. MOY: Thank you.

22 CHAIRPERSON HEATH: All right. Let's call
23 our next application, Mr. Moy, 19249.

24 MR. MOY: Application No. 19249 of Jennifer
25 Wisdom as advertised for requested relief for

1 variances from the limit on number of story
2 requirements under 400.1, lot occupancy requirements
3 under 403.2, rear yard requirements under 404.1, and
4 off-street parking requirements under 2101.1. This
5 is for a new one-family dwelling on an unimproved
6 lot, R-4 district, 18 55th Street Northwest, Square
7 3093, Lot 46.

8 CHAIRPERSON HEATH: All right. Good
9 afternoon. Would you please introduce yourselves?

10 MS. WISDOM: Sure. I'm Jennifer Wisdom, I'm
11 the owner of the lot and the developer of the
12 property.

13 MR. KUHN: Afternoon. I'm Jonathan Kuhn, I'm
14 the architect.

15 CHAIRPERSON HEATH: Okay. All right. So,
16 we've reviewed your application and similar to the
17 last it appears to be complete. I don't know that
18 the Board has any questions on this one. Looks like
19 we don't. so if you're okay with us proceeding on,
20 we will do so.

21 MR. KUHN: Yes.

22 CHAIRPERSON HEATH: Okay. Does Office of
23 Planning have anything further to add on this
24 application?

25 MS. VITALE: No, the Office of Planning will

1 rest on the record in support. Thank you.

2 CHAIRPERSON HEATH: Okay. All right. Thank
3 you. We also have a letter of approval from ANC 1B,
4 and a letter of no objection from Department of
5 Transportation. You did a good job of getting
6 letters of support as well, so we have quite a few
7 signed letters and support letters, even from LeDroit
8 Park Civic Association. So thank you for doing that
9 work.

10 The one letter that we had that was in
11 opposition was really focused on issues of
12 construction, which are not under the jurisdiction of
13 the Board. We don't weigh in on construction related
14 issues, so while we did read that letter the issues
15 there are not those that the Board would address.

16 MS. BUTANI-D'SOUZA: And I also thought that
17 this was a great example of getting the design to --
18 well, justifying the difference in height through the
19 historic character of the neighborhood. I just
20 thought overall this was a very thoughtful project.

21 MR. KUHN: Thank you.

22 MS. WISDOM: Thank you.

23 CHAIRPERSON HEATH: All right. So then, is
24 there anyone here wishing to speak in support of this
25 application? Anyone in support? Anyone wishing to

1 speak in opposition? No opposition?

2 Then if you're okay with us concluding the
3 hearing I think the Board is probably ready to
4 deliberate.

5 And go ahead. Do you want to make a motion?

6 MS. BUTANI-D'SOUZA: So yes, I would make a
7 motion to approve the request for variances as
8 described in the posting.

9 CHAIRPERSON HEATH: Okay. All right.

10 MR. HILL: I second.

11 MR. HOOD: Second.

12 CHAIRPERSON HEATH: Perfect. The motion has
13 been made and seconded. Any further discussion?

14 [Vote taken.]

15 CHAIRPERSON HEATH: The motion carries, thank
16 you.

17 MR. KUHN: Thank you.

18 CHAIRPERSON HEATH: Summary, Mr. Moy.

19 MR. MOY: Thank you, Madam Chair. Staff
20 would record the vote as five to zero to zero. This
21 is on the motion of Vice Chairperson Butani.
22 Seconding the motion, Mr. Hill. Also in support, Mr.
23 Hood, Chairperson Heath, and Mr. Hinkle.

24 CHAIRPERSON HEATH: All right. And you got
25 summary.

1 MR. MOY: Yes, thank you.

2 CHAIRPERSON HEATH: Okay. Let's see. Let's
3 go to -- so our next application, Mr. Moy, would be
4 19265.

5 MR. MOY: Yes. Parties to the table to
6 Application No. 19265 of Marc Ross. This
7 application, Madam Chair, has been amended and is now
8 requesting relief from the special exception under
9 Section 223, not meeting the lot occupancy
10 requirements under 403.2, special exceptions from the
11 rooftop structure requirements under 400.24, rooftop
12 mechanical equipment requirements under 411.5,
13 penthouse screening requirements under 411.18. This
14 would construct a rear addition to an existing two-
15 story one-family dwelling, R-4 district, 1018 9th
16 Street Northeast, Square 909, Lot 21.

17 CHAIRPERSON HEATH: Okay. So, all right.
18 Would you please introduce yourself?

19 MR. LINAM: My name is John Linam. I'm the
20 architect.

21 CHAIRPERSON HEATH: Okay. And so you've
22 amended your application or revised the relief that
23 is being requested. But you're aware that OP had
24 added some additional --

25 MR. LINAM: I am aware.

1 CHAIRPERSON HEATH: Okay. And so this is a
2 self-certified application so you can take OP's
3 recommendation or you can move forward with the
4 relief that you've requested.

5 MR. LINAM: We're happy with the
6 recommendation.

7 CHAIRPERSON HEATH: Okay. So you are going
8 to accept. So that has not been -- you didn't revise
9 your application already to include that, have you?

10 MR. LINAM: Those last two --

11 CHAIRPERSON HEATH: The recommended relief.
12 I believe it was 411.5B.

13 MR. LINAM: That's right.

14 CHAIRPERSON HEATH: And then 411.10.

15 MR. LINAM: That's right. I'm sorry. I must
16 have misunderstood that we could ask for that during
17 this hearing.

18 CHAIRPERSON HEATH: You can. But what we'll
19 need from you in order for us to move forward is a
20 revised self-certification including that relief,
21 which is fairly straight forward. The other thing
22 that we'll need is for you to repost with that
23 additional relief listed.

24 And so that's a requirement of, I believe
25 it's at least 10 -- 15 days. So that would mean we

1 can't move forward with your hearing right now. So
2 if you're fine to proceed in that manner we'll have
3 to put this on for a later date. It's, again, it's
4 up to you.

5 MR. LINAM: Well, unless it's advisable to
6 request approval and what's already been applied and
7 come back with a second application, just whatever
8 seems most appropriate.

9 CHAIRPERSON HEATH: So I would think it would
10 be fastest for you to repost for the 15 days rather
11 than submitting a new application later. So, if
12 you're okay with that we'll put this on for --

13 MR. MOY: It would be June 14th at the
14 earliest.

15 CHAIRPERSON HEATH: Okay. All right. Okay.
16 So June 14th. Okay. So, you'll have to get a
17 placard for reposting and you can do that while
18 you're here in the zoning office. So, all right?

19 MR. LINAM: All right.

20 CHAIRPERSON HEATH: Thank you.

21 MR. MOY: And you can pick that up before you
22 leave while you're here. It was right across the
23 hall.

24 MR. LINAM: Okay. Sure.

25 CHAIRPERSON HEATH: Let's see. Where are we?

1 [Discussion off the record.]

2 CHAIRPERSON HEATH: All right. So we're
3 going to take a five-minute break and then we'll come
4 back.

5 [Off the record from 12:37 p.m. to 12:55
6 p.m.]

7 CHAIRPERSON HEATH: All right. So we're
8 going to come back to order. And we'll call
9 Application No. 18895A.

10 MR. MOY: Yes. Thank you, Madam Chair.
11 Parties to the table. This is to Application No.
12 18895A, A as in Alpha, of James Walker. For the
13 record this application has been amended and is now -
14 - the applicant requesting relief for variances from
15 the lot occupancy requirements under 403.2, rear yard
16 requirements under Section 404.1, open court width
17 requirements under 406.1, nonconforming structure
18 requirements under 2001.3, to construct a two-story
19 rear addition to a four-unit apartment house in a R-4
20 District, 1107 Penn Street Northeast, Square 4059,
21 lot 800.

22 CHAIRPERSON HEATH: All right. Thank you,
23 Mr. Moy. Would you please introduce yourself?

24 MR. BURWELL: Good afternoon, Madam Chair.
25 Board. My name is Andre Burwell, I'm the architect.

1 CHAIRPERSON HEATH: Okay. I think your mic
2 is on. There you go.

3 MR. BURWELL: Oh, good afternoon. Yes. My
4 name is Andre Burwell. I'm the architect.

5 CHAIRPERSON HEATH: Okay. All right. Thank
6 you. So, there were previously a lot of questions
7 around this application, including whether this was a
8 four unit apartment house, or what it was a single --
9 I mean, I don't even know how that question --

10 MR. BURWELL: Absolutely.

11 CHAIRPERSON HEATH: -- came about. But it
12 looks like things have been clarified. The relief
13 has been amended and so I think that has eliminated a
14 number of questions for the Board.

15 One question that still remains is, did you
16 post this?

17 MR. BURWELL: Did not.

18 CHAIRPERSON HEATH: Okay.

19 MR. BURWELL: I just got an answer from the
20 client that they wanted to move forward because they
21 were originally told it was about \$325 for a special
22 exception and it jumped up to about \$4,200. So
23 single-family, they needed a little time to sort of
24 figure out what they wanted to do. Yeah.

25 CHAIRPERSON HEATH: Sure. Okay. So you are

1 going to need to post this with the new relief,
2 because you're -- and because you're applying for a
3 variance you'll have to pay those fees.

4 MR. BURWELL: Understood.

5 CHAIRPERSON HEATH: So we'll just confirm
6 that. And so we're going to have to put this on for
7 a later date. The purpose for advertising is to
8 allow those in the community to know what's going on
9 with your project. And so if they have any issues
10 around it, opposition, or support, they can
11 participate in this process.

12 MR. BURWELL: Right. And I understood. I
13 understood. I just, it had been postponed so many
14 times because it was so difficult for this little
15 project to get everybody on the same page that I was
16 like --

17 CHAIRPERSON HEATH: Okay.

18 MR. BURWELL: -- I got to at least show up
19 for her.

20 CHAIRPERSON HEATH: Okay. Well, we
21 appreciate you coming down and for sticking around
22 for this long. But we're going to have to put this
23 on for a later date.

24 MR. BURWELL: Okay.

25 CHAIRPERSON HEATH: What's the --

1 MR. MOY: Madam Chair, to assist with
2 scheduling a later date, Madam Chair, I would ask
3 whether or not the application has met with the ANC
4 yet, because there is no ANC report.

5 CHAIRPERSON HEATH: Good question.

6 MR. BURWELL: I did actually meet with the
7 ANC twice at this point. They gave their approval in
8 January, the January meeting.

9 CHAIRPERSON HEATH: Uh-huh.

10 MR. BURWELL: But the Commissioner has not
11 sent me a letter of approval. I've requested it and
12 I'm not even sure if she's the commissioner anymore
13 at this point.

14 CHAIRPERSON HEATH: Okay.

15 MR. BURWELL: This has sort of been the case
16 with this project overall. It's --

17 CHAIRPERSON HEATH: Okay.

18 MR. BURWELL: -- a letter from zoning,
19 Commissioner won't meet, new commissioner meets, keep
20 getting letters, so.

21 CHAIRPERSON HEATH: Yeah, and fortunately
22 Office of Planning indicated that in their report.

23 MR. BURWELL: Yes.

24 CHAIRPERSON HEATH: So, if you can get a
25 letter from the ANC during this time while you're

1 posting --

2 MR. BURWELL: Okay.

3 CHAIRPERSON HEATH: -- that would be great.

4 But I think having an understanding from OP that you
5 did present and that they did vote to support
6 certainly helps.

7 MR. BURWELL: Okay.

8 CHAIRPERSON HEATH: So --

9 MR. MOY: So, with that information then, the
10 earliest -- and then with reposting, hoping that you
11 pick up the signs today or tomorrow.

12 MR. BURWELL: I will go right across the
13 hallway --

14 MR. MOY: Today, since you're here.

15 MR. BURWELL: -- and pick it up. I have the
16 check on me.

17 CHAIRPERSON HEATH: Okay.

18 MR. MOY: And Madam Chair, to help facilitate
19 this, the rest would be June 14th.

20 CHAIRPERSON HEATH: Okay. All right.

21 MR. BURWELL: June 14th. Okay.

22 CHAIRPERSON HEATH: So we'll put this on for
23 hearing on June 14th. And --

24 MR. BURWELL: Okay.

25 CHAIRPERSON HEATH: -- you're free to go.

1 MR. BURWELL: All right. Thank you very
2 much.

3 CHAIRPERSON HEATH: And get your placard.
4 Thank you so much.

5 MR. BURWELL: Okay.

6 MR. MOY: And that's with the ANC letter,
7 hopefully.

8 MR. BURWELL: Okay, yes. I will get --

9 CHAIRPERSON HEATH: Yeah. All right.

10 [Discussion off the record.]

11 CHAIRPERSON HEATH: Okay. So, Mr. Moy, you
12 can call our next application which is 19262.

13 MR. MOY: Yes. Thank you, Madam Chair.
14 Parties to the table to Application No. 19262 of Dr.
15 Barry Fisher. This application has been advertised
16 for variance relief from the use requirements under
17 501.1 to allow -- and this is what has been captioned
18 and advertised, Madam Chair, a yoga studio in the
19 DC/SP-1 District, 1800 R Street Northwest, Number C-
20 6, Square 134, Lot 161.

21 CHAIRPERSON HEATH: Good afternoon. Would
22 you all please introduce yourselves?

23 MR. AQUINO: Good afternoon, Madam Chair. My
24 name is John Aquino from the [garbled speech] Realtor
25 representing Dr. Barry Fisher.

1 MR. GROSSMAN: Good afternoon. My name is
2 Richard Grossman. I'm the President of the 1800 R
3 Street Condominium Association.

4 CHAIRPERSON HEATH: Okay.

5 MR. WASHINGTON: Good afternoon. Will
6 Washington with Chadwick Washington, attorney for
7 1800 R.

8 CHAIRPERSON HEATH: Okay. All right. So, we
9 definitely have some questions about this one. I
10 think the first is we need to get some clarification
11 around the use category here because it became clear
12 to the Board in all of the filings that you've filed
13 this as a yoga studio but there is question as to
14 whether or not it's actually massage, massage studio
15 or parlor or -- we've heard it referred to as a
16 number of different things.

17 And we actually had OAG do some research, but
18 I just want to see if you have any clarity around
19 your use category first before we figure out -- or at
20 least a description of what this business really is
21 before we talk about the actual use category.

22 MR. AQUINO: Yes. Thank you, Madam Chair.
23 So our client, Dr. Barry Fisher has a potential buyer
24 who has actually been waiting for about six months
25 now, just in regards while the MRIS listing is still

1 active. It's been a two-year project to, you know,
2 basically get this unit sold due to its structural
3 limitations. The buyer that we have, she owns a
4 business called Thaitastik. So it's Thai yoga. It's
5 basically the lazy person's yoga workout. So
6 basically you are getting a massage, but in the
7 position of, in format of Thai -- excuse me, of yoga,
8 in that regard. So, you know, clothing is kept on
9 the whole entire time and basically it is to
10 destress, you know, in regards to the other medical
11 offices that have been at 1800 R Street, this is you
12 know, one of those references where therapists could
13 engage you or recommend you to do Thai yoga massage.

14 CHAIRPERSON HEATH: Okay. All right. And
15 so --

16 MS. BUTANI-D'SOUZA: Can I ask. So, I
17 believe that a professional office use is what is
18 allowed in this particular zone. So what I'm
19 wondering is, what does the exterior of this unit
20 look like as it faces the building and as it faces
21 the street, and what kind of signage? I understand
22 there are no windows. So what kind of signage are we
23 talking about here? What is this going to look like?

24 MR. AQUINO: So the signage will actually be
25 attached to the current signage that there is now,

1 which is just a formal board listing. So it's by
2 apartment only in regards to the owner, Dr. Barry
3 Fisher. He owns the next door unit, which is C7. So
4 this is C6 that we're trying to basically procure the
5 sale. It has its own entrance so it's not linked to
6 -- it's linked to the building but it has a side
7 entrance. So it would be Dr. Barry Fisher's office
8 and then this particular unit next door to each
9 other. There won't be any signage posted. A lot of
10 it is done on their website, which they have
11 currently active. And of course you'd have to use
12 the call box to get in. Things of that sort.

13 CHAIRPERSON HEATH: Okay. So I did see that
14 this has its own entrance from the street. Does it
15 also have an entrance from the apartment or condo
16 corridor?

17 MR. AQUINO: No, it does not.

18 CHAIRPERSON HEATH: Okay.

19 MR. AQUINO: It is separate, complete
20 separate.

21 CHAIRPERSON HEATH: Okay.

22 MR. AQUINO: And there are no windows in this
23 unit as well. It's 365 square feet, about 15 feet by
24 10 feet.

25 CHAIRPERSON HEATH: So it's strictly set up

1 for commercial office use?

2 MR. AQUINO: That is correct, yes. It was a
3 former psychiatry clinic, which Dr. Barry Fisher
4 moved across the hallway to do his work.

5 CHAIRPERSON HEATH: Okay.

6 MS. BUTANI-D'SOUZA: Sorry. Can you just
7 explain again what use this is? So, based on the
8 Yelp reviews that you submitted about the business,
9 it sounded like it was a sports massage performed in
10 a Thai manner. But then I also noticed that there
11 were some comments about like, modesty of you know,
12 people who are quite modest shouldn't come in. So I
13 just wanted to understand a little bit better, that.

14 MR. AQUINO: Yes. Yes, of course. From
15 speaking with the owner of the business pack,
16 basically it is considered to be more of a sports
17 massage concept. It has different variations based
18 on the need of the client at the time, in regards to
19 that going back to the medical professions and she's
20 had referrals from, you know, other doctors as well,
21 to have their client come in for a relaxation
22 massage. Or, for example, physical therapies have
23 also referred people to her as well in the past, just
24 because of the type of formation going back to the
25 yoga concept, but more of a Thai massage layout.

1 MS. BUTANI-D'SOUZA: So how is it yoga?

2 CHAIRPERSON HEATH: Thai massage is really
3 stretching.

4 MS. BUTANI-D'SOUZA: Yeah, that's --

5 CHAIRPERSON HEATH: So you're on a --

6 MS. BUTANI-D'SOUZA: Oh, I see.

7 CHAIRPERSON HEATH: You're on a mat on the
8 floor.

9 MS. BUTANI-D'SOUZA: I see. I understand.

10 CHAIRPERSON HEATH: With clothing on, as you
11 said, and they're doing more stretching than massage.

12 MS. BUTANI-D'SOUZA: So that's why you called
13 it yoga.

14 MR. AQUINO: Correct. That is correct, yes.

15 MS. BUTANI-D'SOUZA: Because there is a
16 stretching component there.

17 MR. AQUINO: Yes. And the instructors,
18 really their point is because it is by appointment
19 only there will be one instructor, you know, per
20 client. And there is a waiting room as well.

21 MS. BUTANI-D'SOUZA: And who are these
22 instructors? Are they licensed? What's their --

23 MR. AQUINO: They are licensed. And their
24 back --

25 MS. BUTANI-D'SOUZA: They're licensed as?

1 MR. AQUINO: Their background is basically in
2 yoga and massage as well, so it's a combination in
3 that regards.

4 CHAIRPERSON HEATH: It there one person who
5 is doing this, not multiple?

6 MR. AQUINO: Not multiple, exactly.

7 CHAIRPERSON HEATH: Okay.

8 MR. AQUINO: And we wanted to make that clear
9 because that was the very -- at least from the condo
10 board's angle, was that there will be multiple people
11 there. But it's actually just the instructor and the
12 patient.

13 MS. BUTANI-D'SOUZA: And sorry, can you
14 clarify what are they licensed as?

15 MR. AQUINO: Their license, I believe, is in
16 massage therapy.

17 MS. BUTANI-D'SOUZA: Okay.

18 MR. AQUINO: And then also they have yoga
19 license as well, to teach yoga.

20 CHAIRPERSON HEATH: Okay. But there won't be
21 classes, yoga classes.

22 MR. AQUINO: No, no classes at all.

23 CHAIRPERSON HEATH: As such. Okay.

24 MR. AQUINO: Correct.

25 CHAIRPERSON HEATH: I just wanted to make

1 sure that everybody understood the distinction.

2 MR. AQUINO: Yes. And --

3 CHAIRPERSON HEATH: So not a class with lots
4 of people. It's a therapy session, one on one.

5 MR. AQUINO: One on one.

6 CHAIRPERSON HEATH: Okay.

7 MR. AQUINO: Yes. And also too, of course,
8 with a parking restriction, I mean, they will not be
9 going on to the parking. That's another situation
10 that they were, you know, concerned about. And then
11 on a side note, when we were Googling 1800 R Street,
12 there is a massage, you know, taking place there now
13 from a private resident. And if you Google 1800 R
14 Street there was a previous acupuncture service there
15 that's no longer existing, but there is a current --
16 and it's active because we had one of our agents call
17 just to see if, you know, that was even the case.

18 CHAIRPERSON HEATH: Is that on the C level as
19 well?

20 MR. AQUINO: No, it's not. It's in a
21 residential unit.

22 CHAIRPERSON HEATH: Okay.

23 MR. HOOD: Madam Chair, can I ask a question?

24 CHAIRPERSON HEATH: Sure.

25 MR. HOOD: You also want to make sure that

1 you fill out your two witness cards and give them to
2 the reporter if you haven't done that.

3 Let me just ask, how many people you
4 anticipate during the day?

5 MR. AQUINO: So the business hours are
6 normally from 10:30 a.m. to about 8:00 p.m. And
7 based on, she has, I believe, six massage therapists
8 or instructors, so anywhere between seven to eight
9 clients. They usually last about anywhere from 45
10 minutes to an hour session.

11 MR. HOOD: So six to seven a hour?

12 MR. AQUINO: Within the day, sir.

13 MR. HOOD: The whole day. Okay. Okay.

14 MR. AQUINO: The whole day, yes. Yes.

15 MR. HOOD: All right. And let me ask you,
16 are they recommended? Do doctors prescribe them to
17 go to get this, some --

18 MR. AQUINO: Yes, they have had
19 recommendations.

20 MR. HOOD: -- because of arthritis or
21 whatever the case is?

22 MR. AQUINO: Exactly. Which meets the condo
23 board's restriction that, you know, it's not medical.
24 But in regards, I mean, they do get referrals.

25 MR. HOOD: Okay. Thank you.

1 MR. AQUINO: You're welcome. Thank you.

2 CHAIRPERSON HEATH: All right. So with that
3 I'd like to hear from OAG on the appropriate use
4 category.

5 MR. EBI: Yes. It's important that the
6 applicant request relief using the appropriate use
7 classification as founded in the Zoning Regulations.
8 Yoga studio is not an appropriate use classification
9 and it sounds, at least to me, like it's more of a
10 massage establishment rather than a yoga studio. And
11 so the appropriate requested relief would ask to have
12 a use variance to establish a massage establishment.

13 MR. AQUINO: Thank you.

14 MR. EBI: Yup.

15 MS. BUTANI-D'SOUZA: So if this were to go
16 back through would they need to repost as a massage
17 establishment? No? I don't know. I'm just asking.

18 MR. EBI: Let's see. I don't believe so
19 because it's still requesting a use variance.

20 CHAIRPERSON HEATH: The use category has
21 changed.

22 MS. BUTANI-D'SOUZA: Okay. So you just --

23 MR. EBI: Yeah, just the --

24 MS. BUTANI-D'SOUZA: The posting is just the
25 use variance.

1 MR. EBI: Yeah.

2 MS. BUTANI-D'SOUZA: It doesn't specify what
3 use it is.

4 MR. EBI: Yes.

5 MS. BUTANI-D'SOUZA: Got it.

6 CHAIRPERSON HEATH: Okay. But it seems that
7 the opposition already recognized, at least to a
8 large degree, what was happening here beyond it being
9 a yoga studio. In their filing they noted it as
10 massage. So, we'll hear from them and because they
11 have filed a party status request, I don't want to
12 ignore that request.

13 So, I don't know if -- you certainly
14 understood what was being requested here in terms of
15 the use. Can you just talk about what your issue is
16 regarding this use in the building given that it is
17 on the C level, ground level, which allows office.
18 And does it allow medical? Office and -- or office
19 use at least?

20 MR. GROSSMAN: It's office and medical. I'm
21 sorry. It's office and medical, professional;
22 professional suites have always been -- when the
23 building was turned into condominium, all the C units
24 are on the first floor were medical or psychotherapy.
25 So it's configured, two exterior entrances to the

1 building. C6 and C7 are -- and they're directly
2 perpendicular to the main entrance of the building,
3 so it's like a square. C6 and C7 come in here, C1,
4 2, 3, 4, and 5 come in here, and C8 and C9 come in
5 through the main entrance of the condominium. So
6 it's part of the -- it's a separate entrance, but
7 it's part of the building structure.

8 And our primary objection to it is that it's
9 not a professional office, such as a psychotherapist,
10 or a property management company. I have no
11 particular knowledge of there being another massage
12 studio in the building. If it's in a residential
13 unit it's in violation of the bylaws of the
14 condominium.

15 When we bought our units it was with the
16 understanding that the building would only house
17 residential units and professional offices on the
18 first floor. And that's in the condominium bylaws,
19 which I feel that we're contractually bound by the
20 bylaws to protect the nature and the integrity of the
21 condominium. It's always been professional offices.
22 It's always been -- there's a neurologist that has
23 two suites, a psychotherapist, psychotherapist,
24 psychotherapist --

25 CHAIRPERSON HEATH: And so they have clients

1 coming in throughout the day?

2 MR. GROSSMAN: Yeah, but their hours of
3 operation are 8:00 to 5:00.

4 CHAIRPERSON HEATH: So would your objection
5 change if their hours were 8:00 to 5:00, strictly
6 business hours?

7 MR. GROSSMAN: We really you know, we're
8 willing to bend on that, but the Board strongly felt
9 that this was a different use than was intended, that
10 was specified in the bylaws. Our bylaws very clearly
11 state that the use has to be professional offices
12 within the definition of SP1 zoning regulations. And
13 you know, I think that there's general concern about
14 more traffic than a professional office. And it has
15 remained unclear to us that there would only be one
16 practitioner at a time.

17 Going to their website I've seen that in two
18 other locations, one which is within a half mile on
19 the other side of DuPont Circle, there's a showing
20 three or two -- two or three tatami mats in the same
21 space. So, how many practitioners are going to be
22 working at any given time in that space is a concern
23 to us.

24 CHAIRPERSON HEATH: Sure.

25 MR. GROSSMAN: Increased vehicular traffic.

1 We have a circular driveway which only permits
2 loading and unloading. And to us it's pretty well
3 respected. But we do have violations. The
4 violations are very hard to enforce. With the police
5 department, they're very, very difficult because it's
6 private property.

7 CHAIRPERSON HEATH: Sure. Well, we can
8 establish conditions around an order should we decide
9 to approve this, and conditions such as hours of
10 operation or whether there can be just one therapist
11 operating at a time. You know, that can certainly be
12 a part of an order.

13 I just want to understand what sort of things
14 would make this more palatable for you.

15 MR. GROSSMAN: The thing that really is the
16 stick --

17 CHAIRPERSON HEATH: Or for the association.

18 MR. GROSSMAN: For the association. The
19 thing that's the sticking point is in our condominium
20 bylaws, and that is that it restricts the use of the
21 space. We feel that as a board we are responsible
22 for enforcing the terms of the bylaws, and we're
23 opposed to the allowance of any use that deviates
24 from those allowed under the association's governing
25 documents, just in order to protect the property

1 rights of the unit owners.

2 We're 70 percent owner occupied. The
3 professional suits, which are only on the first floor
4 are -- I think that there's a higher ownership -- I
5 think there's only three out of nine rentals. So
6 there's a 33 percent non-owner occupancy. There's
7 like -- it's approximately 70 percent for each,
8 residential and professional. I have petitions here
9 from members of the community unit owners that total
10 78.5 percent of the owner occupied units in
11 opposition to this request for variance.

12 I also have signatures from 55.5 percent of
13 the other professional owners, professional unit
14 owners, the C level owners, in opposition to this
15 request. There are five out of nine that are in
16 opposition to the granting of this variance.

17 CHAIRPERSON HEATH: Okay. All right. Hold
18 on one second. Did you have a question?

19 MR. HILL: Thank you, Madam Chair. Mr.
20 Aquino, I'm just curious of a couple things. So
21 again, the signage is the same as if it were a
22 psychiatrist. So -- is that correct? So there's
23 nothing out front --

24 MR. AQUINO: That is correct, sir.

25 MR. HILL: -- that's any different than if it

1 was a psychiatrist.

2 MR. AQUINO: That is correct.

3 MR. HILL: And, Mr. Grossman, are you the
4 president of the association or --

5 MR. GROSSMAN: Yes, I am.

6 MR. HILL: Okay. And so if it looks exactly
7 like a -- I've got to let you know, like I didn't
8 like it being referred to as a Thai massage parlor.
9 It kind of seemed to allude to something and I took
10 great offense to it.

11 MR. GROSSMAN: Well, I did too.

12 MR. HILL: Yeah, and so that was an error on
13 you all's part.

14 So, how is this different than a
15 psychiatrist's office?

16 MR. GROSSMAN: It's a cash -- it's like a
17 cash business. It's a commercial space. I mean --

18 MR. HILL: How is that different from a
19 psychiatrist's office?

20 MR. GROSSMAN: Psychiatrists bill --

21 MR. HILL: They take cash.

22 MR. GROSSMAN: Well, no psychiatrist that
23 I've been to has --

24 MR. HILL: I've been to plenty of
25 psychiatrists. They take cash.

1 MR. GROSSMAN: I've always received monthly
2 bills.

3 MR. HILL: Okay. So please continue.

4 MR. GROSSMAN: How is it different?

5 MR. HILL: How is it different? How is the
6 signage different? How does it look different?

7 CHAIRPERSON HEATH: How is the visitation
8 different by clients?

9 MR. GROSSMAN: I think that there would be a
10 higher volume of clients.

11 MR. HILL: Because they're Thai? I don't
12 understand.

13 MR. GROSSMAN: No, not because they're Thai.

14 MR. HILL: Okay.

15 MR. GROSSMAN: I mean, I don't care whether
16 they're -- I have no objection to any race or creed
17 or ethnicity.

18 MR. HILL: Because the letter didn't make it
19 seem that way to me.

20 MR. GROSSMAN: Oh, it's definitely not that.

21 MR. HILL: Okay.

22 MR. GROSSMAN: It's definitely --

23 MR. WASHINGTON: And if I might interject,
24 being the author of the request that I believe is
25 what we're referring to, and we certainly meant no

1 offense with regard to referring to it as Thai
2 massage. However, Thaitastik is the name of the
3 company. And if you go to the website they say they
4 do Thai massage.

5 MR. HILL: You listed it as a Thai massage
6 parlor.

7 CHAIRPERSON HEATH: I think it's the word
8 parlor. Thai massage is more specific.

9 MR. WASHINGTON: And I understand. But if
10 you Google Thai Parlor, Thaitastik comes up. So that
11 was the reference in which it was -- the context.

12 MR. HILL: Okay.

13 MR. WASHINGTON: That's what people will do.
14 And part of our objection, the association's
15 objection is that they agreed and bought into a
16 property that's residential with professional
17 offices. There's an image that's associated with
18 having professional offices and residential. It's a
19 common occurrence in a number of properties.

20 A massage establishment or commercial
21 enterprise is not the same as a professional office.
22 And that's what's allowed. And I will note that
23 under their governing documents they have, by
24 contract, and everybody that buys a unit there agrees
25 with this agreement, that they will use the office

1 for professional office purposes, period. And then
2 that's qualified by if that professional purpose is
3 allowed by zoning. But it's still professional
4 offices. So even if you were to grant this, they
5 would still have a contractual violation and you
6 would muddy the waters by granting this, by making it
7 appear that it's an okay operation when in fact it's
8 still --

9 MS. BUTANI-D'SOUZA: Can you help me
10 understand what is a professional office, because to
11 me this sounds like a professionally licensed massage
12 therapist. So it is a professional. They have a
13 license. They have a profession. They have an
14 office where they render services which are not
15 dissimilar to a physical therapist or even a doctor,
16 although they're not medical technically.

17 So I'm just trying to understand in your mind
18 what the difference is here between professional
19 massage therapist office, and a professional office
20 of the sort that's already there.

21 MR. WASHINGTON: Certainly. And the doctors
22 that are there, the professionals there are medical
23 professionals. And if they tie -- and it's been
24 suggested that the customers of the massage or yoga
25 office would have doctor's notes, which some of them

1 might have. However, if you look at the reviews on
2 the websites, most of them are people that have come
3 that have come because they've had friends tell them
4 this is a great place to get a stretch or it's a
5 great place to get deep tissue knots taken out. But
6 it isn't because they were prescribed to go there.
7 It's because they've gone there because they've had
8 friends or they've seen the advertising. And they've
9 come there for massages.

10 And it's not a profession. It's not
11 considered a profession in the sense that the
12 governing documents anticipated when they established
13 this condominium. That's the problem that we have,
14 is that we think you're going down a slope that's
15 moving away from the professionalism that was
16 anticipated. It's becoming more of a commercial,
17 rather than a professional, enterprise when you go
18 down this road. And that is the concern that the
19 condominium has in terms of --

20 MS. BUTANI-D'SOUZA: I'm sorry. What's the
21 difference between a commercial establishment and a
22 professional -- a commercial establishment, I mean --

23 MR. WASHINGTON: Well, there are a lot of
24 businesses.

25 MS. BUTANI-D'SOUZA: Sorry, let me finish.

1 MR. WASHINGTON: I'm sorry.

2 MS. BUTANI-D'SOUZA: So a psychotherapist,
3 for example, accepts as we've established, cash,
4 provides a service. So again I don't see the
5 distinction there. I'm hoping you can help me
6 understand that a little bit better.

7 MR. WASHINGTON: Sure. Well, we think of it
8 more of a distinction between going to a doctor or
9 going to a therapist -- therapy center, which is tied
10 to medical treatment and going for massage treatment
11 or spa treatment, which is more of a commercial
12 enterprise than a professional or medical enterprise,
13 and the type of service that's being provided and the
14 type of clientele that's being invited into the
15 building.

16 MS. BUTANI-D'SOUZA: So it's a different type
17 of clientele for massage therapy than for medical
18 therapy?

19 MR. WASHINGTON: Conceivably, yes. And that
20 is certainly the belief, that it's a broader
21 invitation to the public. People that get
22 prescriptions that go to see doctors is a much
23 narrower part of the universe than anybody could be
24 in the market for a massage.

25 MS. BUTANI-D'SOUZA: But --

1 MR. WASHINGTON: It's a much broader pool of
2 people that would be attracted to the building.

3 CHAIRPERSON HEATH: Is the concern, then, the
4 number of people who would be coming to the building.
5 Or the type of people that --

6 MR. WASHINGTON: The concern is the number
7 and the amount and the traffic, that is -- the pool
8 being larger, the incidents could be larger. I mean,
9 there's nothing that was restricting --

10 MS. BUTANI-D'SOUZA: I believe that doctors
11 are required to treat everybody. So I don't really
12 know that this narrow for doctors --

13 CHAIRPERSON HEATH: Sure. And I think one of
14 the points that I made earlier is that we can
15 restrict the number of hours that they're in
16 operation. There's one therapist that can also be
17 made a part of the order that is providing service
18 here. And so similar to psychiatrists, or
19 psychologists who would have one client an hour or
20 every two hours, the same would be true of them where
21 there's one client receiving service every hour.

22 So to me that doesn't equate to more foot
23 traffic, more people in the building, and aside from
24 that those people are going into a separate entrance.

25 But without even getting into that detail,

1 there can still be the same number of people using
2 this business as there would be for a neurologist or
3 a psychologist or a medical professional of any sort.
4 So I think what you can hear from the Board is we're
5 trying to understand the difference and I'm having a
6 hard time hearing that from you.

7 MR. HOOD: Madam Chair, can I also add that -
8 - and I'm thinking of a chiropractor. A lot of
9 people don't have a prescription to go see a
10 chiropractor. At least I didn't. I just showed up
11 and it was something that was well needed. So I'm
12 just trying to wrap my arms around your argument as
13 the Chair said, and others. I just don't get it.

14 MR. WASHINGTON: No, certainly, and I
15 appreciate that. And so we're trying to clarify that
16 and acknowledge that if you look at it from a -- it's
17 a commercial enterprise and people come in by
18 appointment, then in that regard a great many
19 businesses or enterprises fit the bill.

20 When you look at what was described here,
21 what the condominium documents allowed here is just a
22 professional office, there was an intention to have a
23 smaller universe than the commercial by apartment
24 enterprise.

25 MS. BUTANI-D'SOUZA: Can I -- so the condo

1 documents, specifically they say that a professional
2 office or a use permitted in SP1. Is that correct?

3 MR. WASHINGTON: No, the condo documents say,
4 and I'll quote, is that all units shall be used only
5 for private residential purposes except those units
6 on the first floor which may be used for professional
7 office purposes, if such use is consistent with and
8 in compliance with all valid laws, zoning ordinances,
9 and regulations of all government [simultaneous
10 speech].

11 MS. BUTANI-D'SOUZA: Okay. So if we were to
12 approve this as a use variance, is what they've
13 applied for, then it would be in compliance with
14 zoning ordinances so you wouldn't have a conflict
15 with the contract.

16 MR. WASHINGTON: Right. The post comma issue
17 we wouldn't have a problem with because it would be
18 in compliance with zoning ordinances. But it would
19 still have to qualify as a professional office as
20 interpreted by the Board which interprets their
21 governing documents. So that could end up being a
22 court issue. But the term professional office
23 purposes is the limitation, the primary limitation.
24 But you can't -- if they had a professional office
25 that wasn't approved by zoning, then it still

1 wouldn't be allowed. If it's a professional office
2 that is approved by zoning then it would be allowed.

3 MS. BUTANI-D'SOUZA: I don't think that we
4 can disprove this because of some wording in your
5 condo documents. I don't think we can consider that.

6 MR. WASHINGTON: And I understand that that's
7 not the criteria on which your judgment is based.
8 But we do want you to know that from our standpoint
9 we are bound by the governing documents. If you bend
10 the zoning to allow this use, which wasn't previously
11 allowed, then it will make it more likely than not
12 that there will be a potential conflict which doesn't
13 exist currently. And that's a problem for us,
14 obviously to create that environment. We would
15 prefer not to create an environment where there is
16 any deviation between what's allowed by zoning and
17 what's allowed by other governing documents as it
18 stands now.

19 MR. HOOD: I'm sorry. Did you say bend the
20 zoning? Or maybe I just didn't hear you.

21 MR. WASHINGTON: Alter the zoning.

22 MR. HOOD: No, we would be --

23 MR. WASHINGTON: So give a variance to the
24 zoning so that the use that's requested would comply
25 with zoning. So by giving a variance to allow this

1 use which is not a currently allowed use, then that
2 would create the potential confusion with regard to
3 whether this is or isn't allowed that doesn't
4 currently exist. Currently it's clear that it isn't
5 allowed by the documents, nor by zoning. If you
6 grant the variance then it might be allowed by
7 zoning. There's still a question as to whether it's
8 allowed by the documents with the variance.

9 MR. HOOD: But it wouldn't be bending the
10 zoning. I just didn't follow you when you said
11 bending the zoning.

12 MR. WASHINGTON: And I apologize. That was a
13 loose term. But I meant -- but if the variance were
14 granted --

15 MR. HOOD: It's one of those terms that they
16 say on the record, so when they take it to court they
17 can say, well, they bent the zoning. So I know about
18 all that, so I just want to correct that.

19 MR. WASHINGTON: Absolutely.

20 MR. HOOD: Okay.

21 CHAIRPERSON HEATH: All right. Okay.

22 MS. BUTANI-D'SOUZA: So, sorry. Can we just
23 go back to this hours question? So, there is a --
24 based on the comments that the board members have
25 made here, I think that there is a fair shot that

1 this could get approved as a use variance. Are there
2 particular hours that would make this establishment -
3 - or I don't want to use the word establishment
4 because I think that's sort of a loaded term -- this
5 use more acceptable to the condo association? So in
6 other words, the Chairwoman threw out 8:00 to 5:00.
7 Is there a preference? Is it 9:00 to 6:00, is it
8 8:00 to 5:00, is it 7:30 to 5:00?

9 MR. GROSSMAN: Nine to 5:00 is generally what
10 the --

11 MS. BUTANI-D'SOUZA: Or do you have a set of
12 hours that the other commercial uses, can you tell us
13 what those hours are?

14 MR. GROSSMAN: They're generally 8:00. Some
15 of the psychotherapists have 8:00 appointments.

16 MS. BUTANI-D'SOUZA: Okay.

17 MR. GROSSMAN: But business doesn't really
18 start until 9:00 and ends by 5:00. None of them are
19 there in the evening. Barry Fisher might be, I don't
20 know. But --

21 MS. BUTANI-D'SOUZA: Can you comment on that?

22 MR. AQUINO: Yes, ma'am. Dr. Barry Fisher
23 does -- since it's by appointment only, sometimes
24 he'll see clients up to 7:00 p.m.

25 MS. BUTANI-D'SOUZA: Okay.

1 MR. AQUINO: And they do have to call ahead
2 of time.

3 MS. BUTANI-D'SOUZA: And there's nothing in
4 the condo documents that restricts them from using
5 those. Okay.

6 So I don't know if we're ready to move on.
7 But in my view I think it would be appropriate to put
8 a condition on this, that the hours match the hours
9 of the other tenants, commercial tenants.

10 MR. WASHINGTON: Could I just ask a question?
11 I was wondering, in regard to the licensing
12 requirements, how would that be enforced and would
13 the -- how would the Board be made aware of the fact
14 that practitioners are licensed by the District of
15 Columbia to perform massage?

16 CHAIRPERSON HEATH: So I'll let you answer
17 this but I know typically in professional
18 establishments similar to this they have to display
19 their license on the wall. So the Board isn't going
20 to go to this business to see if that's there. But
21 you certainly can. And if it's not, you can let the
22 Zoning Administrator know so that you know, if this
23 is a condition of this order they would be in
24 violation of one of the conditions, and subject to no
25 longer being able to operate their business there.

1 But what's your typical practice?

2 MR. AQUINO: Yes, by law they do have to
3 require to display their licenses as they do in the
4 other two businesses, which the buyer is actually
5 renting right now, so she really wants to own her own
6 place. And like I said, this unit has been on the
7 market for almost two years now. Dr. Barry Fisher
8 has been spending some money in terms of trying to
9 get it moved on to. We've had nonprofits look at it,
10 until they see the square footage and that there are
11 no windows.

12 MS. BUTANI-D'SOUZA: How big is it?

13 MR. AQUINO: Three hundred sixty-five square
14 feet.

15 MS. BUTANI-D'SOUZA: Okay.

16 MR. AQUINO: And it has two bathrooms and
17 there is a waiting room that separates.

18 CHAIRPERSON HEATH: Okay.

19 MS. BUTANI-D'SOUZA: So you could also
20 request, I'm sure as the condo association, you could
21 request the licenses, and you know, there's all sorts
22 of ways that you could get that information on your
23 own. And then as the chairperson said, you would, if
24 you saw a discrepancy you'd take it to the Zoning
25 Administrator and they could do something like, for

1 example, revoke the certificate of occupancy which
2 would prevent this business from operating.

3 MR. GROSSMAN: There would have to be a
4 license for each practitioner.

5 MS. BUTANI-D'SOUZA: Yes. So if this were
6 approved as a licensed massage -- is that what the
7 use category was?

8 MR. EBI: Massage establishment.

9 MS. BUTANI-D'SOUZA: Okay. So that could be
10 a condition in the order that it be -- that
11 practitioners be licensed.

12 CHAIRPERSON HEATH: Okay. All right. So, I
13 think we'll circle back to the party status request
14 which you did make. Does the Board have any issues
15 with that?

16 MS. BUTANI-D'SOUZA: No.

17 MR. HILL: No.

18 CHAIRPERSON HEATH: With accepting it. So we
19 will accept your party status request.

20 MR. WASHINGTON: Thank you.

21 CHAIRPERSON HEATH: I think we've been going
22 back and forth and we'll continue to ask questions.
23 I don't think we need your typical formal
24 presentation, but if you have questions of the
25 applicant, as we've been going back and forth we can

1 continue to do that.

2 You'll also be notified of any future
3 correspondence or anything surrounding this case.
4 So, that is your -- those are your rights as a party
5 opponent.

6 So, any other questions from the Board? All
7 right. Then does the -- let's see, we'll turn to
8 Office of Planning now to see if you have any further
9 comments about this.

10 MS. RAPPOLT: Good afternoon, Megan Rappolt
11 for the record. And I don't have much to add from
12 what was in my report except that, you know, we just
13 went back to the variance test to sort of look at
14 what's unique about this particular property and I
15 think we've outlined that in our report.

16 We struggled with how to sort of view this
17 use. It's not retail. It's more of professional
18 services. The intensity is like a professional
19 office as you described. We looked at ZR-16 which
20 would -- I'm not exactly sure if the massage use is
21 there, but it would sort of qualify this as a general
22 service category. The uses result in something
23 that's sort of not a tangible commodity at the end.
24 Some sort of personal service use. Yoga is named in
25 that category in ZR-16, but Thai massage isn't. So

1 we just sort of struggled, as you're doing, with what
2 sort of how this use sort of fits into this area and
3 SP1. And I don't think I've heard anything here that
4 would modify our opinion so far. So I'll just close
5 with that and I'm available for questions if you need
6 them.

7 CHAIRPERSON HEATH: Okay. Does massage
8 establishment seem to make sense to you?

9 MS. RAPPOLT: It sounds like it fits the
10 description of what would be happening there. So.

11 CHAIRPERSON HEATH: All right. Okay. Does
12 the applicant have any questions of Office of
13 Planning?

14 MR. AQUINO: No, ma'am.

15 CHAIRPERSON HEATH: Does the party opponent
16 have any questions of Office of Planning?

17 MR. GROSSMAN: No.

18 CHAIRPERSON HEATH: Okay. All right. Did
19 you meet with the ANC, ANC 2B?

20 MR. AQUINO: We did, yes. With Stephanie
21 Maltz, and --

22 CHAIRPERSON HEATH: Okay.

23 MR. AQUINO: Yes.

24 CHAIRPERSON HEATH: I don't believe we've
25 received a report from the ANC.

1 MR. GROSSMAN: Both the ANC Zoning Committee
2 and the ANC Committee as a whole declined to make a
3 recommendation. They felt that it wasn't an issue
4 that affected the greater neighborhood.

5 CHAIRPERSON HEATH: Okay.

6 MR. GROSSMAN: But it was more of an internal
7 issue, so they declined to make any recommendation.

8 CHAIRPERSON HEATH: Okay. All right. And
9 did they take a vote? They didn't take a vote there
10 and no letter.

11 MR. GROSSMAN: No.

12 CHAIRPERSON HEATH: Okay. Got it. All
13 right. All right. We also have a letter of no
14 objection from Department of Transportation. And
15 then a letter of support from the previous landlord
16 of Thaitastik. I guess one of their other locations.

17 MR. AQUINO: They're our current landlord,
18 yes.

19 CHAIRPERSON HEATH: Okay. And from one of
20 the residents at 1800 R Street.

21 So, is there anybody else here wishing to
22 speak in support of this application? Anyone in
23 support?

24 Anyone in opposition? No further opposition.
25 Okay. Then what I would recommend is that we get

1 some clarity around the conditions that we think are
2 appropriate for a business to -- a business such as
3 the Thai -- or the massage establishment to operate
4 in this building. And I'd like to get input from the
5 party opponent on this. I think one that we've
6 already established is around hours of operation.
7 Could we all agree that hours of operation would be
8 from 8:00 to 5:00? And this is -- is it typically
9 Monday through Friday or does it -- do you allow
10 weekend --

11 MR. GROSSMAN: Monday through Friday only.

12 CHAIRPERSON HEATH: -- operation?

13 MR. GROSSMAN: None of these offices --

14 MR. AQUINO: Dr. Barry Fisher has weekend
15 appointments, he does. Yes.

16 CHAIRPERSON HEATH: Okay. What are his
17 hours?

18 MR. AQUINO: His hours are Monday through
19 Friday. They vary. Usually starting 9:30 to about
20 6:00 p.m.

21 CHAIRPERSON HEATH: Okay.

22 MR. AQUINO: And then Saturdays and Sundays
23 he'll do like morning, 10:00 to about 5:00 p.m., just
24 depending on the appointment.

25 CHAIRPERSON HEATH: Okay.

1 MS. BUTANI-D'SOUZA: I would have -- yeah, I
2 think it would be reasonable just to allow the hours
3 to be determined internally, but just to state in the
4 order the hours should match the hours of the other
5 tenants, the other commercial tenants. I don't know
6 if that's an appropriate way to word a condition but
7 I think that that allows some flexibility for these
8 guys to negotiate based on what the buyer needs,
9 what --

10 MR. AQUINO: And also too, Madam Chairwoman,
11 another thing too is most people do get off work so
12 they do tend to get massages after work. So that's
13 another reason why the other establishments are from
14 10:30 to 8:00 p.m. But buyer is willing to, you
15 know, modify hours.

16 CHAIRPERSON HEATH: Okay. I think it seems
17 to me that you're going to have to modify the hours
18 some to make them not extend quite so late. But
19 anybody else on the Board have any issues with giving
20 flexibility to the hours?

21 MR. HILL: No.

22 CHAIRPERSON HEATH: Okay. All right.

23 MR. HILL: I mean, I would -- I have one
24 comment.

25 CHAIRPERSON HEATH: Sure.

1 MR. HILL: Again, I guess the by appointment
2 only is what I would be interested in seeing. And I
3 guess we're going to ask them to try to come to some
4 negotiation. Is that -- and for the opposition
5 again, I understand what your concerns are about
6 things and I just wanted to state on the record
7 again, it's the term massage parlor that kind of set
8 me off. And if you do Google massage parlor you'll
9 see why it kind of set me off. So just to let you
10 know.

11 So, thank you. But anyway, appointment only
12 for signage being the exact same as any other
13 professional services that are going in there.
14 That's what I would think would be appropriate.

15 CHAIRPERSON HEATH: Okay. All right. So,
16 hours of operation with some flexibility, but similar
17 to the other professional offices in the building.
18 The other that we talked about was --

19 MR. GROSSMAN: No outside parking.

20 CHAIRPERSON HEATH: -- professional license.
21 Professional license and being displayed. The other
22 was one technician operating at a time, that this is
23 by appointment only.

24 MS. BUTANI-D'SOUZA: And then the no parking.

25 CHAIRPERSON HEATH: And --

1 MS. BUTANI-D'SOUZA: The customers, I
2 suppose, would be required to park elsewhere.

3 CHAIRPERSON HEATH: Right. So there's a lot
4 currently at this building. Is that right? When we
5 say they're required to park elsewhere, we mean on
6 the street.

7 MS. BUTANI-D'SOUZA: Yes.

8 MR. AQUINO: Yes. And that's understood as
9 well, yes. Uh-huh.

10 CHAIRPERSON HEATH: Okay. All right. Are
11 there other conditions that you all would want to see
12 put forward if this is approved? Okay. All right.

13 MR. WASHINGTON: Would there be a cap, a
14 daily cap? I believe that they suggested --

15 CHAIRPERSON HEATH: On the number of
16 customers?

17 MR. WASHINGTON: -- that they see six to
18 seven customers a day.

19 MS. BUTANI-D'SOUZA: I think the indication
20 that it's one on one, which I think you said --

21 CHAIRPERSON HEATH: Right.

22 MS. BUTANI-D'SOUZA: -- would be a condition
23 would --

24 CHAIRPERSON HEATH: With restricted hours.

25 MS. BUTANI-D'SOUZA: -- would restrict the

1 hours. Exactly. That would automatically lead to
2 some restriction on the total number. But I don't
3 think that that's within our preview to restrict.

4 CHAIRPERSON HEATH: Anything else? Okay. I
5 mean, obviously you still have to deal with the condo
6 association, and so that's outside of this Board's
7 jurisdiction but something that as an owner in this
8 building you'll have to deal with next.

9 So with those conditions, I don't know where
10 the Board stands, but I would be fine to approve this
11 request.

12 MS. BUTANI-D'SOUZA: So should we make a
13 motion. Do you want --

14 CHAIRPERSON HEATH: Yeah, you want to make a
15 motion?

16 MS. BUTANI-D'SOUZA: Okay. So motion to
17 approve the request for a use variance, subject to
18 the conditions that we've outlined for a massage
19 establishment in this location.

20 CHAIRPERSON HEATH: All right. So the motion
21 has been made and seconded. Or, it hasn't been
22 seconded.

23 MR. HOOD: I second it, but I do have a
24 question. Did we ever fine-tune the hours? Or what
25 did you all say?

1 CHAIRPERSON HEATH: We said we would allow
2 flexibility for them to --

3 MR. HOOD: Let them work it out.

4 CHAIRPERSON HEATH: -- adhere to the hours
5 that are typical of other professional use --
6 professional establishments in this building.

7 MR. HOOD: Okay. Okay, yeah, I did hear
8 that. Okay. I'll second it.

9 CHAIRPERSON HEATH: Okay. All right. So the
10 motion has been made and seconded.

11 MR. EBI: Madam Chairwoman.

12 CHAIRPERSON HEATH: Yes.

13 MR. EBI: Did you open the hearing for
14 testimony from persons in support and opposition?

15 CHAIRPERSON HEATH: I can't remember if I did
16 or not, so just to be safe, is there anyone here
17 wishing to speak in support? Anyone in support?

18 Anyone wishing to speak in opposition? No
19 other opposition? Okay. All right.

20 So, thank you. Just in case, it's always
21 good to be safe. Okay. So then the motion has been
22 made and seconded. Any further discussion?

23 [Vote taken.]

24 CHAIRPERSON HEATH: So the motion carries.
25 Thank you.

1 MR. WASHINGTON: Thank you.

2 MR. GROSSMAN: Thank you.

3 MR. AQUINO: Thank you.

4 MS. MEYERS: Okay. Staff would record the
5 vote as five to zero to zero on the motion of Vice
6 Chair Butani. I apologize. I did miss who seconded
7 that with all the discussions. Okay. Seconded by
8 Mr. Hood. Also in support were Chair Heath, Mr.
9 Hill, and Mr. Hinkle. And that is approved with the
10 conditions as discussed by the Board. And --

11 CHAIRPERSON HEATH: Summary.

12 MS. MEYERS: Because there is a party in
13 opposition that would be a full order.

14 CHAIRPERSON HEATH: Oh, right. Yes. Thank
15 you.

16 MS. MEYERS: Thanks.

17 CHAIRPERSON HEATH: So full order. Thank
18 you.

19 MR. GROSSMAN: Thank you.

20 [Discussion off the record.]

21 MS. MEYERS: Okay. Calling parties to the
22 table for Application No. 19259 of GINLIN, LLC.
23 Again, this is pursuant to 11 DCMR Section 3104 for a
24 special exception under 223, not meeting the lot
25 occupancy requirements under 430 -- excuse me. This

1 is my first time on the mic. 4003.2, and the
2 nonconforming structure requirements under 2001.3 to
3 construct a two-story rear addition to an existing
4 three-story, one-family dwelling in the R-3 district
5 at premises 3420 P Street Northwest, Square 1246, Lot
6 866 and 867.

7 CHAIRPERSON HEATH: All right. So if you
8 could reintroduce yourselves for the record, and
9 then, Mr. Sullivan, if you could let us know where
10 you stand based on your discussions this morning.

11 MR. SULLIVAN: Madam Chair, did you want to
12 discuss the first case first?

13 CHAIRPERSON HEATH: We can.

14 MR. SULLIVAN: Or wait until the end.

15 CHAIRPERSON HEATH: We could do it -- well,
16 why don't we do it -- yes, let's do this first and
17 then we'll deal with Alleyoop.

18 MR. SULLIVAN: Okay. Thank you, Madam Chair,
19 Members of the Board. Good afternoon. My name is
20 Marty Sullivan with the law firm of Sullivan and
21 Barros.

22 MR. WILSON: Paul Wilson with the firm of
23 Trout Design. I'm the project architect.

24 MR. MEYERS: James Meyers, I'm counsel for
25 Ms. McGuirl.

1 CHAIRPERSON HEATH: Make sure your mic is on.
2 It sounds like you're picking up somebody else's.

3 MR. MEYERS: I'm James Meyers. I'm counsel
4 for Mrs. McGuirl, who is adjacent property owner.

5 MS. MCGUIRL: Marlene McGuirl, the adjacent
6 property owner.

7 MR. MILLER: Andrew Miller.

8 CHAIRPERSON HEATH: Okay.

9 MR. MILLER: I live across the street. I'm
10 also here on Nelson Cunningham's behalf who lives
11 across the street. I asked Secretary Moy --

12 CHAIRPERSON HEATH: You received the --

13 MR. MILLER: -- as to whether -- and he said
14 he -- and I appreciate very much, Nelson told me this
15 morning at 7:30 that he was communicating with your
16 office. So now that you all have copies of it, that
17 speaks for itself. Thank you, ma'am.

18 CHAIRPERSON HEATH: Thank you. All right.
19 So, Mr. Sullivan, if you could start with any outcome
20 from your discussion this morning.

21 MR. SULLIVAN: No, Madam Chair.

22 CHAIRPERSON HEATH: Okay.

23 MR. SULLIVAN: There were no changes or
24 revisions.

25 CHAIRPERSON HEATH: Okay. Then what I will

1 do is, given what we heard this morning, I would make
2 a recommendation that we grant party status, but
3 combined party status, and you all will need to
4 determine who will represent your party. But you'll
5 have one representative. That representative can
6 call witnesses, that representative can read the
7 testimony of Mr. Cunningham that's been submitted.
8 But I'll let you determine that.

9 Is the Board okay to proceed in that manner?

10 [No audible response.]

11 CHAIRPERSON HEATH: Okay.

12 MR. MEYERS: James Meyers will speak for both
13 parties. For the combined party.

14 CHAIRPERSON HEATH: Thank you, Mr. Meyers.
15 Okay. Does the applicant have any issues with
16 granting this party status request?

17 MR. SULLIVAN: No, Madam Chair.

18 CHAIRPERSON HEATH: Okay. All right. Thank
19 you. All right. So, I think if you could just --
20 you know, normally we would ask you to make your
21 presentation now. I think the application has been
22 simplified based on what's in the record now in terms
23 of the addition being made smaller. So if you could
24 make sure that that's made clear for both the Board's
25 benefit and the party opponent's benefit, that would

1 be helpful.

2 MR. SULLIVAN: Yes. Thank you. And to be
3 clear, as this is mea culpa day, that was -- the
4 plans were always for a one-story addition.

5 CHAIRPERSON HEATH: Okay.

6 MR. SULLIVAN: It was a typo in the narrative
7 that called it a two-story and that has lived
8 throughout, but it's always been one story. And the
9 purpose of the addition is to enlarge and modernize
10 the kitchen for the existing four-bedroom house. As
11 part of the -- you've heard about the garage, so as
12 part of the renovation project the applicant desires
13 to remove one of the three garages on the property.
14 And that work, in addition to everything else, has
15 already been conceptually approved by the old
16 Georgetown Board.

17 So with that I'll turn it over to the
18 architect to answer any questions or to briefly go
19 over the application.

20 MR. WILSON: Good evening. Or it feels like
21 evening. Good afternoon, Madam Chair, Members of the
22 Board. Again, my name is Paul Wilson. I'm with the
23 firm of Trout Design. Won't take a lot of time
24 because I think the record is pretty clear as far as
25 the architecture goes. As Mr. Sullivan said, we have

1 achieved concept approval from Old Georgetown Board,
2 and I can walk you through what we have approval for
3 and where the project stands as of now.

4 This is a view of the block, of P Street.
5 Shows you 3420, and location of the rear addition and
6 the two-bay garage which we intend to maintain on the
7 property.

8 I think one of the things that's germane
9 about the case is the image on the upper left-hand
10 corner which I believe is also in the record, shows
11 the rear -- the current rear yard at 3420 and the
12 existing deck. And then there's a picture of the
13 neighboring property that's 3416 P Street.

14 MS. BUTANI-D'SOUZA: Sorry, Mr. Wilson, can I
15 just interrupt you for one second? I just have a
16 really quick question.

17 MR. WILSON: Sure.

18 MS. BUTANI-D'SOUZA: For Mr. Sullivan. Mr.
19 Sullivan, is this going to be owner occupied, or is
20 this intended to be a rental?

21 MR. SULLIVAN: It's intended to be owner
22 occupied. It's going to be sold and it has every
23 intention -- it's being renovated and restored with a
24 significant investment. It's not going to -- it's
25 not intended to be a rental property, no.

1 MS. BUTANI-D'SOUZA: Okay. Yeah, because I
2 saw the window upgrades and a lot of things that I
3 can't imagine that somebody would invest in doing if
4 you're going to be renting it to students.

5 MR. SULLIVAN: That's correct.

6 MS. BUTANI-D'SOUZA: Okay.

7 MR. WILSON: That's correct. The renovations
8 to the property are quite extensive and especially on
9 the interiors, and I know that's not our subject here
10 today but we have been over, also some renovations to
11 the side façade, including filling in an existing
12 side porch which we've been through Old Georgetown
13 Board with, multiple times, multiple hearings.

14 Another view of the rear yard in the upper
15 left-hand corner. It's very cramped. One of the
16 reasons we're doing these improvements to the
17 property is to increase the amount of green space,
18 and actually our application would reduce the lot
19 occupancy by three percent. So that -- the net
20 decrease in lot occupancy from the garage comes down
21 the 20 by seven foot addition. It's net decrease.

22 The image on the upper right-hand corner
23 shows -- this is the view from P Street. So if you
24 look down the alley our addition is at the very rear
25 of the property. It's a one-story. I think the view

1 from P Street would be very minimal.

2 So walk you briefly through the site plan.
3 This is the existing site, three-bay garage, and the
4 deck at the rear of the existing property. So it is
5 possible. You rise up about 30 inches to come into
6 the rear door of the property. So the first floor is
7 slightly raised above the rear yard.

8 This is the proposed site plan. So two-bay
9 garage. We're extending the rear -- the rear
10 addition extends seven feet. And it's also the full
11 width of the existing building. So seven by 20,
12 there was a small open porch which really serves to
13 house the staircase. And there's a small landing but
14 it's not somewhere where you can actually go out and
15 sit because it is very small.

16 Okay. What happened to my elevations? Okay.
17 For some reason the elevations are not appearing.
18 The addition is, it's nine feet to the eve line above
19 the first floor, so it's not even a full -- it's
20 barely a full story so -- and it has a small hip roof
21 on it. And I apologize that the elevations are not
22 appearing.

23 We do have boards so if you want to drill
24 down to the elevations, we can do that.

25 MR. SULLIVAN: They're also at Exhibit 27 in

1 the case file.

2 MR. WILSON: I did want to walk briefly
3 through the shadow studies because I think that's
4 really the heart of our case. So, our office
5 prepared shadow studies. We have, these are also in
6 the record. So we have views from December, March --

7 MS. BUTANI-D'SOUZA: Sorry, one other brief
8 interruption.

9 MR. WILSON: Yes.

10 MS. BUTANI-D'SOUZA: Mr. Meyers, can you just
11 clarify, Ms. McGuirl's property is it, looking at the
12 shadow study, is it on the left or on the right?

13 MR. MEYERS: Mrs. McGuirl's --

14 MS. BUTANI-D'SOUZA: Sorry. So there's two,
15 there's the existing -- I suppose. There's the
16 existing condition and then there's a proposed, so
17 within each --

18 MR. MEYERS: Yeah. Ms. McGuirl's property
19 would be on the right of each of those.

20 MS. BUTANI-D'SOUZA: On the right of each of
21 them.

22 MR. MEYERS: Yes.

23 MS. BUTANI-D'SOUZA: Okay.

24 MR. MEYERS: It's 3416.

25 MS. BUTANI-D'SOUZA: Got it.

1 MR. MEYERS: Yeah.

2 MS. BUTANI-D'SOUZA: Thank you.

3 MR. MEYERS: Sure.

4 MR. WILSON: So our office prepared the
5 shadow study, so we have shadow studies from
6 December, March, March/September, and June. And we
7 have highlighted, as I run through these, we've
8 highlighted where the additional shadows are created
9 by the addition, and so walk you through these.
10 There's really no change. December -- until we get
11 to 4:00 p.m. there is a small additional shadow cast
12 on the adjacent property and that's the side façade
13 where there are currently no windows.

14 MR. MEYERS: That's being disputed. Go
15 ahead.

16 MR. WILSON: Okay. So this is March. In the
17 morning there would be some additional shadow cast
18 across the alley on to the properties, on to the
19 property at 3424 P Street. Noon, no change. 4:00
20 p.m., a small additional shadow cast on the property
21 at 3416. So only late in the day where we get some
22 additional shadow.

23 And I also should point out, there is a seven
24 and a half foot brick wall on the property line which
25 accounts for a good deal of the shadow cast here.

1 That's an existing condition, which we'll maintain.

2 Moving on to June, 9:00 a.m., no additional
3 shadow, not even to the west. Noon, property -- our
4 addition faces south so obviously won't be any
5 impacts there. 4:00 p.m., model is showing no
6 additional shadow cast on the adjacent property. So
7 I think with that I will wrap up and be open to any
8 questions.

9 MS. BUTANI-D'SOUZA: Since this is your
10 drawing, so I'm assuming you're going to be the most
11 familiar with it, but I'll ask you the same question
12 when it's your turn. I understand that there is a
13 question about a window having a shadow cast on it.
14 Can you just tell us approximately, do you know
15 approximately where that window is?

16 MR. WILSON: I think the best way is to back
17 up to the site photos because it was not included
18 with -- let's see. You can see the window here. I
19 believe that's at the second story --

20 MS. BUTANI-D'SOUZA: Where is -- which
21 picture are we looking at?

22 MR. WILSON: The upper left-hand corner. So
23 that's the seven and a half foot brick wall.

24 MS. BUTANI-D'SOUZA: Is this in the color
25 photographs on the -- where is -- you said it's in

1 the record?

2 MR. WILSON: Yes, I believe so. I don't
3 know.

4 MR. MEYERS: I can explain where it came
5 from.

6 MR. WILSON: I don't have the exhibit number
7 in front of me.

8 MS. BUTANI-D'SOUZA: Mr. Sullivan, do you
9 know which exhibit number it is?

10 MR. SULLIVAN: Yeah. It should be Exhibit
11 27, but Exhibit 27 in the record says it's 13 pages
12 and then when I open it, it only shows up as six
13 pages. So I don't. But I know we filed these and
14 the elevations too. So I don't know why it's showing
15 -- it's showing up. That's odd. It says it should
16 be 13 and when you open the document it's only six.

17 MS. BUTANI-D'SOUZA: Is it in the original?

18 MR. SULLIVAN: I'll check.

19 MS. BUTANI-D'SOUZA: That, the original one
20 is 12 pages.

21 MR. WILSON: I believe the OP report also
22 includes a photograph.

23 MR. SULLIVAN: You know what? That picture
24 is actually submitted separately as a photo in
25 Exhibit 28, I believe. So it's a full sized --

1 MS. BUTANI-D'SOUZA: Oh, I see it. Okay.
2 Yep, that's the one. So there's a window kind of
3 between the trees. Is that -- there's like a sort of
4 ladder against the building and then there's a window
5 and then tree?

6 MR. WILSON: Correct. There's a bay
7 projection into the rear yard and the windows are on
8 that.

9 MS. BUTANI-D'SOUZA: So that's, if you go
10 back to the shadow study, that's --

11 MR. WILSON: Let's look at December 21st.

12 MS. BUTANI-D'SOUZA: Which? At 4:00 p.m.?

13 MR. WILSON: 4:00 p.m., yes. If you look at
14 our highlighted area, just to the right of that,
15 that's where the windows are.

16 MS. BUTANI-D'SOUZA: Okay. So based on your
17 shadow study it's not on the window at December 21st,
18 but what about in June. No, in March. March at 4:00
19 p.m.

20 MR. WILSON: March, 4:00 p.m., there could be
21 the possibility of shadow on those windows, yes.

22 MS. BUTANI-D'SOUZA: Okay.

23 MR. WILSON: Additional shadow.

24 MS. BUTANI-D'SOUZA: Okay. All right. So,
25 and can you help me understand shadow studies in

1 general? When you say March 21st give me a rough
2 date approximation of how long this shadow -- is it
3 going to be February through April? Is it going to
4 be only March?

5 MR. WILSON: It would be arranged so as the
6 sun comes higher in the sky. We were -- our studies
7 show there was no effect in December on the area
8 where the windows are. So gradually through the year
9 that shadow would move farther across the face.

10 MS. BUTANI-D'SOUZA: Uh-huh. So basically
11 sometime between the beginning of February and I
12 suppose, April, is when this is going to be there.

13 MR. WILSON: Uh-huh.

14 MS. BUTANI-D'SOUZA: Okay.

15 MR. WILSON: Okay. I can't give you exact
16 time frame. But I think our studies show that it
17 would be fairly minimal.

18 MS. BUTANI-D'SOUZA: Okay. And I guess
19 looking at the June one, it looks like then you get
20 into an existing shadow that's already there.

21 MR. WILSON: Correct. That's the nearly
22 eight foot tall wall that's on the property line,
23 let's go ahead to June. It's the existing building
24 plus the wall on the property line that casts the
25 shadow.

1 MS. BUTANI-D'SOUZA: Okay. Thanks.

2 CHAIRPERSON HEATH: Any other questions from
3 the Board? All right. So if that concludes your
4 presentation then we'll turn to the party opponent
5 for any questions that you have regarding the
6 applicant's statement.

7 MR. MEYERS: Yes. First of all I'd like to
8 thank --

9 CHAIRPERSON HEATH: And their questions.

10 MR. MEYERS: -- Mr. Sullivan and the other
11 party. We did reach a lot of understanding of what
12 their trying to do and we're not opposed to what they
13 want to do, but it's how they're doing it, and that's
14 the problem. The shadow study --

15 CHAIRPERSON HEATH: Right. Oh, I was asking
16 for your questions. So, do you have any questions,
17 or were you going into your statement?

18 MR. MEYERS: Sorry. I have no questions.

19 CHAIRPERSON HEATH: Okay. All right. Okay.
20 Then if the Board has no questions, just to be clear,
21 you do have a statement that you want to make. Okay.
22 I will let you do that.

23 MR. MEYERS: Yes. James Meyers here for Mrs.
24 McGuirl and for Mr. Miller. And for the shadow
25 study, while we're on that, we think that it needs to

1 be pointed out that you'll see from the last picture
2 on their paper presentation, this is the window as
3 you'll see. And here's a little clearer picture of
4 the actual window from the stair. And if you see
5 those stairways, that's where the floor is going to
6 be. The structure is going to start at this
7 stairway. Then it's going to go up and then the roof
8 is going to go up higher than that, and so when we're
9 finished part of that is -- that we think the shadow
10 study is going to be much more pronounced, especially
11 when you go later in the day, especially in the
12 summer time, because she's facing west and her west
13 view is what she really likes, when the sun is
14 setting. And that's what's happening. That light
15 will be diminished.

16 And there is no shadow study at all of that
17 season, of that time of the season. And we think
18 there should be more shadow studies to make sure that
19 there isn't going to be an affect. We don't think
20 it's sufficient at the time.

21 CHAIRPERSON HEATH: Can you help me
22 understand what's happening at the back of Ms.
23 McGuirl's property? Is that a bay window that we're
24 looking at, because it looks like it's on angle.

25 MR. MEYERS: Yes. It's not a bay window, as

1 you can see, but it --

2 CHAIRPERSON HEATH: I can't tell what's
3 happening there.

4 MR. MEYERS: I'm sorry. May I approach you
5 or --

6 CHAIRPERSON HEATH: No, you can explain from
7 there. I have the same picture in front of me.

8 MR. MEYERS: Oh, okay. Well, this is a more
9 extension of it, but yes.

10 CHAIRPERSON HEATH: So that window is on an
11 angle.

12 MR. MEYERS: Uh-huh.

13 CHAIRPERSON HEATH: And then what happens as
14 it turns the corner, as the wall turns the corner?
15 Is there another window at the back?

16 MR. MEYERS: No.

17 CHAIRPERSON HEATH: So that's the only
18 window --

19 MR. MEYERS: That is the window that's
20 affected, yes.

21 CHAIRPERSON HEATH: But that's the only
22 window that exists?

23 MR. MEYERS: No.

24 CHAIRPERSON HEATH: Not the only window
25 that's affected, the only window that exists.

1 MR. MEYERS: No, it's not the only window
2 that exists, no.

3 CHAIRPERSON HEATH: Okay, so is that a --
4 again, so as the façade turns --

5 MR. MEYERS: She has doors to the -- or down
6 there, double, glass doors.

7 CHAIRPERSON HEATH: Okay. I'm just trying to
8 understand --

9 MR. MEYERS: And front windows that don't go
10 on the angel.

11 CHAIRPERSON HEATH: -- what the window
12 frontage is along that lower -- that ground level
13 story.

14 MR. MEYERS: Uh-huh. Uh-huh.

15 CHAIRPERSON HEATH: Of her home.

16 MR. MEYERS: Uh-huh. This is it.

17 CHAIRPERSON HEATH: So there are, as the
18 façade continues around, there are glass doors?

19 MR. MEYERS: If you continue around this
20 way --

21 CHAIRPERSON HEATH: Correct.

22 MR. MEYERS: There's glass doors.

23 CHAIRPERSON HEATH: Okay.

24 MR. MEYERS: This way, there are no windows.

25 CHAIRPERSON HEATH: Okay. All right.

1 MS. BUTANI-D'SOUZA: And what's the head
2 height of that window? Like how far off --

3 MS. McGUIRL: Second story.

4 MS. BUTANI-D'SOUZA: This is a second story
5 window?

6 MS. McGUIRL: Yes.

7 MS. BUTANI-D'SOUZA: Oh, okay.

8 CHAIRPERSON HEATH: It looks like it's a
9 first story.

10 MR. MEYERS: I know. It does look like it
11 and --

12 MS. McGUIRL: There also is a first floor
13 window. There are two windows there.

14 MS. BUTANI-D'SOUZA: So the first floor
15 window is blocked by the existing fence. Is that
16 right?

17 MR. MEYERS: Yes.

18 MS. BUTANI-D'SOUZA: The first floor window
19 looks out on to the fence.

20 MR. MEYERS: This is your -- you have a
21 window here.

22 MS. McGUIRL: I have a window -- yeah, this
23 is a window.

24 MR. MEYERS: There's a lower window and an
25 upper window, yes.

1 MS. BUTANI-D'SOUZA: The one that's shown in
2 the picture is the upper window?

3 MR. MEYERS: Yes.

4 MS. McGUIRL: Yeah.

5 MS. BUTANI-D'SOUZA: Okay. And --

6 CHAIRPERSON HEATH: And so that second story
7 would be above this first floor addition?

8 MR. MEYERS: No, that's our point because the
9 addition, the floor, here is the floor, here is the
10 floor of the addition.

11 MS. BUTANI-D'SOUZA: Uh-huh.

12 MR. MEYERS: So it's going to go up whatever
13 feet they say it is, plus that roof is going to go up
14 like that, and so it's going to affect her light, and
15 we think the shadow study is not adequate because it
16 doesn't cover enough time period.

17 CHAIRPERSON HEATH: So is her first floor --
18 I'm trying to understand the comparison between the
19 two homes. So is her first floor on grade with her
20 back yard?

21 MR. MEYERS: Yes.

22 CHAIRPERSON HEATH: Okay.

23 MS. BUTANI-D'SOUZA: Okay.

24 CHAIRPERSON HEATH: So the house is --

25 MS. BUTANI-D'SOUZA: A little lower.

1 CHAIRPERSON HEATH: Yeah.

2 MS. BUTANI-D'SOUZA: Can I ask --

3 CHAIRPERSON HEATH: Is her house three
4 stories?

5 MS. McGUIRL: Two stories.

6 MS. BUTANI-D'SOUZA: Can I ask why you didn't
7 provide August or September?

8 MR. SULLIVAN: We typically just provide the
9 quarters. We could do monthly but normally --

10 MS. BUTANI-D'SOUZA: Did you provide one for
11 the fall? You have December, March, June, but you
12 don't have --

13 MR. SULLIVAN: March and September are the
14 same views.

15 MS. BUTANI-D'SOUZA: I'm sorry, what?

16 MR. SULLIVAN: I'm sorry. March and
17 September are the same; the same thing. So it could
18 say March/September.

19 MR. WILSON: The equal ones, yeah.

20 MR. SULLIVAN: So we've handled the four
21 quarters. June and December are different, March and
22 September are always the same.

23 MS. BUTANI-D'SOUZA: So in March, which would
24 be September, the same view, there is no impact on
25 Mrs. McGuirl's property. So essentially the shadow

1 that's impacting on -- hang on. No, on March there
2 is an impact that they're showing at 4:00 p.m.

3 MR. WILSON: Yes, we are showing a slight
4 increase. It's very minimal at 4:00 p.m. on March
5 21st, September 21st. But not on the window that's -
6 - in the photographs the window is on the second
7 floor, so these shadows are being cast at a lower
8 level from that window.

9 MS. BUTANI-D'SOUZA: How high up are these
10 shadows being cast?

11 MR. WILSON: It appears to be a little lower
12 than the eight -- seven foot, six wall that's on the
13 property line. So, probably six feet above -- again,
14 I couldn't give a definitive answer on that.

15 MR. MEYERS: Well, on the first floor window
16 we don't think there's any question of that. On the
17 second floor we think there is also -- if they would
18 do studies, like later in the afternoon, especially
19 in the summer, I think you'd see a much more
20 significant shadowing effect on both sets of windows,
21 especially on the upper window.

22 CHAIRPERSON HEATH: All right. So, we'll
23 allow you to continue your statement.

24 MR. MEYERS: Well, as far as you know, as far
25 as efficacy of computer generated shadow testing is

1 concerned, we would like to see some shadow testing
2 at those later times of day, especially in the
3 summer. Particularly for that's when it's -- I mean,
4 I know it's kind of personal, but that's when she
5 really uses it.

6 Also, the other points that we'd made were
7 explained to us by Mr. Sullivan. We were under the
8 impression and we were told by the previous owners
9 who lived there that the part that's to be taken down
10 is historic. However, we were advised by Mr.
11 Sullivan that the Georgetown Historic Board had said
12 that they were not. Is that correct, sir?

13 MR. SULLIVAN: Yes, that's correct.

14 MR. MEYERS: So, if they're not, they're not.
15 But we did want to bring that to your attention.

16 And then I guess our last remark was that
17 from the inside of her property you can see from our
18 submission, which would be the last photo on our
19 submission, that -- and we've been assured by the
20 adjacent property owner that this will be maintained,
21 this view that you're seeing, and particularly in the
22 forefront of the umbrella and the next segments over,
23 all the way across will not be changed and property
24 owner will make sure that they will address any
25 scenic issues from that, from Mrs. McGuirl on her

1 property. They've made that representation to us and
2 we accept that.

3 CHAIRPERSON HEATH: Okay.

4 MR. MEYERS: But we want that -- she needs
5 that wall there and we were told that it's not going
6 to be the back wall of the structure, that they're
7 not going to tear the back wall of the structure
8 down, just the front and the side, which would leave
9 the back. And we're also told that there will be --
10 that any other fencing is going to remain there so
11 that the view that she has now and the light, except
12 for that one thing, will stay the same.

13 So what we really want is more -- we'd like
14 some shadow studies for late in the -- like I said,
15 later in the day, especially in the summer.

16 CHAIRPERSON HEATH: Okay.

17 MR. MEYERS: If you could -- because 4:00
18 doesn't quite make it, especially when you've got
19 5:00, 6:00, 7:00, 8:00, when that sun gets low,
20 looking over west. Anyway, there we are.

21 CHAIRPERSON HEATH: Does the applicant have
22 any issues with providing the additional shadow
23 studies?

24 MR. SULLIVAN: Just other than the delay.
25 But if we could do it as a post-hearing submission,

1 sure. We can do additional months and times.

2 CHAIRPERSON HEATH: Okay.

3 MR. SULLIVAN: And I think it would be
4 helpful to home in on where that window is because we
5 were told earlier it was a first story window that
6 they're worried about, but it's really a second story
7 window and --

8 MR. MEYERS: We'll clarify that for you too,
9 and we'll do that as well. It's really two windows.
10 It's the first and the second.

11 CHAIRPERSON HEATH: Okay. But the first
12 story window is going to be blocked by the fence.

13 MR. MEYERS: Yes.

14 CHAIRPERSON HEATH: So, and we can see that
15 in the shadow studies, that that is mostly --

16 MR. MEYERS: Mostly. Okay. If you're --

17 CHAIRPERSON HEATH: -- blocked by the
18 existing fence. But what we're concerned about now
19 is the second story.

20 MR. MEYERS: Is the second story window.

21 CHAIRPERSON HEATH: Right.

22 MR. MEYERS: We'll give you height. You want
23 to know how high that is, that sort of thing.
24 Measurements?

25 MR. SULLIVAN: We can, since we're submitting

1 the extra studies it would be easy to -- we'll put
2 the window on there.

3 CHAIRPERSON HEATH: Sure. That would be
4 helpful.

5 MR. SULLIVAN: Yeah.

6 CHAIRPERSON HEATH: Seeing the two together.
7 So if you could get the height and dimensions --

8 MR. MEYERS: Okay.

9 CHAIRPERSON HEATH: -- to the applicant.

10 MR. MEYERS: Very fine.

11 CHAIRPERSON HEATH: That would be helpful to
12 see those two superimposed.

13 MR. MEYERS: And our last point is for Mr.
14 Cummings and also for Mr. Miller. As you look down
15 the alley their concern is that with the missing of
16 that one piece, because they both view it with that
17 one piece gone, that it shows -- allow me for one
18 second.

19 [Discussion off the record.]

20 MR. MILLER: Well, if I can address that
21 issue in my witness statement, I would appreciate it.

22 MR. MEYERS: All right. Well, I'll leave it
23 to you, Ms. Heath.

24 CHAIRPERSON HEATH: Okay. All right. So
25 that concludes your statement.

1 MR. MEYERS: Yes, ma'am.

2 CHAIRPERSON HEATH: Does the Board have any
3 questions of the party opponent? Any other
4 questions? All right. Then if you want to call
5 witnesses you can do so. We'll give you three
6 minutes for your statement.

7 MR. MILLER: Well --

8 CHAIRPERSON HEATH: That's typical protocol
9 for any witnesses coming --

10 MR. MILLER: Yeah, well I thought when I
11 filed as a party and I was granted party, I would
12 have the same --

13 CHAIRPERSON HEATH: You weren't granted party
14 status. We granted party status to the group, and so
15 you have one representative and you can --

16 MR. MILLER: Yeah. I heard that. I spent an
17 enormous amount of time on this because of my
18 concern. I don't like the idea of the manner in
19 which this matter has been handled procedurally. And
20 I think the Board --

21 CHAIRPERSON HEATH: Well, the Board's
22 procedures are spelled out in the Zoning Regulations.

23 MR. MILLER: I'm not talking about your
24 procedures. Ma'am, if I may be allowed my three
25 minutes to make --

1 CHAIRPERSON HEATH: Sure. It's going now.
2 Go ahead.

3 MR. MILLER: Fine. Please. I was not
4 advised by these people of the ANC meetings involving
5 this project at all. Had zero, absolute notice. No
6 notice despite the fact I live across the street.

7 The same thing with the Old Georgetown Board.
8 I had no notice that this matter was being heard
9 before the Old Georgetown Board. So for them to come
10 in here and say, well, that's just now water over the
11 dam, my regard is an absolute violation of my due
12 process. And it's something that the DC Government
13 ought to address so that this type of nonsense
14 doesn't happen in the future.

15 Now, with respect to this particular matter
16 the application contains, in my view, a major
17 inaccuracy. I won't go into it here because you've
18 cut off my time with describing it as a detached --
19 if you don't want me to continue, I won't. But --

20 CHAIRPERSON HEATH: Nobody has interrupted
21 you, sir, so --

22 MR. MILLER: But you weren't --

23 CHAIRPERSON HEATH: -- please --

24 MR. MILLER: You were talking to your
25 colleague and --

1 CHAIRPERSON HEATH: We haven't said a word.
2 So, sir, if you want to use your time, please do so.

3 MR. MILLER: I'm trying to. My view is that
4 this is a detached dwelling, not a semi-detached
5 dwelling. I checked with Allison Meyers at the
6 Office of Zoning. She confirmed that its' a detached
7 dwelling. The property is so describe in here, not a
8 semi-detached dwelling as described in the
9 application.

10 Now what impact that has on the lot
11 occupancy, I don't know. But in any event, that's
12 what I was told and therefore there has to be legal
13 consequences of the misdescription of the status of
14 this property.

15 Now, with respect to the utilization of the
16 house, the one condition I think really ought to be
17 imposed in light of the statement, the other side, is
18 that this house not be rented to students. There's
19 no reason why you can't impose that condition. It's
20 been rented ever since 1920. It has not been lived
21 in by the owner during that entire period of time.
22 You're now told oh no, we're not going to rent it to
23 students. There's no control over what happens to
24 that property once it is sold by this developer,
25 unless there's some covenant in the deed which says,

1 it shall not be rented to students. And that is one
2 of my major objections, the reason as I told Mr. Hood
3 in response to his question earlier today, that there
4 was a real problem in terms of my having to call the
5 police because of the activity on the sidewalk, the
6 drinking, et cetera across the street from where I
7 live.

8 One of the things I find particularly
9 appalling in light of the fact that this garage used
10 to have, as its inhabitants, slaves that now because
11 of the fact that I was not allowed the opportunity to
12 appear before the Old Georgetown Board when it was
13 heard, that they're tearing down part of the slave
14 quarters. I mean, for this to happen in the District
15 of Columbia I just think it's ridiculous.

16 I was Attorney General of Virginia. I was a
17 liberal attorney general. I was the first attorney
18 general that had African/Americans on my staff. And
19 for this to happen across the street from me, I just
20 regard as absolutely beyond the pail. And I'm sorry
21 there's not somebody here from the Washington Post
22 who will report the outcome of this meeting. Thank
23 you very much.

24 CHAIRPERSON HEATH: Thank you. Does the
25 Board have any questions of this witness?

1 MR. HOOD: I do want to -- Williams. Wilson.
2 Mr. Wilson, you said you weren't given proper notice?

3 MR. MILLER: My name is Miller, sir.

4 MR. HOOD: Miller. I'm sorry.

5 MR. MILLER: That's all right. That's no
6 problem.

7 MR. HOOD: Where I was just -- that might
8 have been another case. I'm sorry.

9 MR. MILLER: No problem.

10 MR. HOOD: Last name is Miller, right? Okay.

11 MR. MILLER: M-I-L-L-E-R. Yes, sir.

12 MR. HOOD: Okay. Think I can spell that.
13 Okay. You said you weren't given proper notice,
14 right?

15 MR. MILLER: Well, I wasn't.

16 CHAIRPERSON HEATH: Of the ANC meeting or the
17 Old Georgetown Board.

18 MR. MILLER: The only notice I got was the
19 one from the BZA dated March the 30th. I immediately
20 called Jeff Jones, the ANC Commissioner and said, you
21 know, what the hell is going on. And I was told that
22 the next ANC meeting was on May the 2nd. I went to
23 that meeting. As a result of that meeting the ANC
24 refused to approve this project. That's where we are
25 on it now and I ask that the project be sent back

1 with the shadow studies in order that it can be
2 properly considered by the ANC with a correct
3 description of exactly what's going on.

4 CHAIRPERSON HEATH: Okay. I think you
5 answered my question. I just wanted to make sure
6 that this office did its due diligence, and obviously
7 they did because --

8 MR. MILLER: I have absolutely no question.

9 MR. HOOD: Okay.

10 MR. MILLER: Allison Meyers couldn't have
11 been more cooperative when I called her and asked
12 about the difference between detached and -- are you
13 Allison Meyers by any chance? You're smiling.

14 MR. HOOD: I would be smiling too if somebody
15 was giving me a compliment. I don't normally get
16 them.

17 MR. MILLER: But she was certainly a pleasant
18 person to deal with.

19 MR. HOOD: And I'm sure her director is
20 listening to that. Thank you.

21 MR. MILLER: I hope they do.

22 CHAIRPERSON HEATH: All right. Thank you.

23 PARTICIPANT: Nice work, Mr. Hood.

24 CHAIRPERSON HEATH: All right. So, Mr.
25 Miller I just want to, I want to make sure you're

1 clear now that this is an addition. It's an addition
2 to the existing house. It's not detached.

3 MR. MILLER: No, no, no, no. The
4 structure --

5 CHAIRPERSON HEATH: Are you talking about the
6 garage?

7 MR. MILLER: For 3420.

8 CHAIRPERSON HEATH: The garage that's
9 being --

10 MR. MILLER: No, so the -- no, ma'am. I'm
11 sorry. I was looking at your colleague, Mr. Hill.
12 The structure is the house.

13 CHAIRPERSON HEATH: Uh-huh.

14 MR. MILLER: The dwelling that I'm talking
15 about. And I was told by Allison, Ms. Meyers, sorry,
16 that the pertinent structures do not determine
17 whether a structure is detached or semi-detached. I
18 understand fully that what is being proposed here is
19 in addition to the existing structure.

20 CHAIRPERSON HEATH: Okay.

21 MR. MILLER: I've spent a lot of time on this
22 because I don't like being jerked around, and that's
23 clearly what's happened to me and my neighborhood,
24 Mr. Cunningham with respect to this matter. And it's
25 just very unfortunate that this can happen in the

1 District of Columbia.

2 MS. BUTANI-D'SOUZA: Can I ask a question?

3 CHAIRPERSON HEATH: Sure.

4 MS. BUTANI-D'SOUZA: Mr. --

5 MR. MILLER: Yes, ma'am.

6 MS. BUTANI-D'SOUZA: Mr. Miller.

7 MR. MILLER: Sorry, I can't see you behind
8 that. There you go.

9 MS. BUTANI-D'SOUZA: I'm sorry. I'm not that
10 tall. Okay, so --

11 MR. MILLER: Neither am I.

12 MS. BUTANI-D'SOUZA: So can you help me
13 understand, is your opposition based on the parking
14 issue? Is that the basis of your opposition?

15 MR. MILLER: Well, that is one of -- yes,
16 ma'am, that is one of my two issues. The parking
17 issues.

18 MS. BUTANI-D'SOUZA: What is the second?

19 MR. MILLER: Simply because the fact when --
20 and I speak for Mr. Cunningham here too. When we
21 have guests to the house on occasion, they have a
22 terrible time finding a parking place. And if you
23 eliminate one of the existing off-street parking it's
24 just going to be that much more difficult for them to
25 find a parking place.

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1 MS. BUTANI-D'SOUZA: I'm sorry. Can I just
2 ask, so --

3 MR. MILLER: Yes, ma'am.

4 MS. BUTANI-D'SOUZA: So first issue is
5 parking, which I understand. Second issue is what?
6 Your second issue with this.

7 MR. MILLER: Well, the second issue is the --

8 MS. BUTANI-D'SOUZA: Historic?

9 MR. MILLER: -- rental to students, which is
10 a huge problem when Georgetown is in session. I
11 mean, when I raised this point at the ANC meeting
12 there were a number of Georgetown students in the
13 audience for some charitable cause, which is very
14 commendable. And when I raised it they all laughed.
15 Well, they understood what I was talking about. And
16 I had to call the, as Mr. Hood pointed -- asked me
17 this morning, I had to call the Georgetown Police in
18 order to shut the parties down on the two times I've
19 done it. The other times I could have done it and
20 I've just said the heck with it. But it's an ongoing
21 nuisance as long as students are in that house and it
22 ought to be stopped.

23 MS. BUTANI-D'SOUZA: And you've looked at the
24 plans and you understand that this is being renovated
25 for an owner occupant, not for student rentals?

1 MR. MILLER: Well, see that's the whole
2 point, if I may -- I'm sorry if I didn't make myself
3 clear. I apologize. I understand it's being
4 renovated. I understand the kitchen facilities are
5 being substantially upgraded. Fair enough. That
6 just makes it, in the past, there haven't been six
7 students there. I'm told by Ms. Meyers, again, that
8 the number of students in R-3 in Georgetown is six.
9 And so you go from four to six. That means more
10 partying, more foot traffic, more noise.

11 And what I'm suggesting is that there be a
12 covenant put in any deed from the owner, GINLIN,
13 LLC., to whoever buys it, that this property in the
14 future will not be rented to students. That takes
15 care of the problem.

16 And they say they don't intend to do it so I
17 don't understand what their resistance is to doing
18 it, unless they, after it's all over, oh my gosh, we
19 need to get some income from this property, we're
20 going to start renting to students again. That's my
21 problem. So I thank you for allowing me to clarify
22 that. I appreciate it.

23 MS. BUTANI-D'SOUZA: I'm sorry, and I have
24 one other question.

25 So going back to the parking issue, do you

1 know whether the third parking space is currently
2 used?

3 MR. MILLER: No, ma'am, I don't. I don't
4 monitor what goes on. There is a Catholic Monastery
5 behind. I know Father Don who lives there, and a
6 very wonderful human being. And cars go back and
7 forth all the time. I just don't know what the
8 utilization of those parking garages are. There are
9 three bays at the present time and I would be
10 surprised if they weren't -- if they haven't been
11 used in the last six months it's because nobody has
12 been living at 3420. But if people start living
13 there again and you have individuals trying to find
14 parking places, then they're going to spill over into
15 the street because one of their options has been
16 foreclosed.

17 CHAIRPERSON HEATH: Okay. Go ahead.

18 MR. HILL: Mr. Miller.

19 MR. MILLER: Yes, sir.

20 MR. HILL: It's currently being rented now by
21 students? Is that correct? Is that what you're
22 saying?

23 MR. MILLER: No, sir. I'm sorry if I didn't
24 make that clear. The last time I know that students
25 were in there, they've been there for -- well, the

1 property has been rented since 1920, so we're almost
2 up to 100 years of the property being rented.

3 MR. HILL: That's okay. I understand.

4 MR. MILLER: But --

5 MR. HILL: So who --

6 MR. MILLER: -- to answer your question,
7 when --

8 MR. HILL: Who is there now?

9 MR. MILLER: No one.

10 MR. HILL: Oh, it's empty. Okay, it's
11 vacant.

12 MR. MILLER: It's empty. And has been, sir,
13 ever since sometime I believe last summer, probably
14 when term ended for Georgetown sometime in the
15 summer, or maybe it was early summer. It's been
16 vacant --

17 MR. HILL: So at one time while you've been
18 living there it has --

19 MR. MILLER: Twenty-five years.

20 MR. HILL: While you've been living there it
21 has been rented to students?

22 MR. MILLER: The whole time.

23 MS. McGUIRL: Oh, yes.

24 MR. HILL: Okay.

25 MS. McGUIRL: Oh, yes.

1 MR. HILL: Well, the whole time except for
2 now. It's empty now.

3 MR. MILLER: Well, of course it's empty now.
4 I'm sorry if I didn't make that clear.

5 MR. HILL: That's okay. That's why I'm
6 asking questions.

7 MR. MILLER: Yes, sir.

8 MR. HILL: So, and the whole time it's
9 rented, how many students have been in there prior
10 when it's been rented?

11 MR. MILLER: Go ahead, ma'am. I haven't --

12 MR. HILL: That's okay. Just --

13 MS. McGUIRL: I live next door and there have
14 always been -- you can't count them.

15 MR. HILL: Okay. Well, I mean --

16 MS. McGUIRL: I don't know how many were
17 there. There were many.

18 MR. HILL: That's all right. Okay.

19 MS. McGUIRL: Many.

20 MR. HILL: Okay.

21 MR. MILLER: But to answer your question, Mr.
22 Hill --

23 MS. McGUIRL: As it's three --

24 MR. MILLER: -- I didn't -- I am not sad time
25 and counting.

1 MR. HILL: Okay. And, Mr. Miller, you might
2 not want to answer this question but I'm going to ask
3 you this question.

4 MR. MILLER: Please.

5 MR. HILL: When you bought it, were there
6 students renting the place there?

7 MR. MILLER: You know, my wife was so
8 interested in buying this house when it came on the
9 market right after we were married that I didn't do a
10 lot of due diligence as to who was occupying the
11 other houses, so I don't know --

12 MR. HILL: Okay. All right. Okay.

13 MR. MILLER: -- whether they were or not, but
14 I was certainly told by Joe Reed, who lived next
15 door --

16 MS. McGUIRL: Born and raised.

17 MR. MILLER: -- and for how many years?

18 MS. McGUIRL: Born and raised.

19 MR. MILLER: Born and -- well, he passed
20 away --

21 MS. McGUIRL: And died there.

22 MR. MILLER: -- just months ago, that in fact
23 it had been --

24 MR. HILL: That's okay. That's all right.

25 MR. MILLER: -- rented by students the entire

1 period of time.

2 MR. HILL: Okay.

3 MR. MILLER: And so I'm sorry I can't tell
4 you about --

5 MR. HILL: That's all right.

6 MR. MILLER: -- my own house.

7 MR. HILL: That's all right.

8 MR. MILLER: If my wife hadn't been so
9 anxious to get the house I probably would have done
10 more due diligence, but --

11 MR. HILL: That was 25 years ago. That was a
12 long time ago.

13 MR. MILLER: Yes, sir, it was.

14 MR. HILL: But thank you so much.

15 MR. MILLER: We're still happily married.

16 MR. HILL: That's good.

17 CHAIRPERSON HEATH: Smart man to move
18 quickly --

19 MR. HILL: That's good.

20 CHAIRPERSON HEATH: -- to meet your wife's
21 request. Very smart man.

22 MR. MILLER: Thank you.

23 MS. BUTANI-D'SOUZA: Your wife is a good
24 inventor.

25 MR. HOOD: Chair, I just want to add, having

1 went through the Georgetown Campus Plan, and I know
2 Chairperson Lewis and the ANC, and I understand that.
3 But you know, the reason I asked you that question
4 this morning is because I want to know if things that
5 we do down here work. And from what I'm hearing from
6 you some of that may be faulty. But there is a
7 program that Georgetown has, and this may not be
8 necessarily germane to the case but germane to Mr.
9 Miller's issue, that they have where they deal with
10 students who have parties off campus and stuff
11 like -- so you might want to find out what that --
12 now I can't remember the name of it. They've got a
13 whole program. You might want to reach out to them
14 because that was one of the things that we negotiated
15 or that was negotiated with this Board, the
16 Commission rather, when they did the Georgetown
17 Campus Plan.

18 But one of the things we also want to
19 remember that came up in that, sometime as we get
20 older, including myself, I'm hope now at 9:00, but
21 when I was in my college days, I partied too. You
22 know, even though it's been a while and not -- yeah,
23 I did. Even though it's been a while, some of us got
24 to admit, and I said this at the Georgetown Campus
25 Plan, I said all college, we've got to remember

1 sometimes, we used to do some of those things too.
2 Not making light of your issue, but I think that
3 Georgetown has something that you can reach out to.
4 I don't necessarily -- they call it the SAP, or
5 whatever it's called, but I think you might want to
6 reach out to that program.

7 MR. MILLER: Well, I do appreciate the
8 suggestion, sir. And of course it was when I got a
9 notice of the program and a couple of years back,
10 that I got a telephone number. And it was that
11 telephone number I called with respect to the
12 occasions on which I had to summon the police because
13 the partying across the street had gotten totally out
14 of control.

15 I appreciate your sensitivity to issues like
16 that. I thought your comments this morning, if I may
17 say so, about places for artists were very well
18 taken. I have a relative who is an artist and I
19 understand some of the challenges she's been through.

20 MR. HOOD: Well, you and I better talk off-
21 line, not about the case because I don't want my
22 colleagues to hold up.

23 MR. MILLER: No, no, but I appreciate your
24 interest, sir.

25 CHAIRPERSON HEATH: All right. So, let's see

1 where we are.

2 MR. MEYERS: May I add one thing before we
3 leave?

4 CHAIRPERSON HEATH: Sure.

5 MR. MEYERS: Based on a satisfactory
6 additional shadow studies, and based on
7 representations and our discussions in private, I
8 mean in settlement, and the understanding that if
9 there is -- I mean, if there is problems with her
10 wall here, I mean with the view that -- the view or
11 the light that she has here, her current privacy and
12 view and light, et cetera, that the property owner
13 next door will address that and will help her to make
14 sure that she'll replenish it if necessary or as
15 necessary to preserve.

16 Based on that, if that's still so, if they'll
17 affirm the same here to us, you know, I think that we
18 would have some room to settle this thing. But we do
19 need those shadow studies. We do need to make sure
20 that she's not going to lose that window. So.

21 MR. MILLER: May I say just one thing? Thank
22 you, ma'am.

23 I think one of the important things is to
24 determine exactly the height here. I think we're
25 talking about 10 feet. Plus I was told in the other

1 room and please contradict me if I'm wrong, another
2 28 inches, two feet, four inches. So we're talking
3 about something in the range of 11 to 12 feet high
4 off the actual first floor as shown by the pictures
5 that Mr. Meyers has shown, which is above the ground
6 level.

7 CHAIRPERSON HEATH: Right.

8 MR. MILLER: So even at one story it is a
9 very considerable height.

10 CHAIRPERSON HEATH: Okay. All right. Thank
11 you.

12 MR. MILLER: Thank you.

13 CHAIRPERSON HEATH: So does the applicant
14 have any questions of the party opponent?

15 MR. SULLIVAN: No, we don't. Thank you.

16 CHAIRPERSON HEATH: Okay. All right. And it
17 sounds like you agreed to some things outside of this
18 hearing with the party opponent. What I would ask is
19 that we could -- somebody, if the party -- actually,
20 why don't we start with you? Just in your follow-up
21 to this, please just submit what you're agreeing to
22 with the party opponent in addition to your shadow
23 studies at the time that they've specified and you've
24 agreed to provide, just so we can clarify for the
25 Board that there has been agreement between the two

1 parties. Not that this would be made an order, a
2 part of the order necessarily as a condition, but
3 that there is some agreement. And so that document
4 would be submitted to the record for you, then, as
5 the representative of the party opponent to just say
6 you concur with what's been submitted and you agree,
7 just so that information is in the file before we
8 come back for deliberation on this.

9 MR. MEYERS: Is it okay if I collude with the
10 other counsel?

11 CHAIRPERSON HEATH: I would love that. Yeah,
12 you can definitely do that. You can certainly work
13 together.

14 MS. BUTANI-D'SOUZA: Can I ask just one more
15 question of the architect? How many bedrooms are
16 existing in the current house?

17 MR. WILSON: There are currently four
18 bedrooms and there will be four bedrooms after the
19 renovation, so no net change.

20 MS. BUTANI-D'SOUZA: Thank you.

21 MR. MEYERS: When we are assured that this --
22 that this set of renovations for this property owner
23 is not -- there's no intention to rent. It's
24 intention to make it nicer and resell it for a higher
25 value.

1 CHAIRPERSON HEATH: Right.

2 MR. MEYERS: To someone else who wants to
3 come along to a single family.

4 CHAIRPERSON HEATH: Right. I mean, we
5 haven't heard any guarantees, but you know, what we
6 deduced from seeing what they've proposed here is
7 that they do intend to sell this to someone who is
8 going to be an owner occupant, or would rent to a
9 single family. I can't imagine that anybody would
10 upgrade to this level.

11 MS. McGUIRL: You'd be surprised at some of
12 the Georgetown student fathers and mothers.

13 CHAIRPERSON HEATH: I probably wouldn't. I
14 probably wouldn't be surprised. But --

15 MS. McGUIRL: They will buy a lot -- spend a
16 lot of money.

17 CHAIRPERSON HEATH: You're absolutely right.
18 So but I don't know how we could get any guarantees
19 from the current owner, who is planning to sell it,
20 about what the future owner might do. So I think my
21 hands are --

22 MR. MILLER: Excuse me for interrupting, but
23 the covenant not to rent to students, that's very
24 simple. That's about one sentence in the deed.

25 CHAIRPERSON HEATH: It is. I don't know if -

1 - we'd have to have the applicant agree to that and I
2 don't know that they -- I see heads shaking, so I
3 don't know that they would agree to that.

4 MR. MILLER: Well, you know, they tell you
5 they're not going to rent or sell to somebody who
6 might rent, but then they're not willing to agree,
7 there's a language which would prevent that from
8 happening.

9 CHAIRPERSON HEATH: Right.

10 MR. MILLER: And in light of what I've seen,
11 I don't have much credibility to --

12 CHAIRPERSON HEATH: Yeah, I --

13 MR. MILLER: -- waste on this.

14 CHAIRPERSON HEATH: Okay. All right. So
15 with that we've heard from both parties. I'd like to
16 hear from Office of Planning if there's anything else
17 that you'd like to add.

18 MS. RAPPOLT: Megan Rappolt for the record.
19 We have nothing to add and we'll stand on the record
20 in support of the request.

21 CHAIRPERSON HEATH: Okay.

22 MS. BUTANI-D'SOUZA: I have just one quick
23 question for the Office of Planning.

24 CHAIRPERSON HEATH: Sure.

25 MS. BUTANI-D'SOUZA: I think there were some

1 typographical errors in your report and I'm wondering
2 if -- and I'm sorry because my computer is a little
3 bit slow right now and I can't pull it up. But I'm
4 wondering if you could perhaps correct those and
5 resubmit it since it doesn't sound like this is being
6 decided today.

7 MS. RAPPOLT: Sure. Will do.

8 MS. BUTANI-D'SOUZA: Thank you.

9 CHAIRPERSON HEATH: Okay. All right. Okay.
10 Then is there anybody here from ANC 2E? ANC 2E? All
11 right. So the other thing that we are asking the
12 applicant to do is to go back before ANC 2E and
13 represent what the parties have agreed to and show
14 the further development of the shadow studies and the
15 impact on Ms. McGuirl's property of this visibility
16 or window of this addition.

17 It would be helpful to see if we could get
18 the ANC to be in support, particularly if we can get
19 support from the party opponent. That will -- I
20 would think that would go a long way towards getting
21 the ANC's support. And so if we can get there, that
22 would be great for the Board.

23 MR. MEYERS: Would we schedule that meeting
24 before or after we had our shadow study done?

25 CHAIRPERSON HEATH: They should have the

1 shadow studies done before the ANC.

2 MS. MCGUIRL: Yes.

3 CHAIRPERSON HEATH: They can get on the
4 calendar now.

5 MR. MEYERS: Okay.

6 CHAIRPERSON HEATH: By reaching out to the
7 ANC. But the shadow studies, it would be best to
8 have the shadow studies as a part of their
9 presentation to the ANC. So --

10 MR. MEYERS: If the ANC did not -- they said
11 that -- we were there at the meeting and they said
12 that they could not support it because of the
13 opposition. That's what they said.

14 CHAIRPERSON HEATH: Right. And I think they
15 sent us a letter indicating that. So, and they had
16 questions about conflicting information. So if we
17 could just make sure that the ANC is clear on what's
18 being proposed here and the impacts?

19 MS. BUTANI-D'SOUZA: And if the OP report
20 could also be revised in time for that ANC meeting,
21 since I think some of the confusion may have been
22 from the OP report as well.

23 MS. RAPPOLT: I'm sorry, do you mind pointing
24 out where the errors are, and the confusion?

25 MS. BUTANI-D'SOUZA: I'm trying to pull it

1 up, but I can't pull it up on my computer. Yeah,
2 that --

3 MR. SULLIVAN: If I may? I think it was my
4 two-story typo that was the source of that.

5 CHAIRPERSON HEATH: Okay.

6 MR. MEYERS: The original plans had shown
7 two-story, I think. Or the original description had
8 shown two stories, but then that was straightened out
9 at the last ANC meeting verbally, and I believe
10 counsel filed a correction. We understand it's one
11 story now and --

12 CHAIRPERSON HEATH: Right.

13 MR. MEYERS: -- we hope it stops there.

14 CHAIRPERSON HEATH: Okay. All right. And so
15 we'll get an update from ANC 2E after the meeting.

16 We also have a letter already in the file
17 from Department of Transportation recommending no
18 objection.

19 In addition to that we have a letter of
20 opposition from Kevin Keen, who has issues regarding
21 the closing in of the porch on the east side, or
22 facing the east side. And we do have the letter
23 stating that you've gone through concept approval on
24 the Old Georgetown Board. Is there anyone here
25 wishing to speak in support of this application?

1 Anyone here in support?

2 Anyone wishing to speak in opposition?

3 MR. MEYERS: Yes, we had opposed that side
4 structural change to the enclosure if that historic
5 porch because it's part of the structure itself. It
6 goes in. We have understood that the ANC also
7 opposed it, so did the Georgetown Historic Board. We
8 understand that's off the table for this proceeding.

9 CHAIRPERSON HEATH: Okay. Anyone here
10 wishing to speak in opposition?

11 Okay. All right. Then we will conclude for
12 today unless you had something else, Mr. Sullivan,
13 that you wanted to say. I wasn't going to go to
14 closing.

15 MR. SULLIVAN: I just, I think just to rein
16 in the actual analysis on the addition, I think to
17 put -- show the location of the window on the sun
18 studies would be very informative and put it to bed.
19 Even though if there was a window there I would say
20 it's not substantial, substantially affecting. It's
21 a very small amount of shade.

22 And so I think that's --

23 CHAIRPERSON HEATH: Okay. So we'll see that
24 when we get the new --

25 MR. SULLIVAN: That's the issue before the

1 Board.

2 MR. MEYERS: The additional studies, we'll
3 hope that's the same.

4 CHAIRPERSON HEATH: Sure. Okay. So then
5 we'll put this on for a limited hearing, and we only
6 want the documents that the Board has requested. We
7 don't need any additional filings. So, can we --

8 When does the -- so I guess --

9 MR. SULLIVAN: Next week.

10 CHAIRPERSON HEATH: They meet next week?

11 MR. SULLIVAN: That's the ANC meeting, so
12 next Monday, I believe.

13 CHAIRPERSON HEATH: Okay. Are you already --

14 MR. SULLIVAN: Or, no, it's Tuesday because
15 it's Memorial Day, yeah.

16 CHAIRPERSON HEATH: Okay.

17 MR. SULLIVAN: So, Tuesday.

18 CHAIRPERSON HEATH: Are you already on the
19 calendar?

20 MR. SULLIVAN: I'm not but I suspect we will
21 be.

22 CHAIRPERSON HEATH: Okay.

23 MR. SULLIVAN: We've been there many times.
24 Or they have been there many times. This will be the
25 fifth time there.

1 CHAIRPERSON HEATH: Okay.

2 MR. SULLIVAN: So, and they're very familiar
3 with it. So.

4 CHAIRPERSON HEATH: So sometime in late June,
5 or do we want to push to July?

6 MR. SULLIVAN: I think we'll have everything
7 done in time for next week's meeting as well.

8 MR. MEYERS: We're concerned that they won't
9 have enough time to do the shadow studies if they
10 schedule it that early.

11 CHAIRPERSON HEATH: How long do you need to
12 do the shadow studies?

13 MR. WILSON: It's somewhat contingent on
14 getting the site information from the adjacent owner,
15 so --

16 MR. MEYERS: We'll have that to them at the
17 close of the day.

18 CHAIRPERSON HEATH: Okay. All right. So the
19 shadow study should be fairly quick. Shortly after
20 that.

21 MR. WILSON: Well, if we go to ANC next
22 Tuesday we'll have it finished by then.

23 CHAIRPERSON HEATH: Okay. All right. So if
24 for some reason, Mr. Sullivan, you don't get on to
25 the ANC's agenda for next week, please let the Board

1 know and we'll push this off into July.

2 MS. BUTANI-D'SOUZA: If you could let the
3 Board know by Thursday at 3:00 p.m.

4 CHAIRPERSON HEATH: Yes. I didn't finish my
5 sentence, but yes, that -- yes, that is the
6 requirement.

7 MR. MILLER: And may I have a point of order,
8 and that is, is it possible for me to receive, from
9 the other side, copies of everything that's being
10 filed? Unfortunately I've got arthritis in my
11 fingers and I can't use a computer.

12 CHAIRPERSON HEATH: Sure.

13 MR. MILLER: So it would be really helpful if
14 opposing counsel had the courtesy of providing those
15 of us on this side of the table with copies of
16 anything, with whomever it may be filed?

17 CHAIRPERSON HEATH: Sure.

18 MR. MILLER: The ANC, here.

19 CHAIRPERSON HEATH: Sure. As a party to this
20 cases you will receive all correspondence regarding
21 this case. So new filings. I'm not sure if they
22 typically would just go to you, Mr. Meyers.

23 MR. MILLER: That was what was concerning me.

24 MR. MEYERS: If they come to me I'll just --
25 whatever is at the convenience of the Board. If you

1 want to send them to me I'll make sure that Mr.
2 Miller gets --

3 CHAIRPERSON HEATH: Okay. All right. Okay.

4 MR. MEYERS: Ma'am, one other thing. When we
5 talk about the shadow studies that we are going to
6 conduct I want to make sure that if there's any, you
7 know, dispute as to when you want to do it or when
8 not to do it, I mean, I want to make sure that we
9 don't have any issues on that; that we just set a
10 shadow study and we'll work out times of day that are
11 satisfactory to shadow. I mean, where the shadow
12 will be. See what I'm trying to say?

13 MR. SULLIVAN: Well, maybe we could just say
14 what that's going to be now.

15 CHAIRPERSON HEATH: Right.

16 MR. SULLIVAN: But we can do 7:00 p.m. If we
17 have 4:00 p.m. we could add a time. We could do 12
18 months instead of three -- four quarters. Is that
19 reasonable?

20 CHAIRPERSON HEATH: One moment.

21 MR. WILSON: One thing, I was just sketching
22 out here that we would do seven. So, four
23 additional. We can also extend the time a bit later
24 in the summer months, say 6:00 p.m. for May, June,
25 and July.

1 MR. MEYERS: Seven, the later -- see, that's
2 when she really gets it, when the sun sets, I think.

3 MR. WILSON: Well, I think --

4 MR. MEYERS: Wouldn't that be -- I mean, is
5 that in your experience, when the sun goes down
6 further you get more shadow?

7 MR. WILSON: Well, then you're going to be
8 completely behind the existing building. I don't
9 think that would show anything additional.

10 CHAIRPERSON HEATH: One moment, sir.

11 MR. MILLER: I'm just raising my hand.

12 CHAIRPERSON HEATH: Okay. Okay. I'll come
13 back to you.

14 MR. MILLER: Thank you.

15 MR. WILSON: I just don't want this to become
16 an open-ended constant presence. We need to nail
17 down --

18 CHAIRPERSON HEATH: Sure.

19 MR. WILSON: -- what we're submitting.

20 CHAIRPERSON HEATH: So I think what I heard
21 previously was we were talking about summer time and
22 in the evening. So if we could focus in on July,
23 August, 6:00 p.m. or 7:00 p.m.

24 MS. McGUIRL: Sun doesn't go down until 8:00.

25 CHAIRPERSON HEATH: Right. Well, once the

1 sun is down, it's down. But --

2 MS. MCGUIRL: Yeah. But prior to that.

3 CHAIRPERSON HEATH: Sure. So, that's why I
4 said 7:00. So --

5 MS. MCGUIRL: 7:30?

6 CHAIRPERSON HEATH: I'm fine -- whatever
7 is -- 7:30? I don't know how your computer program
8 works to generate these --

9 MR. WILSON: We can set it to any time. I
10 just want to know what we're submitting by the time
11 we leave the table.

12 MR. MEYERS: Well, then --

13 CHAIRPERSON HEATH: So can we agree to July
14 and August, mid-month, like the 15th, and 7:30 p.m.?
15 Go ahead, Mr. Miller.

16 MR. MILLER: I'm sorry to be the bad boy in
17 the classroom, but I really think that when I saw
18 what they put up there, and 9:00 a.m. The last time
19 I saw the sun rose in the east, well, that doesn't
20 have anything to do with this. 12:00, noon, the same
21 situation. The sun is generally overhead. Had
22 nothing to do with it. The only one that came close
23 to relevance was the one at 4:00 p.m.

24 In the wintertime, because it gets dark so
25 early, it really doesn't make any difference. But

1 spring, summer, and fall. Right now, last time I
2 looked when it wasn't raining, it was still spring.
3 And I went out there with Nelson Cunningham on the
4 east side of the property and looked up, and at 5:00
5 p.m., 6:00 p.m., 7:00 p.m., beginning at 4:00 p.m.
6 and going forward, 5:00, 6:00, and 7:00, those are
7 the critical hours with respect to Ms. McGuirl's
8 window.

9 CHAIRPERSON HEATH: Right.

10 MR. MILLER: And so --

11 CHAIRPERSON HEATH: Well, why don't we say
12 then, sir, because we need to bring this to
13 conclusion and make sure everybody is in agreement,
14 why don't we say 5:00 p.m. and 7:30 p.m.?

15 MS. MCGUIRL: Good.

16 MR. WILSON: So, May, June, July, August at
17 5:00 and 7:00?

18 CHAIRPERSON HEATH: 7:30.

19 MR. MEYERS: 7:30.

20 MR. WILSON: 7:30.

21 MS. MCGUIRL: Yeah.

22 CHAIRPERSON HEATH: Yes.

23 MR. MEYERS: For what? You said the fall
24 too?

25 MR. MILLER: In the spring and fall. Spring

1 is the same thing as the fall so you don't have to do
2 both.

3 CHAIRPERSON HEATH: Right. So it will be the
4 same.

5 MR. MILLER: But we're now spring.

6 CHAIRPERSON HEATH: Okay.

7 MR. MILLER: So --

8 CHAIRPERSON HEATH: All right. All right. I
9 think we're good. I think we're good. I think we
10 have clarity on that. So --

11 MR. MEYERS: Did you say June, July, August?

12 CHAIRPERSON HEATH: Yes. Right. So,
13 state --

14 MS. MCGUIRL: Through 7:30.

15 MR. MEYERS: 5:00 through 7:30. Five o'clock
16 and seven thirty o'clock.

17 CHAIRPERSON HEATH: Correct.

18 MR. MEYERS: Okay.

19 CHAIRPERSON HEATH: What was our new, our
20 date for the limited hearing?

21 MS. MEYERS: I believe with the ANC meeting
22 being may 31st, the next available date would be June
23 7th. But also available would be June 14th or June
24 21st. Based on when the applicant feels the
25 supplemental documents will be ready.

1 MR. SULLIVAN: Well, we expect to have the
2 supplemental documents prior to the ANC meeting.

3 CHAIRPERSON HEATH: Right.

4 MR. SULLIVAN: So any time after the ANC
5 meeting is --

6 CHAIRPERSON HEATH: Okay. So how does our --

7 MR. SULLIVAN: -- great.

8 CHAIRPERSON HEATH: Do you know how our
9 docket looks on the 7th?

10 CHAIRPERSON HEATH: Okay. So we'll make it
11 the 7th.

12 MS. MEYERS: Okay.

13 CHAIRPERSON HEATH: And then if anything
14 changes you'll let the office know by that --
15 Thursday before the 7th.

16 MS. MEYERS: Right. And to be clear, all
17 supplemental filings will be due to the record by
18 June 2nd. But it's expected that they'll be shared
19 with the party in opposition and the ANC in advance
20 of that ANC meeting.

21 MR. SULLIVAN: Okay. Thank you.

22 CHAIRPERSON HEATH: Okay? All right. Thank
23 you all.

24 MR. MILLER: Thank you.

25 MS. MCGUIRL: Thank you.

1 CHAIRPERSON HEATH: All right. So we have
2 one last case coming before the Board today and --
3 oh, yeah, Alleyoop. Yes, we still need to deal with
4 that.

5 So, Mr. Sullivan, while you're at the table.

6 MR. SULLIVAN: Okay.

7 CHAIRPERSON HEATH: How are you going to
8 proceed with Alleyoop?

9 MR. SULLIVAN: We are going to withdraw the
10 current modification request. We will refile within
11 two weeks, a -- if we can do it within two weeks. We
12 might have to wait until June 1st. I've got to check
13 on those rules.

14 CHAIRPERSON HEATH: I think you have to wait
15 until June 1st.

16 MR. SULLIVAN: Yeah. So we'll file a renewed
17 modification under --

18 CHAIRPERSON HEATH: The new regulations?

19 MR. SULLIVAN: -- 2016.

20 CHAIRPERSON HEATH: Okay.

21 MR. SULLIVAN: So the case would be heard
22 under 2016. And what I've been told is that the
23 areas of the application which were approved
24 originally, they will remain under the 2015, and then
25 we will be asking for relief for the modifications to

1 what was approved.

2 CHAIRPERSON HEATH: Okay.

3 MR. SULLIVAN: And in any event, the old
4 order remains so in case we don't get an approval we
5 still have the old option available to us.

6 CHAIRPERSON HEATH: Okay. So given that
7 you're going to be going under the new regulations
8 and that's going to push your case into September, we
9 haven't established our calendar for September yet,
10 so once the office starts that calendar you'll be
11 notified of the new date.

12 MR. SULLIVAN: Okay.

13 CHAIRPERSON HEATH: All right.

14 MR. SULLIVAN: And we'll keep Mr. Proschan --
15 even though it's a new case we'll assume he's party
16 status and --

17 CHAIRPERSON HEATH: Sure.

18 MR. SULLIVAN: -- inform him of everything.

19 CHAIRPERSON HEATH: Okay.

20 MR. SULLIVAN: Thank you.

21 CHAIRPERSON HEATH: All right. Thank you.
22 All right. All right.

23 So I two-minute break and then we'll come
24 back with Eye Street.

25 [Off the record from 2:48 p.m. to 2:55 p.m.]

1 CHAIRPERSON HEATH: Okay. All right. So
2 we'll come back to order and we will call our last
3 case.

4 MS. MEYERS: Sure. That's Application No.
5 19124 of Eye Street JV, LLC. This is an amended
6 application for a variance relief from the closed
7 court width and area requirements under 776, and a
8 special exception from the roof structure setback
9 requirements under 411 and 777 to allow the
10 construction of a new mixed use residential building
11 in the DD/C-3-C District at premises located on
12 Square 453 in Lots 40, 50, 815 through 819, 821, 835,
13 and a portion of the public alley to be closed. And
14 this is a further limited public hearing and the
15 applicant has made several supplemental filings in
16 advance of this hearing that include an amendment to
17 the relief such that some relief has been eliminated
18 and the applicant can clarify.

19 MR. HILL: Thank you, Madam Chair. Since I
20 was the fortunate one that presided over this at the
21 time, I'm going to try to do my best to help us get
22 through this in a timely fashion.

23 So if the applicant wouldn't mind introducing
24 themselves.

25 MS. SHIKER: Good afternoon. I'm Christine

1 Shiker with the law firm of Holland and Knight,
2 representing the applicant.

3 MR. SALPINI: Kirk Salpini, representing the
4 applicant.

5 MR. HOLZBACH: My name is Robert Holzbach.
6 I'm with Hicock Cole Architects and I'm the project
7 manager for the project.

8 MR. HILL: Okay. So what I'd like to do, Ms.
9 Shiker, if I could, and this is you know, dependent
10 upon how the Board feels. What I'd like to do is
11 hear a little bit about like what exact relief you
12 are asking for now. And then, you know, we've had a
13 lot of additional filings, a lot of additional things
14 for the record. If you could pull up the, exactly,
15 the diagram that has the three remaining setbacks for
16 me, if you could clarify again the whole issue about
17 the court relief and whether that's still there,
18 because I kind of got lost in everything that was
19 going on. And then what you had submitted was again
20 what we had requested, which was specificity as to a
21 one-page argument for each one of those setbacks.

22 And so if you could go through that, then, I
23 know that Chairperson Heath and Vice Chair Butani
24 were not original on the case and so hopefully -- you
25 know, they may have some questions for you and anyone

1 else in terms of that. And then I'm able to speak
2 with OP again and then see where we are. So with
3 that I'll turn it over to you.

4 MS. SHIKER: All right. Thank you. I think
5 the primary modification that you will see in the
6 penthouse is that we have removed all setback relief
7 that relates to penthouse habitable space. So we
8 certainly hear the concerns from the Board and by
9 being able to create some efficiencies, lower it, do
10 a different type of green roof system, we have been
11 able to lower the penthouse habitable space on the
12 east tower to nine feet, nine inches, and set it back
13 nine feet, nine inches. So it is set back equal one
14 to one from the exterior walls. Again, significantly
15 more than one to one from all other spaces because
16 remember this tower is very narrow in that rear
17 portion of the lot.

18 With respect -- we also, earlier, removed the
19 setback relief on the court fronting on Eye Street as
20 you may recall. That amendment was done earlier.

21 There are three remaining areas of setback
22 relief. Each of these areas of relief relate
23 directly to mechanical equipment, its placement on
24 the roof and the location of the core in the
25 building. The first area is -- and I'm going to have

1 Mr. Holzbach walk through the arguments after I
2 summarize the arguments.

3 The first is going to be right there, thank
4 you. And that is a 12-foot setback for a 13-foot
5 area of the penthouse. The items that are enclosed
6 in there are a stair, egress corridor, and an outside
7 air handling unit well.

8 In our application we have noted that in fact
9 the OAH well, which is the further east piece of the
10 mechanical equipment, we have some options to
11 possibly lower that and add a second -- it would be
12 adding a third height into there. You would have two
13 screen wall heights so that would have to be part of
14 the penthouse special exception. But it would then
15 be set back and so we could even remove that relief
16 if that is what the Board preferred. The architect
17 believes that the design is better with the 13 feet
18 and believes that it is so minimally visible and
19 we'll walk through that which is why we continue to
20 include that relief in the application.

21 The next area of relief is the 15 foot, six
22 inch setback, which is further to the south on the
23 west tower. That setback is dictated directly from
24 the location of the elevator core and the required
25 generator that sits on the roof. We've gone through

1 in detail in our submission about why that cannot be
2 skinnied any more based on the required clearances.
3 And again, Mr. Holzbach will go through that in a
4 moment. So that does have a height of 20 feet. It
5 is set back 15 feet, six inches. It is very, very
6 deep in the site, and it opens to the interior
7 portion of that court that extends throughout the
8 site. It is minimally visible from the street,
9 again.

10 And then on the east tower, where we used to
11 have a variety of areas of relief, we have only one
12 setback, and that is for the stair tower on the
13 southern portion of the -- can you kind of point to
14 it? The stair tower has been lowered to nine feet,
15 nine inches, and the setback is eight feet. I will
16 note that it is more than 20 feet from the property
17 line, even on the southern end. It is not visible at
18 all from the public alley which has been shown in the
19 renderings. It just can't be lowered any more, and
20 it cannot be set back further to the north for a
21 variety of reasons which Mr. Holzbach will go
22 through, but it's because a stair goes through the
23 entire building. If you move it to the north you
24 either eliminate a double corridor, a double loaded
25 corridor, you adversely impact your loading

1 facilities. If you try to move the elevators you
2 ruin the entire garage which is very difficult
3 because of the historic preservation going on, on the
4 northern part of the site.

5 So those are the three areas of relief. We
6 do still have the closed court relief, as standing
7 Chair Hill just mentioned. We do have that relief.
8 We did not brief that relief because my understanding
9 was, there haven't been questions about that. The
10 practical difficulty for that court was set forth in
11 our prehearing submission. I'm happy to walk through
12 it --

13 MR. HILL: It's okay. It's all right. It's
14 all right. I just wanted to --

15 MS. SHIKER: -- if you need it, but -- yeah.

16 MR. HILL: I didn't --

17 MS. SHIKER: It's still there.

18 MR. HILL: Okay.

19 MS. SHIKER: It has not changed. It's the
20 same basis for the same relief. And I just will
21 again point out that when you look at 411 the
22 standard tops talks about operating difficulties that
23 create unreasonable -- it's unreasonable to have
24 compliance. And I think that our operating
25 difficulties all result from either building code

1 requirements or limited locations to place the core
2 and the stairs, which are directly related to
3 required setbacks from HPRB and from the very small
4 footprint of these two towers. Compliance is
5 unreasonable because it cannot be achieved while
6 still incorporating in the required mechanical
7 equipment, and this does not impair the intent of the
8 new penthouse regulations because the intent is to
9 have setbacks to visually minimize penthouses. And
10 in all of these cases they are, because they are set
11 back so far from the street and from public spaces,
12 the visual impact of these setbacks is very minimal.

13 So with that I would ask for Mr. Holzbach to
14 walk through with as much or as little detail as you
15 want.

16 MR. HILL: Mr. Holzbach, we have everything
17 in the record. Like we've all heard the argument and
18 everything. So if you could, as most efficiently as
19 possible, just go through everything because I think
20 the questions are what is most important so I'd like
21 to get to that as quickly as possible. Thank you.

22 MR. HOLZBACH: Gladly. I'll be as brief as I
23 can and please, ask me to speed up if needed.

24 So, what I would say is I think by the way,
25 Ms. Shiker did a great job of explaining all of the

1 issues. The site has been whittled away through the
2 HPRB process, that there are real difficulties
3 meeting the setbacks in a few locations.

4 The first one, very specifically, is this 12-
5 foot setback. We're talking about the -- we're able
6 to maintain 12 feet clear, but we have a 13 feet
7 height issue, and that occurs at the stairwell. Let
8 me jump ahead. It's driven by the stair and then the
9 stair pressurization shaft and the duct work that
10 stands on top of it. That leads us to a 13 foot high
11 parapet. And in my opinion it's a better design move
12 to have one continuous screen wall around all of
13 those elements as opposed to dropping down at the
14 outside air well, down to nine feet, which we could
15 do but again, I don't necessarily recommend it.

16 We also have views of it from the outside if
17 you'd like to see those. So that, very briefly, is
18 the first issue. I think we are tied by the width,
19 given the width of the stair, this egress corridor,
20 and then the mechanical well leading to a total of 12
21 feet there.

22 MS. SHIKER: And, Mr. Holzbach, the egress
23 corridor there is four and a half feet, which meets
24 kind of the bare minimums of code, but is really not
25 standard for traditional corridors you see in these

1 types of buildings.

2 MR. HOLZBACH: You'd like to see five feet
3 there.

4 And then very quickly, you know, the outside
5 air unit well could drop to nine feet, clearly
6 meeting the setback there if needed.

7 Moving on to the 15 foot, six setback issue.
8 We're bringing the elevators up to the penthouse to
9 access, to provide accessible connection to the
10 terrace up there. Therefore we have an 18 foot, six
11 overrun basically. So we're already high on the very
12 far western side of the site. That elevator really
13 has to be adjacent to the west side. We looked at
14 putting in the middle and even on the eastern side.
15 It doesn't make sense. It really needs to be on this
16 side. You can't plan units with a center core in
17 this narrow of a building. So the elevators are to
18 the far west. It made sense then to have our tall
19 generator enclosure adjacent to that and wrap it all
20 in a 20-foot enclosure.

21 Vertically we have -- it's sitting on top of
22 the elevator lobby, where we have, you know, a
23 section of you know, minimal height and then the slab
24 thickness, and then the height of a screen wall which
25 is about 20 feet.

1 Moving forward, the egress there on the west
2 -- of the east tower, this one in particular, there's
3 only eight feet clear set back from the edge of the
4 building. We've, as Ms. Shriker said, we have
5 reduced the roof height to nine feet, nine inches, so
6 we're not quite making it there.

7 In terms of getting through to, how does this
8 actually work on plan and why can't we make it
9 comply, looking at the 10th floor, this is exemplary
10 of the typical floors as well, the egress stair
11 cannot move any further to the north to comply
12 because it then is part of our double-loaded
13 corridor. And that elevator is pinned in its
14 location which I'll talk about in a moment.

15 We can't move it all the way to the other
16 side of the corridor because then we're blocking, I
17 think, unreasonably access to many, many units. If
18 we were to move it to the east a little bit further
19 to try to get it all within the deeper section of the
20 roof, then we are really impacting the elevator lobby
21 itself. In addition what happens is this is the
22 stair as it lands at the lower level. It then falls
23 into our parking garage and space at the ground level
24 is at a premium given the historic buildings on the
25 site. So it --

1 MS. SHIKER: Falls in to our loading.

2 MR. HOLZBACH: What did I say?

3 MS. SHIKER: Parking.

4 MR. HOLZBACH: Yes. It falls into our
5 loading. My apologies. Loading. Thank you.

6 And if we were to push it again to the
7 further, the north side of that corridor, then this
8 blue area here is our service corridor access to the
9 retail. That would then make service access to the
10 retail on the western side of the site impossible.

11 MS. SHIKER: Mr. Holzbach, the orange, can
12 you please just point out the orange and explain that
13 that is the historic structure that --

14 MR. HOLZBACH: Sure. Sure.

15 MS. SHIKER: -- is required to maintain?

16 MR. HOLZBACH: This is the one-story and then
17 the two-story alley structures that we are
18 maintaining. And we certainly couldn't move the
19 tower, the stairs many more to the left because then
20 they would come through those. And it doesn't really
21 help us with the setback relief anyway. In fact,
22 these are the reasons for that setback relief.

23 HPRB has made us set back over these historic
24 buildings, quite a large amount. And so then we ran
25 out of roof area for our -- to handle our stair

1 setback.

2 Lastly -- was there a question?

3 MR. HILL: Sorry. Go on.

4 MR. HOLZBACH: Lastly I mentioned the
5 elevators. Those can't be moved any further north
6 either because they are basically as far north as
7 they can go before hitting our ramp. And the ramp
8 snakes in between the historic buildings along the
9 north-south alley. So it's a very, very tight three
10 dimensional puzzle in all three conditions, and I
11 think we've done our best to minimize the relief
12 required and also maximize the fact that it's buried
13 deep in the site and away from visible impacts to
14 surrounding properties.

15 MS. SHIKER: At this point we could go
16 through the views if you'd like, or we could move to
17 questions and then go through those if you have a
18 question.

19 MR. HILL: I just have a quick question. Mr.
20 Holzbach, so if you go back to that historic thing
21 real quick, because I'm just curious, I live around
22 there and I've seen that. Why is that historic?

23 MR. HOLZBACH: That's a great question.

24 MR. HILL: You don't know?

25 MR. HOLZBACH: Well, it's contributing to the

1 historic district. It was built within the period of
2 significance.

3 MR. HILL: Okay.

4 MR. HOLZBACH: And therefore deemed historic.

5 MR. HILL: Okay. Okay.

6 MS. BUTANI-D'SOUZA: Can I ask one really
7 quick question about the stair tower setbacks?

8 MR. HILL: Yes.

9 MS. BUTANI-D'SOUZA: And I'm not an
10 architect, so I don't have a -- I'm not so familiar
11 with the building codes, but --

12 MR. HILL: Sure.

13 MS. BUTANI-D'SOUZA: -- for those roof stair
14 towers, you couldn't make that into a ship's ladder
15 and just make it skinnier?

16 MR. HOLZBACH: No, this is -- so on this
17 roof, on the east building, there are -- we're not
18 taking the elevators up and we --

19 MS. BUTANI-D'SOUZA: Oh, I'm not talking
20 about the elevators. I'm talking about the stair
21 tower.

22 MR. HOLZBACH: No, I understand that, but we
23 must have egress, which have to be stairs.

24 MS. BUTANI-D'SOUZA: Oh, you can't do a
25 ship's ladder?

1 MR. HOLZBACH: Correct. You cannot do that.
2 They need to be stairs.

3 MS. BUTANI-D'SOUZA: And one other question,
4 just because I'm curious. You said you switched the
5 green roof products. Which, what did you switch from
6 -- to? I don't mean brand names, just --

7 MS. SHIKER: Oh, yeah. No, I wouldn't know
8 the brand names. So, basically before we had a much
9 larger parapet that extended our exterior wall up
10 higher which broke into the one to one plane.
11 Instead we're going to do a green roof application
12 that sits on the roof, that's set back further back
13 so that there's no intrusion into the one-to-one
14 plane. So it's just a different way of people have
15 been looking at different ways to apply them to the
16 roof and this is just something that we've learned of
17 recently that doesn't have to require the parapet to
18 be at the exterior wall which created greater height
19 and was intruding in that one-to-one setback.

20 MR. HOOD: So you were able to, in that case,
21 you were able to do some redesign and meet the
22 setback.

23 MS. SHIKER: Commissioner Hood, we've worked
24 very hard to try to meet the setbacks in every place.
25 And yes, this has been a redesign that's been going

1 on since the Board asked us to look at these setbacks
2 and expressed additional concern.

3 MR. HOOD: Okay.

4 MS. BUTANI-D'SOUZA: Apparently they switched
5 from a built in place screen roof to a tray system,
6 is my guess. Correct?

7 MR. HOOD: But I guess my point was, they
8 were able to -- and I said this earlier on, it was a
9 design issue, and they were able to meet that
10 setback. So we'll continue to have this discussion.
11 Okay.

12 CHAIRPERSON HEATH: So one question I have
13 regarding your statement, Ms. Shiker, that you
14 submitted previously. So page 2, just to get clarity
15 here, says, "To the extent that the green roof system
16 does not fully comply with the regulations." Is
17 there still some question about whether or not
18 this --

19 MS. SHIKER: So as I said, we have -- our
20 team has been working very hard to do this design and
21 this option only emerged late last week for the green
22 roof system. And our initial indications from the
23 Zoning Administrator is that it will, it does comply
24 with the regulations. Just, the regulations are new.
25 This is a new system, or it's a new placement that I

1 hadn't seen before, and so given that my deadline was
2 Thursday at 3:00 and we weren't being able to get any
3 confirmation until -- or have those initial
4 discussions until Friday, late afternoon, I wanted to
5 reserve the right for that flexibility. And
6 basically what the flexibility requested was if, for
7 example, we couldn't do the screen roof system and we
8 had to extend the parapet up, kind of going back to a
9 traditional system, that we -- the design would then
10 set that habitable space back to meet the setbacks.
11 There would be no additional relief requested on
12 setbacks. However, what it would do is you would
13 still have your nine foot, nine stair tower. We
14 didn't want to raise that to bring it all up to 11.
15 So we were just asking you to give the flexibility
16 that if for some reason we had to set it back more to
17 a traditional parapet system, we would meet the
18 setback there but we'd still maintain only that one
19 stair tower at nine, nine, with an eight foot
20 setback.

21 CHAIRPERSON HEATH: Okay. All right. Okay.
22 All right. I think I'm good for right now. I'm
23 going to have more but you can keep going.

24 MR. HOLZBACH: Okay.

25 CHAIRPERSON HEATH: You were still going

1 through your --

2 MR. HOLZBACH: Actually, I'm finished unless
3 you would like to see perspective views of the
4 changes.

5 MR. HILL: And --

6 MS. BUTANI-D'SOUZA: If you could run through
7 those real quick, like real quick?

8 MR. HOLZBACH: I'd be happy to.

9 MR. HILL: Yeah, please. And also I was just
10 -- ask as many questions as you'd like and if you
11 want to do -- I'm sure you have many, many slides
12 that you can go through.

13 MS. BUTANI-D'SOUZA: No, no, we don't. Just
14 real quick.

15 MR. HILL: Please. Please. Thank you.

16 MS. BUTANI-D'SOUZA: Show us the view of the
17 setback. That's all that I'm --

18 MR. HOLZBACH: Of course. So we have this
19 ranged in order from when we original submitted based
20 on the 18 foot, six.

21 MS. BUTANI-D'SOUZA: I don't need to see what
22 you originally submitted.

23 MR. HOLZBACH: Okay.

24 MS. BUTANI-D'SOUZA: I'm only interested in
25 what you're submitting right now.

1 MR. HOLZBACH: Sure. So I will -- this is
2 what we're submitting now, so that the -- this is the
3 view. By the way, the view that we're looking at
4 right now is standing in front of, I believe it's 600
5 Massachusetts Avenue, the new, the Gould Property
6 construction, right from their front door. We
7 created this view during the HPRB process, so we are
8 standing at their front door looking down the
9 north/south alley.

10 And so as you can see, the setbacks on the
11 west tower are not even visible. And then the tower,
12 the pieces on the east tower are --

13 MS. BUTANI-D'SOUZA: Sorry, which are the
14 west tower setbacks? Can you remind -- is it --

15 MR. HOLZBACH: Well, you can't even see the
16 penthouse on that tower.

17 MS. SHIKER: Everything facing Eye Street is
18 set back one to one.

19 MS. BUTANI-D'SOUZA: Sorry. I just mean, I
20 am recording though in my head, as the 8 foot
21 setback, the 12 foot setback and the --

22 MR. HOLZBACH: Oh, I'm sorry. Okay, so --

23 MS. BUTANI-D'SOUZA: I'm sorry, the 12 foot
24 setback and the 15, six, so.

25 MR. HOLZBACH: Thank you. You're all

1 interested. I'm thinking about the penthouse overall
2 and you're thinking just about the setback relief
3 request.

4 MS. BUTANI-D'SOUZA: Only interested in the
5 three.

6 MR. HOLZBACH: Understood. Okay. So here we
7 are. This is the view that shows the -- this is the
8 12-foot setback relief, this is the 20-foot setback
9 relief, and then that's all you would see in this
10 view.

11 MS. BUTANI-D'SOUZA: Sorry, the --

12 MS. SHIKER: Fifteen, six.

13 MS. BUTANI-D'SOUZA: The 15, six.

14 MR. HOLZBACH: What did I say?

15 MS. SHIKER: Twelve.

16 MR. HOLZBACH: Oh, the 20 foot height.
17 Fifteen, six setback relief is right here where the
18 hand is, and then the 12-foot setback relief is right
19 here.

20 MS. BUTANI-D'SOUZA: So what you're showing
21 is, that's what's visible from the street.

22 MR. HOLZBACH: This is what you see from the
23 street.

24 MS. BUTANI-D'SOUZA: Okay. And, sorry, which
25 is the one where you said you could do a three -- if

1 we approved another screen wall?

2 MR. HOLZBACH: Oh, if we did another height?

3 MS. BUTANI-D'SOUZA: That was a 12 foot one,
4 right?

5 MR. HOLZBACH: Yes. We could drop this to
6 nine feet and I believe we do have that. That's
7 further. There it is. This is the nine feet. So it
8 basically, it does not become visible from this view.

9 MS. BUTANI-D'SOUZA: So this is if we were to
10 approve it as a special exception to have three
11 screen wall heights.

12 MR. HOLZBACH: Yes.

13 MS. BUTANI-D'SOUZA: You're not going to be
14 able to see the 12-foot setback, so what is it that
15 you can see that's -- I'm trying to understand what
16 the down side is to doing this.

17 MR. HOLZBACH: I think there might be, you
18 know, another area from -- another point from and
19 another distance where in my mind I want to minimize
20 the amount of levels in the penthouse. This is the
21 corner --

22 MS. BUTANI-D'SOUZA: I know architects love
23 to keep everything the same. Okay.

24 MR. HOLZBACH: Guilty. It's more streamlined
25 and cohesive in my mind, rather than just moving

1 every wall just to catch the very edge of the setback
2 requirements.

3 MS. BUTANI-D'SOUZA: So it's more streamlined
4 and cohesive when you're on the roof, or when you're
5 looking at -- where is it more -- where is it
6 eventually?

7 MR. HOLZBACH: Well, if you were in adjacent
8 buildings, for example --

9 MS. BUTANI-D'SOUZA: Okay.

10 MR. HOLZBACH: -- many people are looking at
11 the rooftops from adjacent buildings all day long.

12 MS. BUTANI-D'SOUZA: Okay.

13 MR. HOLZBACH: And so, I think of that as
14 well and how important that is.

15 MS. BUTANI-D'SOUZA: Okay.

16 MR. HOLZBACH: Because it's really a 360
17 degree -- well, 180 degree --

18 MS. BUTANI-D'SOUZA: Uh-huh.

19 MR. HOLZBACH: -- world that we can see
20 things in, so.

21 MS. BUTANI-D'SOUZA: Okay. Okay.

22 MR. HOLZBACH: Yeah.

23 CHAIRPERSON HEATH: So on that point, so you
24 said that you could lower the penthouse height at the
25 12-foot setback to nine feet.

1 MR. HOLZBACH: Yes.

2 CHAIRPERSON HEATH: Is there any reason you
3 couldn't also lower the other portion that is 13 feet
4 down to nine feet?

5 MS. SHIKER: That wouldn't work because it is
6 the stair tower, where the stair pressurization fans
7 above it, and that's what's dictating the 13-foot
8 height. So the --

9 CHAIRPERSON HEATH: So that one can't drop at
10 all.

11 MS. SHIKER: No. No.

12 CHAIRPERSON HEATH: Because I was going to --

13 MS. SHIKER: If we could have dropped at all
14 we would have done that but it doesn't drop to nine
15 feet with all the stair pressurization fans, so.

16 CHAIRPERSON HEATH: Okay. So 12 feet
17 wouldn't work, obviously, then.

18 MS. SHIKER: And I think if you dropped it to
19 12 feet there was -- if you dropped the OAH well to
20 12 feet I think -- well, Mr. Holzbach, you can
21 testify, but I thought you thought it would look more
22 like a mistake than an intentional.

23 MR. HOLZBACH: Is that your question, that we
24 would drop just the OAH, outside air unit well, to 12
25 feet? Or the whole thing?

1 CHAIRPERSON HEATH: I was originally asking
2 if you could drop all portions of the roof that are
3 at 13 feet on this building, down to 12.

4 MR. HOLZBACH: It might be possible. I think
5 that we would be sacrificing interior height in the
6 stairwell and we're trying to maintain that because
7 we've got -- they're bringing equipment up through
8 the stairwell and the height is really useful for
9 that application.

10 CHAIRPERSON HEATH: That would just give you,
11 again, two heights.

12 MR. HOLZBACH: Yes.

13 CHAIRPERSON HEATH: That you're working with
14 there.

15 MR. HOLZBACH: Yes, true.

16 CHAIRPERSON HEATH: So --

17 MS. BUTANI-D'SOUZA: Sorry. What equipment
18 is being brought up through the stairwell?

19 MR. HOLZBACH: So anytime there's maintenance
20 or equipment that needs to be brought up they're
21 going to likely bring it through the stairwell and
22 not risk damaging the cabs. And so these are longer
23 pieces. It could be pipes, it could be tools, it
24 could be anything. And so a higher level on the
25 stairwell for access to that roof is beneficial.

1 So if we were to lower -- the only way to get
2 that from 13 to 12 would be to take the height out of
3 the stairwell which for practical maintenance reasons
4 I would prefer not to do.

5 CHAIRPERSON HEATH: That sounds possible.

6 MS. BUTANI-D'SOUZA: Yeah, that definitely --
7 I mean, I'm not an architect but I do work in
8 construction and certainly any contractor that comes
9 up there would have to take care with the elevator,
10 install padding. They can make, obviously when
11 you're installing pipes you can cut the pipes down to
12 size. So I don't see -- I think that that's a great
13 idea.

14 CHAIRPERSON HEATH: It would eliminate one
15 area of relief.

16 MR. HOLZBACH: Sure. So --

17 CHAIRPERSON HEATH: And not add the special
18 exception.

19 MS. SHIKER: So one possible option is if we
20 could do on the northern -- excuse me, yeah. On the
21 northern portion, drop the stair to the lower height
22 clearance and the OAH well to 12 feet so we meet the
23 setback. We would suggest to the Board that they
24 consider approving multiple heights because the 13
25 foot of the other required egress stair would then

1 provide for any kind of mechanical equipment that
2 needed to come up, and it would be, I would think,
3 almost imperceptible since they're separated by the
4 taller piece. One would be at 12 and one would be at
5 13 feet, but it would give that require -- you know,
6 that preferred clearance for mechanical items coming
7 up through the stairway. But you wouldn't have the
8 multiple heights in one section.

9 CHAIRPERSON HEATH: Right. Okay. And see
10 where we are on that. But that certainly sounds like
11 we're moving in a positive direction.

12 MR. HOLZBACH: Agreed.

13 MS. BUTANI-D'SOUZA: Sorry, does that
14 eliminate one of the setbacks?

15 CHAIRPERSON HEATH: It does. It eliminates
16 the 12-foot setback.

17 MS. SHIKER: That is correct. It would
18 eliminate the 12-foot setback and the 13-foot setback
19 on the southern portion is already more than one-to-
20 one setback.

21 MS. BUTANI-D'SOUZA: And it would eliminate
22 the 12-foot setback without requiring the -- no, it
23 does require multiple screen heights.

24 CHAIRPERSON HEATH: Right now it's --

25 MS. SHIKER: It would include three heights.

1 MS. BUTANI-D'SOUZA: But it would be less
2 visible than -- so it would look less like a mistake
3 and be less bothersome to the office workers.

4 MR. HOLZBACH: Agreed.

5 MS. BUTANI-D'SOUZA: On the 9th floor. Okay.

6 MR. HOOD: I don't think our new regulations
7 deal with unequal heights. So we're getting down to
8 one.

9 MS. SHIKER: Two.

10 MR. HOOD: Two? Okay. Well, let me see if I
11 can get to one. Okay?

12 MS. BUTANI-D'SOUZA: Sorry, we didn't go over
13 the view of the eight-foot setback.

14 MR. HOLZBACH: Yes. Pardon my flipping so
15 fast through the slides. Okay. So this is the view;
16 this is one of the views of the alley. You're
17 looking northeast here and the stair basically comes
18 up through the building right here and it tops out.
19 This is the one story building and this is the two-
20 story alley structure, and the building is set back
21 over those, and this is the result of the HPRB
22 process.

23 So the stair is kind of right here and you
24 can't see it in this view within the alley.

25 MS. BUTANI-D'SOUZA: Where is -- sorry.

1 Where is the eight-foot setback?

2 MR. HOLZBACH: So again, you can't see the
3 stair in this view.

4 MS. BUTANI-D'SOUZA: Uh-huh.

5 MR. HOLZBACH: I think that's the point of
6 the view, is that you can't see it. So essentially
7 it's right here. The stair would be, like if you
8 were looking at this from another building above you
9 would see it in this area right here.

10 MS. BUTANI-D'SOUZA: So Ms. Shiker said that
11 it was minimally visible. So what I'm curious about
12 is, where is it visible?

13 MR. HOLZBACH: So --

14 MS. SHIKER: I think I was talking in general
15 that all the penthouses were. I don't believe that
16 there is any place in the alley where you can see the
17 eight foot setback. Is there, Mr. Holzbach?

18 MR. HOLZBACH: Yeah, I couldn't find one.

19 MS. BUTANI-D'SOUZA: Okay.

20 MR. HOLZBACH: That's not to say that, again,
21 I think if you're walking through the city you're
22 going to see it somewhere.

23 MS. BUTANI-D'SOUZA: Okay.

24 MR. HOLZBACH: But I think when you're close
25 to this building and when you really care about it

1 close up, you're not going to see it.

2 MS. BUTANI-D'SOUZA: Okay.

3 MR. HOLZBACH: And I think especially,
4 because this project is so tied to the preservation
5 and being compatible with the historic district, it's
6 when you're close to the historic buildings that you
7 really don't want to have these additional things
8 catching your eye, and that's why we have the
9 setbacks all over the place, is to respect those
10 buildings. And so I think in this case we are --
11 we're meeting the spirit of the setbacks, even though
12 we're requesting that relief.

13 MR. HOOD: What do we have on the floor
14 beneath the 15, six setback on the west penthouse?
15 What's on the floor below that?

16 MR. HOLZBACH: Sure.

17 MR. HOOD: So let's look at that.

18 MR. HOLZBACH: So this is the elevator lobby.
19 Actually, that's -- find a better view. Okay. So
20 here we go. This is the penthouse -- this is the
21 building roof and then this is the penthouse roof on
22 the right-hand side. So when you come out of the
23 elevators we have a small storage area with an access
24 hatch up to the generator well, a small restroom and
25 then a lobby in this space.

1 MR. HOOD: So that's the floor below?

2 MR. HOLZBACH: That's right. This is the
3 roof level. And then above we have a generator well
4 that we placed on top of the lobby.

5 MR. HOOD: I'm saying the floor below.

6 MR. HOLZBACH: Oh, I'm sorry. The floor --
7 my apologies.

8 MR. HOOD: Yeah.

9 MR. HOLZBACH: It's residential. We don't --
10 I don't have --

11 MR. HOOD: Okay. You don't have a schematic
12 on that?

13 MR. HOLZBACH: I don't have a floorplan of
14 that.

15 MR. HOOD: Can't we do some designing down
16 there to help us meet that setback up top?

17 MR. HOLZBACH: The only thing that carries
18 through is the elevator location.

19 MR. HOOD: And the over -- the 18, six,
20 you're doing that for the overrun, right?

21 MR. HOLZBACH: That's right.

22 MS. BUTANI-D'SOUZA: Do you mean reduce the
23 ceiling height of the top units?

24 MR. HOOD: I'm just trying to figure out if
25 we can get to -- have we seem to have been able to

1 have done everything else as far as redesigning, we'd
2 be able to meet some of the setbacks. And I think it
3 can be accomplished.

4 MR. SALPINI: Commissioner Hood, we have in
5 that penthouse lobby, we have the code required
6 minimum height of seven foot six inches. You
7 wouldn't want to be in a space with any less.

8 MR. HOOD: Okay. But --

9 MR. SALPINI: So from --

10 MR. HOOD: But let me just --

11 MR. SALPINI: From that component we're in
12 one place.

13 MR. HOOD: Okay. Let me just finish my point
14 and I'll hear that. I'm just thinking. Let me come
15 back to where we were with the overrun. With the
16 modern day equipment, and I guess that's what you're
17 going to be using, right?

18 MR. HOLZBACH: Yes.

19 MR. HOOD: I think the overrun is about 15
20 feet. And I stand to be corrected. It's about 15
21 feet. Am I correct?

22 MR. HOLZBACH: I would have to get back to
23 you on that. I couldn't say for sure. We
24 typically --

25 MR. HOOD: Well, all the experts have come

1 down here and told me they can accomplish it with 15,
2 and I can stand to be corrected. I hear a lot of
3 stuff. So, but I'm sure that I heard 15.

4 MR. HOLZBACH: Okay. I can't refute you. I
5 would have to go back and do my own research on that.

6 MR. HOOD: Okay. Well, if I'm correct make
7 sure you -- Ms. Shiker, I'm sure, will correct me.
8 The gentleman who was speaking, I wanted to -- I was
9 just trying to focus on that and what's up under. So
10 if he wanted to add something?

11 MR. SALPINI: Yeah, sure. So, what we are
12 designing to on the typical residential floor is a
13 nine foot finished ceiling. There's nothing extra
14 being added in the 10th floor design. So it's not
15 like we've got latitude to take height out of that
16 floor without taking, again, taking the building away
17 from what would be a typical market condition today.

18 MR. HOOD: Okay. Well, I will tell you, I'm
19 with you as I was -- well, not where I was
20 previously. But I'm with you with the stairwell. I
21 understand that. I can grant that relief. But I'm
22 just not -- I haven't got to 15, six. But I'll --

23 MS. SHIKER: So if we could talk a little bit
24 about what dictates that width for the 15, six. And
25 I think that maybe walking through what these

1 dimensions are, when you -- when the Historic
2 Preservation Review Board continued to cut back,
3 originally this project spanned -- can you just go
4 back to -- yeah, there. It spanned from the west
5 tower to the east tower. So these setbacks were
6 originally not an issue until the project continually
7 got cut to such a small floorplate, especially on
8 that west tower. It is exceedingly thin. It's a
9 single corridor with residential units along it, and
10 when you add the required space for the elevator and
11 then the generator, plus the clearance on either
12 side, we have, and our design team has not been able
13 to parse away to get that narrow enough to get the
14 setback given the base floorplate.

15 And the reason, those operating difficulties
16 I think are exactly what the special exception
17 standard was meant to account for when you have such
18 difficulties with your site and trying to get it.
19 And when we look at the intent of the regulations it
20 is to make sure that it is minimally visible, that it
21 is reduced in size, and because this portion where
22 the setback relief starts is over 60 feet away from
23 Eye Street. It is deep down into the site. It is --
24 in fact, is that a laser pointer. Okay can you
25 show --

1 It even is behind the façade of the other
2 building, which is an excellent way to limit any
3 visibility of it. So do you see? I mean, the
4 setback is behind the façade of the other tower, and
5 Commissioner Hood, we have really tried to find
6 different ways. I just don't think there is another
7 way to parse this one. And this is again why we gave
8 you options on the 12-foot one, and we're trying to
9 solve all the others. We could not solve these two.

10 MR. HOOD: So, Ms. Shiker, you were here last
11 night so you heard the discussion that went on.

12 MS. SHIKER: I did, yes.

13 MR. HOOD: And you heard some of the things
14 that the Zoning Commission is going to be looking at,
15 so I don't need to go over that. And you know one of
16 the concerns were the setbacks and open court. So
17 you've heard all that. You were here, because I
18 noticed, I particularly paid attention. I saw you
19 stayed and I know those weren't your cases, so I know
20 why you stayed.

21 MS. SHIKER: That is correct.

22 MR. HOOD: So I guess you know what we're
23 going to be looking at.

24 MS. SHIKER: I do. And in my understanding
25 of the concerns were open courts fronting on to

1 streets. And when you look at the street view of
2 this project, every single setback on the open court
3 fronting on the street is met in this case. This is
4 more of an interior court that is linear that goes
5 through the site, and so it's a bit more of a unique
6 condition that you don't really see on a lot of
7 sites. I was only able to find one precedent that
8 the Zoning Commission approved recently that had
9 setback relief on a linear court that went from an
10 alley to a street. And so there certainly is
11 precedence that these types of relief, again, we --
12 you evaluate every case on its own. But I wasn't
13 able to find many cases where you have this type of
14 court because when you're behind that main façade,
15 you're really fronting more on the alley and the rear
16 portion of the project, than the front portion of the
17 project.

18 And so again, I believe it was important for
19 us to try to solve the further north part of the
20 setback because it does confront more closely, that
21 court looking at the street. But I do believe that
22 with the operating difficulties, with the setback
23 that's provided, and the depth in the site, that this
24 setback could be approved as under the special
25 exception.

1 MR. HOOD: And let me just help you, Ms.
2 Shiker. We actually going to look at more than just
3 open courts that front the streets. And I think you
4 heard that last night. We're going to look at the
5 exterior wall issue. We're going to look at that
6 whole piece. Not just the ones that front the
7 street. The ones that front the street I think you
8 all pulled back, or we denied them anyway, to begin
9 with, correct?

10 MS. SHIKER: We were able to solve that, so
11 we moved that relief, yeah.

12 MR. HOOD: Solved that problem after I guess
13 we knew which way we were going down. So I still
14 have 15, six but I'll leave that up to hear what the
15 Board has to say on that.

16 I still think we can do some designing. I'm
17 sorry. I don't see us getting around that. I think
18 it can be dealt with on the lower floors.

19 MR. HILL: There's no more questions? All
20 right. So --

21 MS. BUTANI-D'SOUZA: I'm just curious to hear
22 the opposite argument from NCPC on this.

23 MR. HINKLE: Yeah, I don't think I have
24 anything else to add from what I've sated before.
25 One thing I would note is, and I'm not sure --

1 exhibit, what is this? Exhibit, I have it open if I
2 can find it. What I'm looking at is the attachments
3 to the Zoning Administrator's decision letter, which
4 I think is Exhibit 42B.

5 CHAIRPERSON HEATH: Uh-huh.

6 MR. HINKLE: Perhaps.

7 CHAIRPERSON HEATH: Uh-huh.

8 MR. HINKLE: 39E, maybe. And there's a
9 graphic showing courts. And at the top level, I
10 guess it's the 9th or 10th level of the building is
11 the open court, which essentially shows the court
12 wrapping around the site and wrapping around those
13 top floors. And it's counted as one court, so it's
14 going from Eye Street to the alley, which is an open
15 court to the street. So if you could explain --

16 MS. SHIKER: I certainly see that and we, you
17 know, did this a long time ago. I'm sure there are
18 different ways to parse the courts. It was just the
19 simplest one for the Zoning Administrator on such a
20 complicated building, to give confirmation that each
21 of the courts meets the setback. As you see, they
22 wrap around all the way to the back as well, and
23 they're at the upper levels.

24 I mean the front buildings along Eye Street
25 stop at the third floor and so you have courts set

1 down in there and then at every level they're set
2 back so it was really, they were technical drawings
3 to show that the open space far exceeds the minimum
4 required open space. They weren't intended to be
5 drawings that dictated where you could see a setback
6 from. This, you know, at that time the letter also
7 says we could get relief from all of the areas that
8 we were seeking relief from. So it was -- those
9 documents were prepared for a different question and
10 a different issue.

11 MR. HINKLE: But it's called an open court.

12 MS. SHIKER: An open court is a court that
13 opens on to a street, to an alley that's 10 feet or
14 greater, or into any yard. So there's a lot of
15 different kinds of open courts. But my understanding
16 was the intent of the regulations was to make sure
17 that from streets we minimize that visibility, which
18 are the arguments I've already made.

19 MR. HINKLE: Understood, yeah. Certainly
20 it's difficult to kind of agree that you have this
21 graphic showing some technical aspect of the court
22 and then stating that that definition of a court
23 doesn't apply to other portions of the zoning
24 regulations.

25 MS. SHIKER: It is an open court. The

1 question is, is when you have a court that is open to
2 both a street and to an alley, is it an open court
3 fronting a street or an open court fronting an alley?
4 My position was that if you logically look at the way
5 the site lays out, and you draw a line at the
6 furthest recessed portion of the building, the
7 furthest southern portion, which is the line of the
8 east building, everything in that section would open
9 to the street and I think it's arguable to say
10 everything behind that is closer to the interior or
11 the rear of the building and opens to the rear.

12 So, no, there's not a definition that
13 supports my position. I think it's a logical
14 reading. There is also not anything right now that
15 says you can't get relief from an open court. It
16 specifically says you can get a special exception.
17 So, again, I felt that if we could solve the
18 penthouse relief that was in that front portion, we
19 would be coming more in compliance with the intent of
20 the regulations.

21 MS. BUTANI-D'SOUZA: Can I just ask one other
22 question? So, I'm just asking this hypothetically.
23 But so let's say that we don't grant this relief,
24 what are you guys going to do?

25 MR. SALPINI: You don't grant the relief then

1 we go back to the drawing board and try and solve it
2 another way.

3 I would tell you that you're somewhat --

4 MS. BUTANI-D'SOUZA: I'm just asking
5 hypothetically.

6 MR. SALPINI: Right.

7 MS. BUTANI-D'SOUZA: I just want to
8 understand it.

9 MR. SALPINI: You're somewhat late to the
10 case, not through your fault, but you're somewhat
11 late to the case.

12 MS. BUTANI-D'SOUZA: Well, I have spent a lot
13 of time reviewing it.

14 MR. SALPINI: What has happened --

15 MS. BUTANI-D'SOUZA: A very long time
16 reviewing it.

17 MR. SALPINI: Well, I'm not saying it to tell
18 you to buy us your view, I'm just telling you that we
19 have been through a multi-year process with HPRB
20 before we even got to you. And our project has been
21 nibbled on all ends to respect these historic
22 buildings, both in front of us and behind us. As a
23 result of that nibbling we have had to sculpt our
24 building that you see around those areas of the site
25 that they would permit us to build upon.

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1 And as a consequence of the sculpting they
2 have created very limited opportunities for us to
3 place anything on the roof that's essential to allow
4 the building to work. We started with a penthouse
5 design and we have modified that penthouse design
6 extensively to try and remove relief requests where
7 possible. We have modified our occupied penthouse
8 space --

9 MS. BUTANI-D'SOUZA: I understand that you've
10 made a lot of modifications, but I don't really find
11 that to be a compelling argument for why we should
12 not require further modifications, and I certainly
13 appreciate that this has gone through a lot of
14 contortions. And I certainly appreciate the soft
15 costs that are associated with that on your project,
16 and I certainly appreciate that there may be some --
17 that there are some revenue impacts associated with
18 that as well. I absolutely understand all of that,
19 but I don't really think that that's something that
20 we as a board, would evaluate here.

21 I mean, you know, you guys have to build
22 within the -- what the zoning allows you to build,
23 and that's what we're here looking at. And I get
24 that you went through HPRB first. I get that they
25 had certain things that they required. This Board

1 may have certain things that we require as well, so
2 I'm just curious --

3 MS. SHIKER: Yeah, I think to answer your
4 question, I mean, I think that the whole composition
5 of the project will have to be evaluated again. I
6 mean, this is, as Mr. Salpini said, the project has
7 had a lot of different review. It's also gone
8 through Mayor's Agent, review for a project of
9 special merit. It went to HPRB four or six times.
10 Six. Six times. It went to the ANC seven times.
11 It's been supported every time.

12 So it's been a project so I think that if
13 this relief --

14 MS. BUTANI-D'SOUZA: I get it. You guys
15 would have to reconsider.

16 MS. SHIKER: -- which I do believe meets the
17 special -- and I understand what you're saying. Just
18 because we need the relief doesn't mean the relief
19 needs to be granted. But in this case I believe that
20 the record is very full of evidence that supports the
21 special exception standard as we've gotten down to
22 just the two last remaining issues.

23 And so I would ask the Board, consider that
24 standard and how it's supposed to be applied and the
25 intent of the regulations and how we get to the point

1 where we meet those to grant the relief as opposed
2 to, could you start over and build a whole other
3 project. I think that when you look at the relief
4 that the Zoning Commission approves, and this has
5 been -- the relief hasn't really changed in how
6 they've talked about it from the old regulations to
7 this regulation. It doesn't say, there is no
8 building that you could possibly construct on this
9 site that would meet the regulations. That's not the
10 standard. It's an operating difficulty that leads to
11 an unreasonable impact on your project that then the
12 intent of the regulations is not impaired.

13 And so, yes, could we start from scratch and
14 try again and start the whole four-year project over?
15 You know, I guess that is -- but that's not the
16 standard the Board is supposed to look at. We do --
17 I think we very clearly conveyed our operating
18 difficulties, so I think that those --

19 MS. BUTANI-D'SOUZA: That's not really what I
20 was suggesting. I just wanted to know if you had a
21 Plan B.

22 MS. SHIKER: No, we don't. There is not a
23 Plan B at this point.

24 MR. HILL: Okay. So what I'd like to do is
25 hear from the Office of Planning. And knowing where

1 the Office of Planning was before, and please feel
2 free to explain or say anything you like. But I am
3 curious about again, kind of like the multiple
4 heights that was offered up as a solution and whether
5 you think the Office of Planning would rather that
6 than what they have already approved. And so I'd
7 like to hear your opinion, please. Thank you.

8 MR. COCHRAN: Thank you. For the record,
9 Steve Cochran, Office of Planning.

10 Section 411.18 establishes certain setback
11 requirements. Section 411.11 then permits special
12 exceptions from the setback requirements that 411.18
13 establishes. This is, as Ms. Shiker mentioned, a
14 special exception case. Special exceptions are
15 assumed to be permitted as long as the criteria are
16 met. It's not a variance case where there has to be
17 an exceptional condition leading to a practical
18 difficulty.

19 The penthouses for which special exception
20 relief is permitted are above the height act limits.
21 And there is no relief, as you know, permitted, from
22 an exterior wall.

23 Now there's a long history, as you've seen,
24 of the Zoning Administrator being the interpreter of
25 the Height Act that goes back to the Commissioners of

1 the District of Columbia, through the Home Rule act,
2 through the mayor, on down to DCRA, to the Zoning
3 Administrator.

4 In the December 7, 2015 memo from the Zoning
5 Administrator, he determined that the walls for which
6 the relief, the remaining walls for which the relief
7 is being requested, are not exterior walls.
8 Therefore, a special exception can be granted by the
9 Board. Doesn't have to be, but it can be, so you can
10 use 411.18 and 411.11.

11 OP believes that the applicant has
12 demonstrated the compliance with the criteria that
13 are established in 411.11 and 3104. And therefore we
14 recommend that the Board approve special exception
15 relief under 411 and 3104 from 411.18's setback
16 requirement to permit an eight-foot setback on the
17 east tower, where a 12-foot setback would otherwise
18 be required, from 411.18's setback requirement to
19 permit a 15-foot, six-inch setback on the west tower
20 where otherwise a 20-foot setback would be required.
21 And finally a special exception relief from 411.9 to
22 permit the west tower penthouse to have walls of
23 three heights rather than no more than two heights,
24 which is the standard. So that's where we are now.

25 MR. HILL: So you'd rather -- the Office of

1 Planning would rather have the three heights and get
2 rid of that.

3 MR. COCHRAN: With respect to whether it's
4 two heights or three heights, we're agnostic.

5 MR. HILL: Okay. So you get rid of the
6 three. I mean, the 12 foot. Okay.

7 MR. COCHRAN: We don't care.

8 MR. HILL: Okay. Does anybody have any
9 questions for Office of Planning?

10 MR. COCHRAN: Okay. Does the application
11 have any questions Office of Planning?

12 MS. SHIKER: I would just clarify on the
13 eight foot, it is -- the otherwise required setback
14 would be nine foot, nine inches based on the most
15 recent, I think you said 12 feet. But just to
16 correct the record, that height is nine feet, nine
17 inches. We're asking for an eight-foot setback, so
18 of a foot and nine inches, versus originally we had
19 asked for three feet.

20 MR. HILL: Okay.

21 MR. COCHRAN: To clarify on that, I am
22 confused on that. I thought that after the
23 discussion today the nine foot nine -- okay, it was
24 going to be at 13, you said an alternative was nine
25 foot nine. I thought I heard it going to 12.

1 MS. SHIKER: That is correct, but where we
2 have the eight-foot setback for special exception
3 relief for the stair tower on the east building, the
4 height of it is nine feet, nine inches.

5 MR. COCHRAN: Okay. Thank you.

6 MR. HILL: Okay. Does anyone have any more
7 questions from the Board?

8 Okay. So, we're done. So all right. Is the
9 Board ready to deliberate?

10 CHAIRPERSON HEATH: Yes.

11 MR. HILL: Okay. So, I'll tell you where I
12 am and then everybody can -- I'd love to hear where
13 you guys are.

14 Originally -- oh, gosh. If I go all the way
15 back to the beginning there was so many different
16 forms of relief, and then I'm also with Chairman Hood
17 in terms of, it does make it a little bit confusing
18 for me as we go down the line, just when things
19 actually do tend to pull away, if we push it hard
20 enough. And so that is of interest, I suppose,
21 that's something I'll just take mental note of for
22 later.

23 But the Office of Planning is in agreement
24 that these meet the request relief. And one of them
25 again being now the approval of the multiple heights

1 for the penthouse that would take away the 12 foot.
2 So, and then also the ANC was in agreement with this
3 proposal. And so I got the Office of Planning who
4 we're supposed to give great weight to and then the
5 ANC who we're supposed to give great weight to. I
6 mean, I think that probably the ANC did not dig down
7 enough to it where the penthouse level is something
8 that they're, you know, necessarily taking a look at.
9 However, they were in approval.

10 I think that the historic buildings that are
11 there -- I mean, I actually happen -- it's just odd
12 that I live near there, so I'm actually familiar with
13 the project that it has been cut away that has kind
14 of, I think, you know, made these setback reliefs
15 necessary. And so I would continue to be in approval
16 of what we had originally done, which was approve the
17 three setback reliefs. Although, now I guess we're
18 approving the one on -- you know, I would be
19 approving -- I would be in agreement with the one on
20 the east penthouse for the eight feet. Then also the
21 west penthouse for the 15, six. And then the west
22 penthouse multiple heights to get rid of the 12.

23 So that's where I'm at and I'd love to hear
24 from anyone else.

25 CHAIRPERSON HEATH: I think -- well, I have

1 reviewed the record so as I think Ms. Butani stated,
2 we weren't here for the initial hearings on this
3 case, or the initial deliberation, but have reviewed
4 the record. And I appreciate that through all of the
5 pushback from the Board that the applicant has been
6 able to do significant work to reduce the amount of
7 relief being requested.

8 I think probably Commissioner Hood is right.
9 If we kept pushing a little bit more there might be a
10 way that you find, that doesn't seem feasible now, to
11 get rid of the 15, six relief being requested. But
12 I'm satisfied that by eliminating the 12-foot relief
13 that the intent of the regulation has been met, that
14 the visibility of the penthouse is diminished from
15 the street. We've also talked about the limited or
16 no visibility from the alley because of the angle at
17 which you'd be looking at the roof from such a close
18 proximity. And so I am in support of approving the
19 eight-foot relief, the 15, six, with the 12-foot
20 going away and approving the three heights for the
21 penthouse on the west tower.

22 MS. BUTANI-D'SOUZA: And I agree with my
23 colleagues. I think that the burden here has been
24 met. I think that the applicant has amply
25 demonstrated on the two remaining setbacks, the

1 eight-foot setback and the 15-foot, six setback, that
2 there are substantial operational difficulties that
3 would limit their ability or prohibit them from
4 moving these elsewhere. And I believe that they've
5 done a very good job of trying to make these
6 minimally visible and trying to meet the intent of
7 the regulations.

8 I'm curious if there's any disagreement on
9 that front, but I believe that this meets the
10 standard.

11 MR. HINKLE: Yeah, so, the eight-foot setback
12 on the east tower, originally I was supportive of
13 allowing the relief for that because I felt it was an
14 open court at the alley. And my agency has
15 historically, over the past number of years, felt
16 that setbacks wouldn't be required at that.

17 Since then I noticed the graphic that was
18 attached to the determination letter, and the
19 discussion within that document about that being an
20 open court across the lot. And as I mentioned, I
21 don't see how you could have two definitions of the
22 same open court. It just doesn't make sense to me.

23 So right now I'm not supportive of the relief
24 being requested for that eight-foot setback on the
25 east tower. Certainly I'm supportive of the three

1 heights on the east tower for penthouse relief if we
2 could get that northern one down. But I continue to
3 have concerns about the 15-foot, six setback. It is
4 visible from Eye Street and you know, I think as Mr.
5 Hood stated I think there could be a little more
6 refinement in the design. So at this point I'm not
7 supportive of the relief of that.

8 MS. BUTANI-D'SOUZA: Sorry, you're supportive
9 of the eight-foot but not the 15, six. Is that
10 right? No, you're not --

11 MR. HINKLE: Neither one.

12 MS. BUTANI-D'SOUZA: Neither one. Okay.

13 CHAIRPERSON HEATH: No setbacks, just the --

14 MR. HOOD: I would -- oh, are you finished,
15 Board Member Hinkle? Okay.

16 I actually, there's case law and precedent
17 for me to be able to discuss this with my colleagues
18 who have now put the penthouse regulations in place
19 and I actually did that in a closed meeting. One of
20 the things on that other issue for clarification, the
21 Zoning Commission and the Board of Adjustment are
22 bound to follow interpretations given by the term, by
23 the Zoning Administrator. So I wanted to make sure I
24 got that clear.

25 One of the things that we are looking at and

1 concerned about, again that's why I have issues with
2 the 15, six, we're looking at -- we're looking at it,
3 and I know all of us may not agree on the Commission
4 but we'll see how these discussions go. We did
5 receive another letter from NCPC and it's not
6 necessarily germane to this case, but that is a
7 concern of ours, in that open court area and making
8 sure that the setbacks are there.

9 So I think this is further discussion. I
10 don't think I want to hold this case up. And I'm
11 sorry, unfortunately that's just the review process
12 in the District of Columbia. If you go to HPRB first
13 or if you come to the Zoning Commission first, if you
14 go to -- that's just part of it. I know under the
15 Williams administration they tried to get rid of some
16 of the red tape. But, guess what, the red tape makes
17 project better because you all came down here with a
18 lot of setbacks and they seem to have disappeared.

19 So I applaud you for doing that and I thank
20 you all for doing that. You just got one more I
21 would like for you to make disappear. So in the sake
22 of that I do think one is warranted. I think you've
23 made the case to me on the eight-foot with the
24 stairwell. I think it does cause a lot of dynamic as
25 you go down in the building and some shifts. I just

1 can't get with 15, six yet.

2 So what I would ask, Mr. Chairman, is that
3 you would -- and I have no problems with the 12 feet.
4 I appreciate again for that to go away, those
5 heights. But what I would ask, Mr. Chairman -- I'm
6 sorry.

7 MR. HILL: Whatever.

8 MR. HOOD: Former -- Board Member Hill, I
9 would appreciate it if we would do these motions; we
10 would break them up because I do have one that I do
11 not support.

12 MS. BUTANI-D'SOUZA: And there's one that's
13 withdrawn. Is that correct? The 12 foot is
14 withdrawn? No?

15 MR. HOOD: It's just multiple heights.

16 MS. BUTANI-D'SOUZA: Just multiple heights.
17 Okay.

18 MS. SHIKER: That is correct.

19 MR. HOOD: But it meets the setback.

20 MR. HILL: I'm sorry, Madam Chair, you were
21 going to say something?

22 CHAIRPERSON HEATH: So, I'm wondering -- I'm
23 not sure what we need for something to pass. If it's
24 three two, then it passes? Because I'm wondering if
25 it makes sense for us to push again and see if the

1 15, six can -- yeah. I mean, every time we've given
2 them extra time to look at something again, they've
3 found a way. So I'm just wondering if it makes sense
4 for, like if there's a difference --

5 MS. SHIKER: So, the way that we were able to
6 remove the relief on the penthouse habitable space is
7 the green roof. But also, as you saw in the
8 testimony, one of the primary reasons we were having
9 a hard time getting access up to the roof, because
10 remember, we don't take the elevators up on the east
11 side. We were only taking stairs. The stairs did
12 not work. So what has happened is in order to lower
13 that substandard market, or submarket stairs have
14 been put in. So anybody who lives in those units who
15 are trying to access it, they can't use those stairs
16 to move anything.

17 So there really are -- there have been
18 concessions that have been made to get here. It's
19 not that, oh, there was an easy design solution.

20 MR. HILL: Okay. That's all right. That's
21 all right. That's all right.

22 MS. SHIKER: And so we would --

23 CHAIRPERSON HEATH: We get it.

24 MS. SHIKER: We would ask that the Board move
25 forward. It's been almost six months since our first

1 hearing on this [simultaneous speech].

2 MR. HILL: Okay. Okay, and actually, I also
3 want to move forward. So --

4 CHAIRPERSON HEATH: I've had less history,
5 so.

6 MR. HILL: This will be my last act as the
7 former Vice Chair of these Washington, D.C. --

8 MR. HOOD: But let me just say this. Let me
9 just say this, though, Ms. Shiker did exactly what
10 happened the last time.

11 MR. HILL: I understand and I'm --

12 MR. HOOD: Hold on, let me just finish. She
13 interjected and we rational, tried to accommodate --

14 MR. HILL: That's all right. That's all
15 right.

16 MR. HOOD: -- and that's what threw a lot of
17 us off. So if we were stuck where we were they would
18 have had their approval, I would have voted against
19 everything, and we would have moved forward and I
20 probably would have done something else.

21 MR. HILL: If --

22 MR. HOOD: So I think, I think, Ms. Shiker,
23 no disrespect to you, but I think sometimes we do
24 that. That causes our deliberations to go awry. So
25 I mean, actually I want the client to know, she's

1 doing a good job for you, but still we need to be
2 able to dialog among ourselves.

3 MR. HILL: Yes. And, Chairman Hood, I think
4 that you should no longer make phone calls from, you
5 know, from your living room.

6 MR. HOOD: I will take --

7 MR. HILL: You know. Okay?

8 MR. HOOD: I was trying to accommodate.

9 MR. HILL: So --

10 MR. HOOD: I heard her.

11 MR. HILL: -- this would have possibly gone a
12 completely -- and as far as the history goes again, I
13 was here and Ms. Shiker turned around and came back
14 up. And again, I think that you're doing a good job
15 for your client. And at the same time I do know the
16 project. I think it's incredibly small. I think
17 everything that they have been arguing about is
18 accurate. If you've seen the alley and what they're
19 saving for HPRB, it's -- I can't figure out what's
20 the historic part of it, other than I understand.

21 So however, at the same time, Chairman Hood,
22 if I can -- you know, I do not have a problem
23 separating this if OAG says I can do that and vote
24 these things separately out. Then and Chairman Hood
25 is nodding, so I'm going to go with that that's a

1 yes. So, it still however, the votes are going to go
2 down. I'm fine with that as well.

3 MS. BUTANI-D'SOUZA: Do we want to --

4 MR. HILL: And so I'm going to make a motion,
5 my first --

6 MS. GLAZER: Can I interject something?

7 MR. HILL: Sure.

8 MS. GLAZER: Does the Board have a revised
9 self-certification that breaks down exactly what the
10 relief is that's now requested after today's
11 discussion, because that might be helpful if you want
12 to break it down and take one portion of the relief
13 at a time and vote on it.

14 [Pause.]

15 MR. HILL: Office of the Attorney General,
16 this didn't necessarily make it any clearer for me.
17 Okay? And so I'm going to go back to what I was
18 doing, which was, I'm going to make a motion that we
19 continue to approve the closed court.

20 CHAIRPERSON HEATH: Okay.

21 MR. HILL: Okay? Hello.

22 CHAIRPERSON HEATH: Right. Second.

23 MR. HILL: Second. The motion is -- that's
24 okay. So what we have approved, of what we have
25 approved, I'm making a motion to continue to approve

1 the closed court relief.

2 CHAIRPERSON HEATH: Second.

3 MR. HILL: The motion is made and seconded.
4 All those in favor.

5 MS. BUTANI-D'SOUZA: Which is the closed --
6 is that the eight-foot, the 12 --

7 CHAIRPERSON HEATH: Don't even look at this.
8 The closed court is not -- it was prior.

9 MS. BUTANI-D'SOUZA: Oh, this is the one.
10 Okay. I see.

11 MR. HILL: So the motion has been made and
12 seconded.

13 [Vote taken.]

14 MR. HOOD: Mr. Chairman, I would like for you
15 to -- well, I guess you're talking about the eight
16 feet.

17 MR. HILL: No, I'm just doing the closed
18 court. The one that we've already approved, the
19 closed court, all -- that was way back --

20 CHAIRPERSON HEATH: It's old.

21 MR. HOOD: Well, we only dealing with --
22 okay.

23 CHAIRPERSON HEATH: I know. I know.

24 MS. GLAZER: Is that the variance relief?

25 [Discussion off the record.]

1 MR. HILL: Okay. All right. So if it
2 continues to be approved then Chairman Hood is saying
3 we don't need to approve it now again.

4 MR. HOOD: If we've already approved it and
5 we're not addressing it, I don't see why we're voting
6 on it again.

7 MR. HILL: So there's nothing I have to vote
8 on it. So that stands the way it is.

9 MS. GLAZER: Yes. I don't think there's any
10 harm in restating it, but it does --

11 MR. HILL: Why, Chairman Hood, do you have an
12 issue with that?

13 MS. GLAZER: Well, counsel has approached and
14 stated that you opened the -- reopened the record to
15 consider everything. But I don't believe you've
16 rescinded the vote. I'm not sure. If you didn't
17 rescind the vote I think you would just be restating
18 for clarification purposes, the relief that
19 remains --

20 MR. HILL: Okay. All right. So once
21 again --

22 CHAIRPERSON HEATH: Either way, it's
23 approved. Right.

24 MS. GLAZER: It's approved, yes.

25 MR. HILL: Once again, to restate for

1 clarification purposes, I made a motion to approve
2 closed court relief, 20-foot required, 10 provided.

3 CHAIRPERSON HEATH: Second.

4 MR. HILL: Motion has been made and seconded.

5 [Vote taken.]

6 MR. HILL: Motion carries.

7 CHAIRPERSON HEATH: All right.

8 MR. HILL: Okay? So now the second motion
9 is, and I'm going to go with the easy ones, is a
10 motion for -- on the east penthouse for relief from
11 nine, nine required, eight foot requested, stair
12 tower, eight in Exhibit Sheet 48, and making a motion
13 to approve that.

14 CHAIRPERSON HEATH: Second.

15 MR. HILL: Motion been made and seconded.

16 [Vote taken.]

17 MR. HOOD: Which one is that?

18 MR. HILL: The eight foot.

19 CHAIRPERSON HEATH: That's the eight foot
20 that --

21 MR. HILL: That's the one right here.

22 CHAIRPERSON HEATH: At the stair --

23 MR. HILL: Stair tower.

24 CHAIRPERSON HEATH: Stair tower.

25 MR. HOOD: Okay. So we going to go on all --

1 so, okay. So the other three that front Eye Street
2 are withdrawn.

3 CHAIRPERSON HEATH: Right. We're not voting
4 on those.

5 MR. HOOD: So we don't need to do that.
6 Okay. All right. I see what we're doing now. Okay.

7 Forgive me, I only had two or three in my
8 mind so.

9 MR. HILL: That's okay. So once again the
10 motion was to approve east tower, nine, nine
11 required, eight requested, stair tower, eight exhibit
12 -- no, sorry. Exhibit 48, Sheet 8. All those in
13 favor. Oh, no, it's made and been seconded?

14 CHAIRPERSON HEATH: Yes.

15 [Vote taken.]

16 MR. HILL: Chairman Hood, did you vote?

17 MR. HOOD: Which one is this?

18 CHAIRPERSON HEATH: The eight foot.

19 [Discussion off the record.]

20 MR. HOOD: Yeah, let me just say this.
21 Anything I voted in favor of the last time, I'm
22 concentrating on the 15, six. The rest of it you can
23 just -- I'm fine with the changes. Okay? That's --
24 yeah, no, I want that to be on the record because all
25 this other stuff I'm getting confused now. I'm

1 focused on what I think really matters. Anyway. Go
2 ahead.

3 MR. HILL: Okay.

4 MS. MEYERS: Okay. For clarity, can staff
5 record that vote?

6 MR. HILL: The staff was -- the vote was four
7 to one.

8 MS. MEYERS: Correct. So the vote was four
9 to one for the east penthouse with the eight-foot
10 setback. The motion was by former Vice Chair Hill,
11 and seconded by Chair Heath. In support was Vice
12 Chair Butani and Mr. Hood, and opposed was Mr.
13 Hinkle.

14 MR. HILL: Yes, correct.

15 MS. MEYERS: Okay. Thank you.

16 MR. HILL: And so the next motion I would
17 like to make is to approve the penthouse setback
18 relief from the west tower. Oh, sorry. I'd like to
19 approve multiple heights for the west tower on the
20 setback relief for the 13 feet for Exhibit Sheet 4
21 and 5.

22 CHAIRPERSON HEATH: Second.

23 MR. HILL: The motion has been made and
24 seconded.

25 [Vote taken.]

1 CHAIRPERSON HEATH: Oh, everybody was on
2 that. Okay. So everybody, the motion -- there you
3 go.

4 CHAIRPERSON HEATH: Uh-huh. So three
5 heights.

6 MR. HILL: Three heights.

7 MS. MEYERS: Staff would record the vote as
8 five to zero to zero for a vote on a special
9 exception for multiple enclosure heights. The motion
10 was made by Mr. Hill. It was seconded by Chair --
11 or, Chair Heath, that's right. And also in favor was
12 Vice Chair Butani, Mr. Hinkle, and Mr. Hood.

13 MR. HOOD: Let me muddy the waters a little
14 bit. The last one that we voted on, not this past
15 one, the one before that, I thought that was
16 withdrawn.

17 CHAIRPERSON HEATH: Unh-uh.

18 MS. BUTANI-D'SOUZA: The eight foot?

19 CHAIRPERSON HEATH: The 12-foot setback but
20 not the multiple heights. Oh, the eight-foot still.

21 MR. HILL: No, this one. I'm sorry. I
22 apologize.

23 MR. HOOD: Yeah, you pointed to these two.
24 And my sheet tells me it was withdrawn.

25 CHAIRPERSON HEATH: Yeah.

1 MR. HILL: That, the eight foot was not
2 withdrawn.

3 CHAIRPERSON HEATH: The eight foot.

4 MS. BUTANI-D'SOUZA: I thought the eight foot
5 one was the one where you agreed that --

6 MR. HOOD: Oh, the eight foot? Oh, the stair
7 well. Yeah. Okay. I thought you were talking about
8 those two.

9 MR. HILL: Sorry. My bad.

10 MR. HOOD: Okay. Okay. I'm sorry. Stair
11 well.

12 CHAIRPERSON HEATH: And the last one.

13 MR. HILL: Okay. And the last one I'd like
14 to make a motion to approve the west penthouse 20-
15 foot setback required, requested 15, six, for Exhibit
16 Sheet 7.

17 MS. BUTANI-D'SOUZA: Second.

18 MR. HILL: Motion has been made and seconded.
19 [Vote taken.]

20 MS. MEYERS: Staff would record the vote as
21 three to --

22 MR. HILL: Wait, hold, hold, hold.

23 CHAIRPERSON HEATH: No, I will vote to deny.
24 I just, I know you didn't ask for a discussion.

25 MR. HILL: Okay. Okay. That's okay.

1 CHAIRPERSON HEATH: I just, I wanted to
2 continue to let them work it out. And so I will vote
3 to deny.

4 MR. HILL: Okay. So --

5 MS. MEYERS: Okay. So staff --

6 MR. HILL: -- three, two.

7 MS. MEYERS: -- will record the vote as two
8 to three to zero.

9 MR. HILL: Sorry.

10 MS. MEYERS: And the motion was made by Mr.
11 Hill, seconded by Vice Chair Butani. And Ms. Heath,
12 Mr. Hinkle, and Mr. Hood were opposed so the motion
13 does not carry.

14 CHAIRPERSON HEATH: Correct.

15 MR. HILL: Thank you.

16 CHAIRPERSON HEATH: Correct.

17 MR. HILL: Thank you.

18 MR. HOOD: All right.

19 CHAIRPERSON HEATH: Thanks.

20 MS. SHIKER: Thank you.

21 [Discussion off the record.]

22 CHAIRPERSON HEATH: So we are officially
23 relaxing the rules for summer. And so for this
24 really applies to the male dress code. Women can
25 continue to wear whatever is appropriate for summer,

1 but men will no longer need to wear ties.

2 MS. GLAZER: Madam Chair, I know this may be
3 redundant, but back to that case, does the Board have
4 final revised plans that reflect the proposal?

5 MR. HILL: Ms. Shiker, you will not have
6 final revised plans, correct, because you were denied
7 something.

8 CHAIRPERSON HEATH: Right. You don't have
9 final revised plans, so we need that before the order
10 can be finalized?

11 MS. GLAZER: No, what I was referring to was,
12 there was some relief that was withdrawn today. A
13 request for relief.

14 CHAIRPERSON HEATH: Right. We understand
15 that, but do you need that before the order is
16 finalized?

17 MS. SHIKER: [Speaking off mic.]

18 MR. HILL: Yeah, can you turn your mic on?
19 Does it not work? Go ahead.

20 MS. SHIKER: We can submit a final plan into
21 the record showing the 12-foot height of the stair
22 tower, egress corridor, and OAH well. That will
23 continue to show the 15, six setback, which was
24 denied because we don't have a solution for that.

25 MR. HILL: Does that answer your question?

1 Is that good?

2 MS. GLAZER: Well, it enables the Board to
3 approve the relief.

4 MR. HILL: Yeah, it enables the Board to
5 approve what was approved, so that will be great.

6 MS. SHIKER: And I assume that you can't do a
7 summary order because part of it was denied?

8 MS. GLAZER: Pardon me?

9 MS. SHIKER: We can't do a summary order
10 because part was denied.

11 CHAIRPERSON HEATH: Can you split the orders?
12 Since we split the motions. I don't know.

13 MR. HILL: If you can that would be great.

14 CHAIRPERSON HEATH: Do a summary order on
15 what was approved.

16 MS. GLAZER: We don't have plans at the
17 moment.

18 CHAIRPERSON HEATH: Right. But she's saying
19 she'll get those to you.

20 [Discussion off the record.]

21 MR. HILL: Let's do -- if we can do this --

22 MS. GLAZER: Is the applicant, is that
23 something the applicant wants to request, to
24 bifurcate the case at this point, to the relief that
25 was denied and have the other relief separate?

1 MS. SHIKER: Can I submit that request along
2 with the plan to the Board if in fact that is the
3 request? I just need to think through the
4 implications of bifurcation of the order.

5 CHAIRPERSON HEATH: Sure.

6 MS. SHIKER: Okay. Yeah. And so when I
7 submit the revised plans showing the correct setback,
8 the height, the 12-foot height on the northern
9 portion of the west tower, I'll also submit with a
10 cover letter, either requesting that a single order
11 be issued, or bifurcated orders be issued.

12 MR. HILL: Okay. That's great. Thank you.

13 MS. GLAZER: Does the Board then want to
14 continue this case, just to decide whether it will be
15 bifurcated or not, or you want to do that
16 administratively?

17 CHAIRPERSON HEATH: We can do it
18 administratively.

19 MR. HILL: Okay. Thank you.

20 CHAIRPERSON HEATH: Okay. Thank you.

21 In accordance with Section 405C of the Open
22 Meetings Act, D.C. Official Code Section 2-575C, I
23 move that the Board of Zoning Adjustment hold closed
24 meetings on the Mondays of June 6th, June 13th, June
25 20th, June 27th. These meetings start at 4:00 p.m.

1 and are held for the purpose of obtaining legal
2 advice from our counsel, and deliberating upon but
3 not voting on the cases scheduled to be publically
4 heard or decided by the Board on the day after each
5 such closed meeting. Those cases are identified on
6 the Board's public meeting and hearing agendas for
7 June 7th, June 14th, June 21st, and June 28th.

8 A closed meeting for these purposes is
9 permitted by Sections 405(b)(4) and (b)(13) of the
10 Act.

11 Is there a second?

12 MS. BUTANI-D'SOUZA: Second.

13 CHAIRPERSON HEATH: Will the secretary please
14 take a roll call on the motion?

15 MS. MEYERS: Yes.

16 [Roll call vote taken and passes.]

17 MS. MEYERS: All right. Thank you.

18 CHAIRPERSON HEATH: All right. I request
19 that the Office of Zoning provide notice of these
20 closed meetings in accordance with the Act. Thank
21 you. We're adjourned.

22 [Whereupon, at 4:08 p.m., the Board Hearing
23 was adjourned.]

24

25