

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning
Board of Zoning Adjustment

PUBLIC HEARING

9:42 a.m. to 1:52 p.m.
Wednesday, January 18, 2017

441 4th Street, N.W.
Jerrily R. Kress Memorial Room
Second Floor Hearing Room, Suite 220-South
Washington, D.C. 20001

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1 Board Members:

2 FREDERICK L. HILL, Chairperson

3 CARLTON HART, Board Member

4 MICHAEL TURNBULL, Zoning Commission

5 CLIFFORD MOY, BZA Secretary

6

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

2 Located in the Jerrily R. Kress Memorial
3 Hearing Room at 441 4th Street Northwest. This is
4 January 18th, 2017, public hearing of the adjustments
5 of the District of Columbia.

6 My name is Fred Hill, Chairperson. Joining me
7 today is Carlton Hart, Board member, and representing
8 the Zoning Commission is Michael Turnbull. Copies of
9 today's hearing agenda are available to you and are
10 located on the wall bin near the door.

11 Please be advised that this proceeding is
12 being recorded by a court reporter and is also webcast
13 live. Accordingly, we must ask you to refrain from
14 any disruptive noises or actions in the hearing room.
15 When presenting information to the Board please turn
16 on and speak into the microphone, first stating your
17 name and home address. When you're finished speaking,
18 turn off your microphone so that your microphone is no
19 longer picking up sound or background noise.

20 All persons planning to testify, either in
21 favor or in opposition, must have raised his or her
22 hand and been sworn in by the secretary. Also, each
23 witness must fill out two witness cards. These cards
24 are located on the table near the door and on the
25 witness tables.

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1 Upon coming forward to speak to the Board,
2 please give both cards to the reporter sitting to the
3 table at my right. if you wish to file written
4 testimony or additional supporting documents today,
5 please submit one original and 12 copies to the
6 secretary for distribution. if you do not have the
7 requisite number of copies you can reproduce copies on
8 an office printer in the Office of Zoning located
9 across the hall.

10 The order of procedures for special exceptions
11 and variances will be -- the order is over in the bin
12 over there also as you kind of come in to the door, to
13 the right.

14 The record will be closed at the conclusion of
15 each case, except for any materials specifically
16 requested by the Board. The Board and the staff will
17 specify at the end of the hearing exactly what is
18 expected and the date when the persons must submit the
19 evidence to the Office of Zoning. After the record is
20 closed, no other information will be accepted by the
21 Board.

22 The District of Columbia Administrative
23 Procedures Act requires that the public hearing on
24 each case be held in the open before the public
25 pursuant to Section 405(b) and 406 of that act. The

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

9 The decision of the Board must be based
10 exclusively on the public record. To avoid any
11 appearances to the contrary the Board requests that
12 persons present not engage the members of the Board in
13 conversation. Please turn off all beepers and cell
14 phones at this time so as not to disrupt these
15 proceedings.

16 Preliminary matters are those which relate to
17 whether a case will or should be heard today, such as
18 a request for a postponement, continuance, or
19 withdrawal, or whether proper and adequate notice of
20 the hearing has been given. If you're not prepared to
21 go forward with the case today, or if you believe that
22 the Board should not proceed, now is the time to raise
23 such a matter.

24 Mr. Secretary, do we have any preliminary
25 matters?

1 MR. MOY: Very, very little, Mr. Chairman.
2 Good morning. And good morning to the Board. With
3 regard to the docket for today, two appeals have been
4 postponed and rescheduled. They are Appeal No. 19410
5 of ANC 6C, and Appeal No. 19412 of ANC 6A. And both
6 these appeals have been rescheduled to February 1st,
7 2017. And that's it from the staff, Mr. Chairman.

8 CHAIRPERSON HILL: Okay. Thank you. Then, if
9 that's good then if all those who are wishing to
10 testify today, if you would please stand so that the
11 secretary could administer the oath? Thank you.

12 MR. MOY: Good morning.

13 [Oath administered to the participants.]

14 MR. MOY: Ladies and gentlemen, you may
15 consider yourselves under oath.

16 CHAIRPERSON HILL: Good morning, everyone.
17 Just so everyone knows, as far as the agenda today,
18 we're actually going to go in order in terms of what
19 was listed, so the public meeting agenda, we're going
20 to follow -- there's nothing that's changing. So, if
21 you're here for a case now, you know when it should be
22 heard.

23 Mr. Moy, I suppose if you wouldn't mind
24 calling our first meeting case?

25 MR. MOY: Yes, sir. Thank you. With

1 pleasure. That would be -- this is a request for a
2 time extension to Application No. 18916B, B as in
3 Bravo, of 49th Street Developer, LLC., and participate
4 -- and this is property located at the intersection of
5 East Capitol Street Southeast, and 47th Street
6 Southeast, Square 5348, Lots 1 through 8. And
7 participating are yourself, Chairman Hill, Mr. Hart,
8 and Mr. Michael Turnbull.

9 CHAIRPERSON HILL: Okay, great. Thank you.
10 Is the Board ready to deliberate? Okay.

11 Okay. So, after reviewing the record, I mean,
12 I don't really have a lot to discuss with the Board in
13 terms of the extension. I mean, it has been extended,
14 I guess. My only thought is that this is the third
15 extension and so -- and the reason why is that it
16 seems that they -- originally, they missed the funding
17 cycle from DHCD, and they have, it seems, been given
18 indication from you know, DHCD to again continue to
19 try to move forward with this.

20 I thought that, you know, considering the
21 amount of affordable housing that is going to be
22 generated from this, I mean, I didn't really have an
23 issue with extending the -- you know, approving the
24 extension.

25 I guess the only kind of comment that I did

1 see, there was not a formal report from ANC 7E,
2 although the applicant's statement included a letter
3 of support from the ANC 7E Chair.

4 Do you all have any thoughts?

5 MR. HART: Yeah, I -- excuse me. After having
6 reviewed the record myself I didn't see really any,
7 any issues with this beyond the issue that you raised,
8 which was the ANC report. It didn't sound like there
9 was going to be really a lot of opposition to this,
10 and I think we can you know, move forward with the --
11 I would vote for approving the application as filed.

12 CHAIRPERSON HILL: Okay.

13 MR. TURNBULL: Yeah, after reading the record
14 also, I would agree with the two of you. I think it's
15 a significant housing proposal and I think funding is
16 always tight for something like this, so I would be in
17 favor of postponing it one more time or allowing them
18 to extend, to go for an extra two years on this.

19 CHAIRPERSON HILL: Okay. Alright. Then I'll
20 go ahead and make a motion to approve Application No.
21 18916B of 49th Street Developer, as read by the
22 secretary.

23 MR. HART: Second.

24 CHAIRPERSON HILL: Motion has been made and
25 seconded.

1 [Vote taken.]

2 CHAIRPERSON HILL: The motion passes, Mr. Moy.

3 MR. MOY: Staff would record the vote as
4 three, to zero, to two. This is on the motion of
5 Chairman Hill to approve the request for a two-year
6 time extension. This is their first-time extension
7 request. Seconding the motion is Mr. Hart, and also
8 in support Mr. Michael Turnbull, and we have two seats
9 vacant, and motion carries.

10 CHAIRPERSON HILL: Alright. Thank you.
11 Summary order.

12 Alright. Mr. Moy, if you want to call our
13 next meeting case?

14 MR. MOY: That would be Application No. 19367;
15 19367 of Frank and Andrea Mirkow, and this application
16 was captioned and advertised for a special exception
17 relief under the rear yard requirements, Subtitle D,
18 Section 306.1, side yard requirements, Subtitle D,
19 Section 307.1, which would construct a rear second-
20 story garage addition in an R-1-B Zone, 4831 Alton
21 Place Northwest, Square 1498, Lot 821.

22 And participating on this decision is the
23 Chair, Chairman Hill, Mr. Hart, and Mr. Anthony Hood.

24 CHAIRPERSON HILL: Alright. Great. Thank
25 you. Are we ready to deliberate, Mr. Hart?

1 MR. HART: The two of us?

2 CHAIRPERSON HILL: Yeah, the two of us because
3 Mr. Hood is an absentee.

4 I actually had, I guess, you know, a little
5 bit of difficulty with this in that I was torn in that
6 the people who are in opposition are, you know,
7 immediate neighbors or this particular project.
8 However, they did meet with the ANC Commissioner and I
9 thought that it was really great that the
10 Commissioner, I guess is Amy Hall, could meet with the
11 two members in opposition, as well as the people who
12 are trying to -- who are, you know, the applicant.

13 And I guess what it kind of continued to --
14 and this has happened, you know, this is constantly
15 something that happens with these special exceptions,
16 in terms of like what one considers unduly affected,
17 you know. And like, so light and air or privacy. And
18 obviously, you know, the people who are right next
19 door are going to have a much more -- depending, not
20 always, but you know, interest in a vehement response
21 as to what is being built next door to them.

22 I had hoped that after the initial hearing and
23 after the meeting that the applicant and the two
24 people in objection would have been able to get to a
25 place that all were feeling good about the project.

1 I guess the ANC, they did come through with
2 conditions that they found that made the project not
3 unduly affected, wherein they were retaining the
4 existing five-foot one-inch distance from the eastern
5 property fence. They are now, you know, doing
6 frosting the top windows of the proposed structure, so
7 as to minimize light pollution to the east, offering
8 the opponents their choice of a flat or slanted roof
9 for the proposed structure, offering the opponents the
10 option of requesting landscaping screening on the west
11 side if so desired, and then installing down-spouts
12 and water collection barrels on the proposed
13 structure.

14 The Office of Planning, you know, they have
15 gone over the application and they are the one -- or
16 you know, they're ones that I also turn to quite a bit
17 to help me understand what is unduly affected. You
18 know, again, if I am the next door neighbor I'm going
19 to find it much more different than perhaps the Office
20 of Planning would find it.

21 And so, the Office of Planning, again was in
22 approval of this and, you know, if you kind of turn to
23 their report and they really clearly outline how the
24 light and air available to neighboring properties
25 shall not be unduly affected. And then they go

1 through, you know, and clearly indicate why they
2 believe that that's not the case. The privacy of use
3 and enjoyment of neighboring properties shall not be
4 unduly compromised. Again, they go into great detail.

5 The addition of accessory structures, together
6 with the original building as viewed from street,
7 alley, and other public ways shall not substantially
8 visually intrude upon the character and scale and
9 pattern of houses along the subject street frontage.
10 And again, they go into great detail as to why they
11 don't think that that is an issue.

12 I guess I'm -- you know, I lean towards
13 approving this due to the fact that the ANC
14 Commissioner has met with the opponents and has done
15 their best to try to come to a resolution, and really
16 that the ANC has voted to approve this. So, I
17 basically am at a point where the ANC is voting to
18 approve, the Office of Planning has voted to approve,
19 and have outlined why. And unfortunately for me I
20 just feel disappointed again that the neighbors are
21 not able to sign off on the property.

22 So, I guess at this point I'm leaning towards
23 approval, but that's what I was kind of -- how I got
24 to that point.

25 MR. HART: Yeah, I think it is a difficult

1 case in -- with respect to the applicant not being
2 able to reach a kind of a consensus with the adjacent
3 neighbors, but I also look at the -- and I guess you
4 have to weigh the issues that were originally brought
5 up by the ANC, and how the applicant has sought to
6 address those issues. And as you raise, the Office of
7 Planning has done a thoughtful review of this project
8 and indicated that it would -- that it should be
9 approved.

10 And at our last hearing I think there was some
11 confusion about what was being kind of proposed in
12 some of the drawings. I think a lot of that has
13 actually been submitted to us in subsequent documents,
14 and I think that that's helpful in kind of making my
15 mind up and I think that I could also support the
16 application as it is now before us.

17 I, you know, understand that people may not --
18 may disagree about that. But I think that looking at
19 what is being requested and the work that the
20 applicant, through their architect has undergone
21 through the project, would -- should lead us to an
22 approval for this application. So, I think that the
23 work has been helpful in leading us to that, that
24 decision. So.

25 CHAIRPERSON HILL: Okay. And it's always

1 disappointing when there are people that are in
2 opposition that were unable to come to the table
3 together and obviously, it really affects the people
4 that are nearest to the property. But again, for me,
5 based upon all the analysis that the Office of
6 Planning has given, that the work that the ANC has
7 done, the work that the applicant has done, I would go
8 ahead and make a motion to approve Application No.
9 19367 as read by the secretary.

10 MR. HART: Seconded.

11 CHAIRPERSON HILL: Motion has been made and
12 seconded.

13 [Vote taken.]

14 CHAIRPERSON HILL: And now we'll see what
15 happens, Mr. Moy.

16 MR. MOY: Yes. Mr. Chair, as you said, I do
17 have in hand an absentee ballot from Anthony Hood, and
18 his vote is to approve with such conditions as the
19 Board may impose, so that would give a final vote of
20 three, to zero, to two on your motion, Chairman Hill,
21 to approve the application for the special exception
22 relief. And seconding the motion, Mr. Hart. Two
23 seats vacant. Motion carries, three, zero, to two.

24 CHAIRPERSON HILL: Thanks, Mr. Moy. Can we do
25 a summary order with that?

1 MR. MOY: Yes, we can.

2 CHAIRPERSON HILL: Thank you.

3 MR. MOY: The next and last decision-making,
4 or cases on the public meeting session is Application
5 No. 19401 of 3645 Warder, W-A-R-D-E-R, LLC. And this
6 application was captioned for special exception relief
7 under the RF use requirements, Subtitle U, Section
8 320.2, which would permit the conversion of an
9 existing one-family dwelling into a three-unit
10 apartment house, RF-1 Zone, 3645 Warder Place
11 Northwest, Square 3034, Lot 279.

12 And participating on this application, Mr.
13 Chair, is yourself, Chairman Hill, Mr. Hart, and Mr.
14 Robert Miller.

15 CHAIRPERSON HILL: Alright. Is the Board
16 ready to deliberate?

17 MR. HART: Yes.

18 CHAIRPERSON HILL: So, what I wanted to start
19 to talk about, I suppose, Mr. Hart, is we did hear
20 this. I think it was last week. I'm not sure if it
21 was last week or not.

22 And there were some issues that I guess the
23 Office of Planning had kind of raised in terms of some
24 of the drawings or wanted to see more specificity with
25 some of the drawings. And you also had some questions

1 concerning the drawings that you were also interested
2 in looking at.

3 There was also something about a little corner
4 of an in-fill that I was interested in hearing from
5 the neighbor that they understood that that was
6 actually taking place because it wasn't necessarily
7 clear to me that the neighbor understood that.

8 I do see that, you know, from the record that
9 there's an e-mail, which is all I really needed in
10 terms of reaching out to that neighbor. And so,
11 again, that was basically the only real question I had
12 from last week. And so, I would be interested to hear
13 about your thoughts on the drawings and whether you're
14 satisfied.

15 MR. HART: Yeah, Mr. Chair. I have looked at
16 the filings for the case several of the drawings
17 actually. Really what we were looking for, or what I
18 was looking for were an indication on the elevations
19 of some of the details around some of the windows,
20 some of the railing on the front, on the porch. There
21 was a door that had side lights and a transit light
22 that was -- that were being removed. Or at least
23 being replaced with just a single door.

24 And, the architect, last week, noted that they
25 would be able to make the changes and actually to

1 indicate on the elevations, the details that were
2 existing on the building. And I have reviewed the
3 drawings and I think that the -- I appreciate the
4 details being added to the drawings. It helps us know
5 kind of exactly what is before us, and these details
6 are important because if you look at all of the other
7 kind of buildings, all the houses along the street,
8 the ones next door and down the street, they had these
9 details and it would have been a shame to kind of lose
10 them and I wasn't sure if it was just a drawing issue
11 or if it was these design elements, these decorative
12 elements were going to be lost. And that would have
13 been shame if they were.

14 These -- happy to say that they are actually
15 not lost. They are being indicated, and there are a
16 lot of drawings and notations about what's being
17 retained from the original façade. So, this was
18 primarily on the front façade, but the other facades
19 had details as well.

20 I also concur with the e-mail regarding the
21 kind of light and air aspect, because of that little
22 addition, if the next-door neighbor was aware of that
23 and it seems that they are very much aware of that.
24 So, I think that that's no longer a concern.

25 So, with that, I would be happy to make a

1 motion to approve this application for the special
2 exceptions that were being sought.

3 And it was -- that's Application No. 19401.

4 CHAIRPERSON HILL: Alright, great. I'll
5 second that. Motion has been made and seconded.

6 [Vote taken.]

7 CHAIRPERSON HILL: And before we read Mr.
8 Miller's I guess that I just did want to mention, Mr.
9 Hart that last week you had questions about the design
10 and I'm glad that you're satisfied with the drawings.

11 Mr. Moy.

12 MR. MOY: Yes. Thank you, Mr. Chairman. I do
13 have an absentee ballot from Mr. Robert Miller. And
14 his absentee vote is to approve with such conditions
15 as the Board may impose, so that would give a final
16 vote of three, to zero, to two. This is on the motion
17 of Mr. Hart to approve for the special exceptions that
18 were requested. Seconding the motion, Chairman Hill.

19 And of course, also in support, Mr. Rob Miller.
20 Motion carries, sir.

21 CHAIRPERSON HILL: Alright, great. And then
22 we do a summary order.

23 MR. MOY: Yes, sir.

24 [Pause.]

25 CHAIRPERSON HILL: Alright, Mr. Moy, and

1 members of the Board, just before we move on to our
2 hearing cases, there was going to be a reconsideration
3 for a hearing and it was Application No. 19387 of
4 Graham Smith and Alexis Daio. And the request for
5 reconsideration came from the ANC, and you know, we
6 were prepared to go ahead and work through that.
7 However, the ANC went ahead and withdrew their letter
8 for reconsideration. So, I just wanted to mention
9 that on the record. It is actually in Exhibit 71, and
10 the -- actually, in the letter, the top of the letter,
11 the heading has the withdrawal of request to reopen.
12 And then in the cover letter of 71, again, Exhibit 71
13 again, speaks specifically to their withdrawal.

14 So, since they're withdrawing it, that is why
15 we're not moving forward with that. So, I just wanted
16 to kind of mention that.

17 And then, Mr. Moy, if you want to go ahead and
18 call our next hearing case when you get a chance, that
19 would be great.

20 MR. MOY: Yes, sir. Thank you, Mr. Chairman.
21 Parties to the table to Application No. 19403 of
22 Grant Barker, and as captioned and advertised for
23 special exception relief under the height requirements
24 of Subtitle E, Section 5203.1. This would permit the
25 conversion of an existing two-story, three-unit

1 apartment house into a three-story, four-unit
2 apartment house, RF-1 Zone, premise is 821 Randolph
3 Street Northwest, Square 3027, Lot 85.

4 CHAIRPERSON HILL: Good morning. If you could
5 please just go ahead and introduce yourself, and tell
6 me your home address, that will be great. Thank you.

7 You just push the, push the button there, down
8 right there and the green light will come on.

9 MS. ROY: I'm Patricia Roy. I live at 819
10 Randolph Street Northwest.

11 CHAIRPERSON HILL: Alright.

12 MR. BARKER: I'm Grant Barker. I live at 821
13 Randolph Street Northwest.

14 CHAIRPERSON HILL: Alright. Mr. Barker, I'm
15 not going to need a really long presentation from you
16 today, but I would like to hear a little bit about
17 your application and what you're requesting and then
18 also how you meet the standard, and then we can start
19 to work through the hearing as well, and hear from the
20 Office of Planning.

21 MR. BARKER: Okay. The application is to
22 renovate the property by adding a new floor on top.
23 The height requirement, the current ceiling is five
24 feet high, and I would like to extend that up, but
25 doing so would put me past the 35-foot roofline

1 requirement that just got imposed on properties in my
2 zone in May or something like that. Both of my
3 adjoining -- both of the adjoining properties have
4 roof heights of 40 feet and that's what I am applying
5 for.

6 CHAIRPERSON HILL: Okay. I know that, I think
7 some board members have some questions for you. Does
8 the Board have any questions right now?

9 MR. TURNBULL: Yeah. Mr. Chair, thank you. I
10 just, my first question is, I'm confused as to what
11 this dwelling really is. Mr. Moy read a description
12 of it, but the Office of Planning does -- from the
13 drawings, this looks like a two-flat, not an apartment
14 house in an RF zone. So, I'm confused as to what --
15 is this really a two-flat? It talks about a --

16 MR. BARKER: I'm not sure what a two-flat is,
17 but it's a --

18 MR. TURNBULL: Two dwellings in it. There's
19 one in the basement and then there's one -- the
20 drawings don't seem to show that there's actually more
21 than two dwellings. It looks like you're extending on
22 to this third floor from the unit down below, so
23 you're -- it doesn't look like there's a separate
24 access down to ground floor.

25 MR. BARKER: So, from the front of the house

1 you can go downstairs to the basement.

2 MR. TURNBULL: Right.

3 MR. BARKER: And then that's -- you're stuck
4 there. Or, you can go upstairs. And if you go
5 upstairs you have the first floor, or inside there you
6 can go up to the second floor and those are both
7 separate units.

8 MR. TURNBULL: Okay. I guess my question is,
9 OP did not mention anything about an apartment house,
10 or relief in an RF zone. So, I'm just curious as
11 to -- we'll have to get to the Office of Planning on
12 that then.

13 CHAIRPERSON HILL: Alright, Mr. Barker, I am
14 actually going to turn to the Office of Planning in a
15 second. But, Mr. Hart, do you have anything for the
16 applicant at this point? Alright.

17 Then, in that case I will go ahead and turn to
18 the Office of Planning and then perhaps we can get
19 some answers from there as well to Mr. Turnbull's
20 question.

21 MR. GOLDEN: Good morning, Mr. Chair, Board
22 Members. Bryan Golden with the Office of Planning.
23 So, this application was self-certified and the only
24 request that was -- the only relief that was requested
25 was for the height and there was no mention of an

1 additional unit. So, it would have been considered
2 existing.

3 MR. TURNBULL: Well, my question is that this,
4 then, is an apartment. Apartment building in an RF
5 zone, a two-flat zone, and you're saying they don't
6 need any relief for their -- this is --

7 MR. GOLDEN: We'd have to look into that
8 again.

9 MR. TURNBULL: My feeling is, you're not ready
10 to really -- you haven't really looked at this. I
11 think if this is an apartment building in an RF zone,
12 I think it -- there could be relief needed. I mean,
13 you've got a -- I think we have an issue about not
14 just the height. I just think the occupancy of the
15 dwelling unit then.

16 MR. GOLDEN: So, existing is three units,
17 which would make it an apartment house, existing?

18 MR. TURNBULL: I don't think it is three
19 units. Is it two units or three?

20 MR. BARKER: It's three.

21 MR. TURNBULL: Existing three units?

22 MR. BARKER: Uh-huh. It has been for time and
23 memorial.

24 MR. TURNBULL: Well, I guess the drawings
25 don't show a first-floor plan. At least I don't see a

1 first-floor plan. I see a basement plan existing,
2 which shows what is a kitchen with two bedrooms, or
3 four bedrooms. I see a first-floor plan which looks
4 blank. I see a stairs on the second floor existing,
5 going up to what's basically four bedrooms, with a
6 small kitchen on the side.

7 So, are you telling me that the first floor is
8 a totally separate -- I mean, we don't really have a
9 first floor plan.

10 MR. BARKER: Yeah, so the first floor plan, I
11 don't know why it's blank, other than that maybe he,
12 my architect, just didn't think it was important to
13 include because it's not in scope for the project.

14 MR. TURNBULL: Well, your architect is wrong.

15 MR. BARKER: But, I can just tell you it's
16 very much like the third floor, except one of the
17 bedrooms is really, it's not a bedroom, it's the entry
18 way. And there are stairs going up there. So, it's
19 exactly like -- I'm sorry, exactly like the second
20 floor existing.

21 MR. TURNBULL: The first floor is exactly like
22 the second floor existing.

23 MR. BARKER: Yeah, except that bedroom that's
24 in the front that has the stairs. It's the entryway.

25 CHAIRPERSON HILL: So, on the first floor

1 there's three bedrooms?

2 MR. BARKER: Yeah.

3 CHAIRPERSON HILL: And this is what I guess I
4 need clarity from the Office of the Attorney General I
5 -- actually, I can ask any of them.

6 [Pause.]

7 CHAIRPERSON HILL: Okay. Mr. Barker, did you
8 speak with the Zoning Administrator before you self-
9 certified?

10 MR. BARKER: No.

11 CHAIRPERSON HILL: Okay. So, I mean, I'm fine
12 with the self-certification and what the Office of
13 Planning has talked about, I mean, as far as the
14 Boards are concerned. I mean, you know, when you go
15 to get your permits, if you need something else
16 they'll let you know then, and then you'll be back
17 before us if that's what ends up happening.

18 So, however, Mr. Turnbull, if you'd like to
19 see more drawings before we do that, then -- and I'm
20 also fine with that.

21 MR. TURNBULL: No, my question is, if this is
22 an existing use that goes back to 1958, that's been up
23 since then and he's got an occupancy permit that goes
24 back that far, that's one thing. If this is fairly
25 recent then I don't know, I think some questions

1 should have been raised about it. I mean, I'm not
2 sure if it's recent, new or --

3 MR. HART: Yeah, just kind of following on the
4 question, and I don't know, maybe this is a question
5 for OP, regarding the IZ. And is there inclusionary
6 zoning that needs to happen with this, with this case,
7 if it is four units? I mean, what's the cut-off for
8 it?

9 CHAIRPERSON HILL: It's only three, I guess.
10 Well --

11 MR. GOLDEN: I think it is four units, but I
12 would have to check for the RF zoning.

13 MR. HART: I mean, I think I'd rather have
14 some kind of clarity from the Office of Planning
15 before kind of making a determination on all this,
16 just so that we have an understanding and we're kind
17 of knowing what we're -- I mean, it doesn't seem like
18 there is -- there are a lot of good things that are
19 going on with this, so that's less of an issue. I
20 think some of it is just understanding what it is that
21 we have before us.

22 CHAIRPERSON HILL: Okay. So, what is the
23 clarification you'd like specifically from the Office
24 of Planning. And then also, Mr. Turnbull, if you
25 could clarify what you're asking of, of the Office of

1 Planning. And, Mr. Barker, this is going to help for
2 you is if there is an issue with the way you've
3 submitted your application, you might as well find out
4 now.

5 MR. BARKER: Well, if we're having trouble
6 with the number of units, if that's the issue. No.
7 Okay.

8 MR. TURNBULL: Well, in a way, yes. I am.

9 CHAIRPERSON HILL: Okay. So, why don't you
10 ask your question real quick just -- because what is
11 it that you'd like from the Office of Planning?

12 MR. HART: Just really understanding if there
13 are any inclusionary zoning issues that are raised
14 with a fourth unit. I'm just making sure that that's
15 -- that that is actually clear. If they're not,
16 that's fine, but it's just helpful to have that
17 information before we make a final decision.

18 CHAIRPERSON HILL: And, Mr. Turnbull?

19 MR. TURNBULL: Yeah. And again, I would like
20 to know when this building was an apartment building,
21 and if the Office of Planning has looked at that in
22 regard to the fact that it's an RF zone. It's a two-
23 flat. It's zoned. Now, it's an apartment house.
24 When it became an apartment, I think we need to know
25 the -- how that relates to where we are right now,

1 today in this. That if it was a three-unit apartment
2 house and it's been that way since '58, that's one
3 thing. And I think trying to increase the apartment
4 house in an RF zone is a question we need to look at.

5 And if OP -- I mean, it's nonconforming with the zone
6 as far as the use, and I'm just thinking if we're
7 trying to worsen the condition for the neighbors by
8 adding another apartment, needing it for another car
9 for the area, there are issues with making an
10 apartment building in a two-flat zone.

11 So, I just think OP needs to look at that in
12 relationship to the impact on the neighborhood.

13 CHAIRPERSON HILL: Does the Office of Planning
14 understand what's being asked of it?

15 MR. GOLDEN: Yes, we can get you that
16 information.

17 CHAIRPERSON HILL: Okay.

18 MR. TURNBULL: And I'd like to see the first
19 floor plan. I think that ought to be submitted.

20 CHAIRPERSON HILL: Okay, and I also would like
21 to see that as well.

22 MR. GOLDEN: Okay.

23 CHAIRPERSON HILL: So, we are going to come
24 back, but you can go ahead and we're going to continue
25 to ask you questions, going to continue to move

1 through the hearing. But those are a couple of things
2 that we're going to need from the Office of Planning.

3 Let's see. Okay. So, is there anything else
4 you'd like to mention right now?

5 MR. BARKER: I just wanted to state that the
6 application is for a request from the -- for a
7 variance from the ceiling height. It's not about four
8 units, and nothing in the language I submitted to the
9 Board of Zoning Appeals mentioned anything about four
10 units. That was language that you guys came up with
11 about what you assumed my intended use would be. So,
12 I just wanted to --

13 CHAIRPERSON HILL: Okay.

14 MR. BARKER: -- state that.

15 CHAIRPERSON HILL: Okay.

16 MR. TURNBULL: So, you have a three-unit then?

17 MR. BARKER: I have a three-unit and my
18 request is to add another floor to the third unit.

19 CHAIRPERSON HILL: So, it will remain a three-
20 unit?

21 MR. BARKER: That was -- that's what -- that's
22 what I submitted. That was my application.

23 MR. TURNBULL: Alright. Okay. Well, if we
24 could clarify all of that. I think that needs to
25 be --

1 MR. BARKER: Yeah, it wasn't until I got to
2 the ANC meeting and read what my statement of
3 application was that I was like, oh.

4 MR. TURNBULL: That's not correct. Okay.

5 MR. BARKER: That's not -- okay, if they're
6 going to give me four units I'll take it but --

7 CHAIRPERSON HILL: Right. No, because that's
8 what's kicking you into another conversation here.

9 MR. BARKER: Yeah. Yeah.

10 CHAIRPERSON HILL: Is that your --

11 MR. BARKER: That's what I was afraid of.

12 CHAIRPERSON HILL: -- application asks for a
13 four-unit apartment house. And so, let's go ahead and
14 clear that up.

15 MR. BARKER: Yeah, if you read this statement
16 of the applicant --

17 CHAIRPERSON HILL: Work with the Office of
18 Planning.

19 MR. BARKER: -- it doesn't say anything about
20 that.

21 MR. TURNBULL: I mean, I think we need to
22 establish if this is a three-unit, if it's a
23 nonconforming use within the zone and it's been that
24 way for quite a while, I think we just need to
25 establish that.

1 MR. BARKER: Okay, yeah. I don't think it's
2 nonconforming because when I went to get my
3 certificate of occupancy I didn't have to do anything
4 special there. They just gave it to me.

5 MR. TURNBULL: Well, let's have Office of
6 Planning look at that then, too.

7 CHAIRPERSON HILL: So, Mr. Barker, if you can
8 after this, just work with the Office of Planning --

9 MR. BARKER: Sure.

10 CHAIRPERSON HILL: And make sure your
11 application is asking for what you actually want, and
12 then if the Office of Planning could go ahead and
13 submit the revised report with the questions from Mr.
14 Turnbull and Mr. Hart. And then also, we can get the
15 first-floor drawings from you, Mr. Baker (sic), that
16 would be great.

17 MR. BARKER: Sure.

18 CHAIRPERSON HILL: Okay. So, I'm going to
19 keep moving through the hearing here. Is there anyone
20 here that's wishing to speak in support of the
21 applicant? Well, first of all, I'm sorry. Is there
22 anyone here from the ANC?

23 Okay. Is there anyone here wishing to speak
24 in support of the application? Alright. Is there
25 anyone here wishing to speak in opposition of the

1 application? Alright. Okay.

2 So, then there you go. And I'm sorry, your
3 name again was Ms. Roy?

4 MS. ROY: Patricia Roy.

5 CHAIRPERSON HILL: Ms. Roy. Okay, great. So,
6 Ms. Roy, we're going to go ahead and give you three
7 minutes to tell -- oh, there's other people. Okay,
8 great. Please come forward. I didn't see you guys.
9 I'm sorry.

10 Good morning. If you could please introduce
11 yourselves? You just have to turn on the microphone
12 there. Pull the microphone down and there's a little
13 button that says push and then the light will come on.
14 If you could just give me your name and your address?
15 And also, did you fill out your witness cards?

16 MS. MUNOZ-KING: No.

17 CHAIRPERSON HILL: Okay. So, there's two
18 witness cards. There should be some, or maybe the
19 transcriptionist can give them this. Okay. If you
20 could just fill two of those out and then please give
21 them to the transcriber there to my right?

22 And then also, did you get sworn in this
23 morning?

24 [No audible response.]

25 CHAIRPERSON HILL: Okay. Alright. Let's see.

1 Let's swear you in first. Okay. And, Ms. Roy, you
2 did get sworn in this morning?

3 MS. ROY: Yes, I did.

4 CHAIRPERSON HILL: Okay. Great. If you
5 wouldn't mind standing please, and just take the oath
6 here that Mr. Moy is going to give? Thank you.

7 MR. MOY: No, you can stand where you are.
8 Does anyone else need to be sworn in?

9 CHAIRPERSON HILL: Yeah, has anyone else
10 missed the swearing in that needs to stand and swear
11 themselves in? Okay. Alright. Thank you.

12 [Oath administered to the participants.]

13 MR. MOY: Thank you.

14 CHAIRPERSON HILL: Okay. Alright. Let's see.
15 So, if you could go ahead please, and introduce
16 yourselves and tell us where you live?

17 MS. MUNOZ-KING: My name is Mireya Munoz-King,
18 and I live at 816 Shephard Street Northwest.

19 MS. LYLES: My name is Kimberly Lyles. I live
20 at 818 Shephard Street Northwest, Washington, D.C.

21 CHAIRPERSON HILL: Okay. Great. Let's see.
22 And so, as you're going through your presentation, I'm
23 going to give everyone three minutes to speak. If you
24 don't mind telling me at the beginning kind of where
25 you are in relationship to the property that would be

1 great. Okay? Ms. Munoz, you want to go first? Okay.

2 MS. MUNOZ-KING: My house is the back yard. I
3 have a garage that my husband built a couple of years
4 ago, and it just sit to the back of 821 Randolph.

5 MS. LYLES: Her house is directly behind hers.

6 CHAIRPERSON HILL: Okay. Okay. Alright.
7 Okay. So, please, go ahead. I'm going to give you
8 three minutes, all right?

9 MR. TURNBULL: So you're --

10 CHAIRPERSON HILL: I'm sorry.

11 MR. TURNBULL: If there's an alley in the back
12 you're on the other side?

13 MS. MUNOZ-KING: It's an alley, yes.

14 MR. TURNBULL: And you're on the other side?

15 MS. MUNOZ-KING: Yeah. Yeah.

16 MR. TURNBULL: Okay.

17 MS. MUNOZ-KING: On the alley. I'm more merry
18 today because I was reading the notice that was sent
19 to me, and this notice is saying that the existing
20 two-unit apartment, it's of an existing two-story,
21 three-unit apartment house into three-unit story,
22 four-unit apartment house, and I am a little confused
23 into with the information. And I as I was listening
24 to you all also, okay. So, that's one thing.

25 The other thing is that I was -- I been living

1 there for 25 years. No, on the 22nd of January. And
2 I remember when some renovation was done by the former
3 owner of that house. Maybe, maybe close to 10 or 12
4 years, something like that. And I know that they made
5 an extension at the back of the house, okay, into an
6 apartment. I believe that was it.

7 They have a garage also, but why I'm here now
8 is because of two things. Parking. Parking has
9 become crazy in a way that I have a two parking space
10 in the back and sometime I can't even go to the alley
11 to park my car.

12 Second, I have picture here that I've taken of
13 the trash can. I know there's a law that you have to
14 have your trash cans inside of your yard, and when you
15 know that the trash can is going to come, the day that
16 it's going to come you are supposed to put your trash
17 can outside for -- you know, if you have a closing
18 yard you put it outside for the trash can. People to
19 come and pick up the trash.

20 Well, for some reason 821 Randolph Street,
21 they have their trash, I have pictures here, that they
22 keep their trash outside at their area, their line.
23 And it's always on the right side, or left side, I
24 will say, of the garage storage facility that is owned
25 by someone else.

15 And also, the trash is becoming crazy with the
16 new people that are coming in. We need to educate
17 them with the law about how the trash is to be
18 collected and what is -- how we're supposed to keep
19 our trash can inside the yard, and they should be
20 covered.

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1 supposed to be in plastic bag. If you have bulk trash
2 you're supposed to call labor, works -- what is it?
3 Department of Labor or Works, I think, where they come
4 and pick up your bulk trash.

5 You know, everything there is a way, a matter
6 to do things and I don't know if my time is gone, but
7 that's why I'm here. This is my concern, that
8 sometime if I park my car I don't park -- I have a van
9 and I don't park it much because it's kind of
10 difficult coming out of my garage when the trash cans
11 are there.

12 CHAIRPERSON HILL: Okay. Okay.

13 MS. MUNOZ-KING: Sometimes I have to move
14 them.

15 CHAIRPERSON HILL: Okay.

16 MS. MUNOZ-KING: Okay.

17 CHAIRPERSON HILL: Alright. Thank you, Ms.
18 Munoz.

19 MS. MUNOZ-KING: And I have picture here. I
20 have picture here as evidence.

21 CHAIRPERSON HILL: I think we got -- that's
22 okay. Well, you can speak with the secretary as to
23 how to --

24 MS. MUNOZ-KING: Okay.

25 CHAIRPERSON HILL: -- offer that into the

1 record. I mean, there are photographs here, I think,
2 that speak to what you're talking about in Exhibit 6.

3 MS. MUNOZ-KING: Okay.

4 CHAIRPERSON HILL: And, Mr. --

5 MS. MUNOZ-KING: Can I say something else that
6 I forgot?

7 CHAIRPERSON HILL: Okay.

8 MS. MUNOZ-KING: I've noticed that people that
9 are living presently in that unit, they come from the
10 front to put the trash in the back. That mean that
11 they don't have an exit. They don't have a -- they
12 should have an exit coming from the back of the house
13 to put the trash. Why do they come from the front --

14 CHAIRPERSON HILL: Okay.

15 MS. MUNOZ-KING: -- and put the, lay the
16 trash --

17 CHAIRPERSON HILL: Okay. Okay. Okay. Okay.
18 Okay. No, we'll ask questions.

19 MS. MUNOZ-KING: Okay.

20 CHAIRPERSON HILL: And, Mr. Barker, if you
21 also just want to kind of take note because we're just
22 going to ask some questions about some of the things
23 that get brought up, okay?

24 Are you in the property now, or are you just
25 developing it or renting it?

1 MR. BARKER: I live there.

2 CHAIRPERSON HILL: Okay. Alright.

3 MR. BARKER: I've lived there since --

4 CHAIRPERSON HILL: So, you're one of the
5 three?

6 MR. BARKER: -- I purchased it.

7 CHAIRPERSON HILL: You're one of the three
8 units?

9 MR. BARKER: Yeah.

10 CHAIRPERSON HILL: Okay. Alright. Great.
11 Alright. Let's see now, Ms. Lyles, if you could go
12 ahead?

13 MS. LYLES: Hello.

14 CHAIRPERSON HILL: Hello.

15 MS. LYLES: I have lived --

16 CHAIRPERSON HILL: Is your light on? Is your
17 light on there? Maybe?

18 MS. LYLES: Yes.

19 CHAIRPERSON HILL: Okay.

20 MS. LYLES: Hello?

21 CHAIRPERSON HILL: Yup.

22 MS. LYLES: I have lived on Shephard Street
23 since 1966. As she stated, the previous owner -- the
24 people that used to live there were my friends. So, I
25 know what the inside of the house looks like. The

1 previous owner put an extension on to the back of the
2 house. And when he put that extension on the rear of
3 the house, he did not make a rear exit. There was a
4 rear exit there, but when the previous owner built
5 that new extension on his home he did not put a rear
6 exit. So, as she said, the people do have to walk
7 from the front, around to the back to do the trash.

8 I live directly behind them. If they back out
9 of their back yard, straight, they would back into
10 mine, which has happened.

11 They're real bad with the trash. That is my
12 big issue. The trash cans are always in the alley,
13 often knocked over by either someone driving from
14 their house, or by the wind. When the trash is
15 knocked over, they have never picked those cans up.
16 I've picked those cans up more times than I can count
17 because the trash blows directly into my yard, because
18 I'm directly behind them.

19 The parking is an issue for me because I don't
20 know how many people live there. Several. I can only
21 say, I'm constantly seeing different people. I don't
22 know how many people live there, but I do know that
23 they only have four parking spaces in the back. We
24 have a problem with parking in our area because we're
25 like a block and a half from the subway. There have

1 been at least four new high-rise apartments built.

2 Two of them do not have parking.

3 On the block that we live in, in the 800 block
4 of Shephard Street, there are five homes. There are
5 only five families that live in that block, and we
6 can't find parking most of the time. So, with the
7 addition of however many more people they want to
8 bring in, is going to create a larger problem for me.

9 And also, like I said, they do work on their home.
10 When they do work on the unit they take the things out
11 back and they don't put it on their property. They
12 never take their trash cans in, but they, even when
13 they're out, they're not on their property. They're
14 on the property of the garage, which is next door to
15 them.

16 The owner of that garage has gotten fined
17 twice because of other people's trash, or whatever,
18 constantly sitting in front of her property.

19 Also, I would like to say that the house is
20 three levels. It has a basement and it has two upper
21 levels. If they build up, I'm sorry, but I won't be
22 able to see the sunrise. It will totally block the
23 sun and the stars because it's directly behind me.
24 So, I just have that issue. My main issue -- well, my
25 main two issues are the trash and the parking.

1 CHAIRPERSON HILL: Okay. Great. Thank you.
2 Ms. Roy.

3 MS. ROY: Yes. I would say, backing on what
4 she was saying, the trash is a real big problem,
5 period. Even in my side because they keep the trash
6 cans out in the alley --

7 MS. LYLES: Yeah.

8 MS. ROY: -- on my side, not your side but,
9 back up in there in that little --

10 MS. LYLES: In that side as well.

11 MS. ROY: -- cubby hole.

12 MS. LYLES: Yeah, I see them. Yeah, I see
13 them.

14 MS. ROY: I see them constantly put trash.
15 They keep everything out there. That's an issue.

16 But anyway, as far as the house being a three-
17 unit existing, three-unit back in 1958, that's not the
18 case because I've lived there since 2002 and the
19 gentleman before Mr. Barker purchased the house, he
20 then extended that extension on, and that was probably
21 in the last eight years, probably, I'm thinking.
22 Somewhere around that time.

23 But, that's not what I was -- my main issue
24 is, I don't have a problem with them building up. My
25 problem is them building out, because the way it stand

1 now, when they added that addition on a few years ago,
2 it extended way past my property. My property.

3 Now, what Mr. Barker is proposing is that when
4 he build that third floor -- by the way, I did read
5 something saying that existing three-unit turning into
6 a four-unit apartment. Somewhere. But, like I say,
7 everybody is doing it.

8 But my concern is when he builds out past all
9 the way out to the end of his current property, right
10 now you know, I have pictures that it shows that.
11 it's from the ground floor all the way up to the
12 second floor is just a wall. It's just a wall.

13 And when he builds up another nine feet,
14 that's going to completely box me in on my north,
15 east, and west side. I'm already boxed in. But by
16 him going up even higher it's going to really create,
17 I feel it will create a problem with my air flow, as
18 well as the, you know, creating shade in my area. And
19 because I was also concerned about -- because I had
20 planned on putting in solar panels in the future. But
21 if he's building up nine more feet, I feel that that's
22 going to create a problem as far as the shade blocking
23 my solar panels. If that would be the case. I don't
24 -- you know.

25 And the other thing is the privacy; invasion

1 of privacy. He have -- he wanted to put a deck on the
2 back side, and that would be overlooking my property
3 as well.

4 So, you know, and Mr. Jeremy, the guy who
5 lives next door to him, he also already put up a third
6 floor. But the way his is, you know, it doesn't
7 extend all the way out. You know, it's shorter. And
8 I have pictures of that too, to show that, you know,
9 the way it is.

10 So, you're right. It will -- I feel that it
11 will block my air flow, my sun, as well as my privacy
12 overlooking, you know, my property.

13 CHAIRPERSON HILL: Okay. Alright, great. So,
14 I know that we're probably going to have a bunch of
15 questions here. So, let's see. I'm going to start,
16 if that's all right.

17 Mr. Barker, you guys are allowed to go up 35
18 feet by right, and so you're asking for another four
19 feet, three inches above what you would have been able
20 to do.

21 Just, can you tell me real quick if you just
22 did the 35 feet, what does it do to your project?

23 MR. BARKER: It gives me like five and a half
24 foot ceilings, I think.

25 CHAIRPERSON HILL: Okay.

1 MR. BARKER: So, I can --

2 CHAIRPERSON HILL: In that top story? I don't
3 understand.

4 MR. BARKER: So, I have an attic. So, I have
5 an attic right now, an existing attic, and you can't
6 quite stand. I can't quite stand up in it. I could
7 extend that out the whole way which, by right, but I
8 just couldn't stand up fully.

9 CHAIRPERSON HILL: Okay. Alright. So, it
10 does change the project.

11 And then, let's see. As far as, you know,
12 some of the issues that you guys are bringing up, like
13 the applicant is here -- well, first of all, there is
14 confusion as to whether or not there's a fourth unit
15 or not, right? And so, that's what we're going to
16 clarify with the -- as you saw in the beginning, talk
17 with the Office of Planning and it seems like it might
18 have been an error on the applicant's side.

19 The other is, they're here just, again, for
20 the height. So, they can go to 35 feet by right, so
21 it's an additional four feet three inches that they're
22 asking for. I am going to address and talk about the
23 trash and parking. Some things are not really in our
24 purview in terms of things that we are able to I
25 guess, control to a certain extent. But definitely

1 want to hear about that and see if we can get to a
2 place where you all are more -- at least have an
3 opportunity to discuss the trash issues.

4 Did you guys go to the ANC meeting when they
5 were talking about this by any chance?

6 MS. ROY: We didn't.

7 CHAIRPERSON HILL: Okay. Did any of you go?

8 MS. ROY: No, I wasn't here at the time.

9 CHAIRPERSON HILL: Okay. Okay. And I know
10 this is unfortunate because the ANC is really like
11 where you know, you can go to the meeting and then
12 they have the full ANC. And so, your ANC did vote to
13 approve it. And unfortunately, didn't, I guess, get
14 the feedback from you at that time.

15 Yes, Ms. Roy?

16 MS. ROY: I've been trying to get in touch
17 with Mr. Timothy Jones for a long time and he's not
18 returning my calls.

19 CHAIRPERSON HILL: Is he your SMD from that --

20 MS. ROY: He's on the ANC, yes.

21 CHAIRPERSON HILL: The ANC for that SMD?

22 MS. ROY: He's the one that approved this
23 plan. Yeah.

24 CHAIRPERSON HILL: Okay. So, Mr. Barker, I
25 mean, you did get approval from the ANC. Can you tell

1 me about how that meeting went and just, what was the
2 opposition, you know, what was the -- if there was
3 opposition, how did that go?

4 MR. BARKER: There wasn't any opposition per
5 se. People had questions about what my intended use
6 was and what the history of the property was, and
7 about the parking situation, all of which I addressed
8 satisfactorily.

9 CHAIRPERSON HILL: When you say you addressed
10 the parking situation with them, how does that -- what
11 do you mean, you've addressed it.

12 MR. BARKER: Well, so, by, I think by zoning
13 law or whatever, I'm required to have one parking
14 space. I have four back there. They're two tandem
15 ones and I think people didn't realize that I had four
16 parking spaces, which is three more --

17 MS. LYLES: I said you had four.

18 MR. BARKER: -- spaces than -- right. I know.
19 I know. I'm just stating that it's three more than
20 are required for my --

21 CHAIRPERSON HILL: By the way, guys, let's all
22 try to just like kind of calmly talk. I mean, believe
23 me, I've got to let you know, I live in a condominium
24 and there's retail below me, and there's all kind of
25 issues that go on with our building and I know how hot

1 everybody gets. Let's just try to kind of relax.
2 He's outnumbered three to one right now at the table,
3 so let's just, you know, let's just kind of like --
4 but we're listening to everybody, okay?

5 So, but so, yeah. So, please, go ahead, Mr.
6 Barker.

7 MR. BARKER: Well, and also at the ANC they
8 brought up the fact that these high-rises were being
9 built with no parking and the fact that I don't think
10 anyone was there to protest these high-rises that have
11 like 16, 20 units.

12 CHAIRPERSON HILL: I understand. You're
13 saying that you're giving more parking already than
14 you need to give.

15 MR. BARKER: I'm giving more parking.

16 CHAIRPERSON HILL: Right. Right. So --

17 MR. BARKER: And I'm only asking for one extra
18 floor, not even an additional unit and nobody is
19 protesting these 16 --

20 CHAIRPERSON HILL: That's okay. We're just
21 trying to -- because in your application it seems like
22 you're asking for an additional unit. So, that's
23 why --

24 MR. BARKER: It seems like that.

25 CHAIRPERSON HILL: Right. So, that's why

1 people are also maybe coming out --

2 MR. BARKER: But if you read the
3 application --

4 CHAIRPERSON HILL: Well, in any case, the --
5 and I'm going to let my board members also have some
6 fun here in asking questions.

7 But the last one I had, so, concerning the
8 trash issue, for your neighbors. Do you have anything
9 to speak of in terms of the trash, and also this back
10 door exit and that no one can walk through to get to -
11 - they have to walk around to dump the trash?

12 MR. BARKER: So, there is a back-door exit.
13 Right, basement back door. We don't use it very
14 often. My friend who lives there, my parents don't
15 feel comfortable going through his living room to get
16 there, so we -- they just consider that his private
17 space.

18 CHAIRPERSON HILL: Okay.

19 MR. BARKER: So, so, they go around front.
20 And the people who live upstairs go around front
21 because there's no way to the back for them, which is
22 why, as part of this project, there is a deck on back
23 which would provide exits for all of the floors, out
24 to the back.

25 CHAIRPERSON HILL: So, that issue could be

1 resolved is what you're saying, in terms of people not
2 walking around the front.

3 MR. BARKER: Yes, that's part of what this
4 project is about, is having that deck.

5 CHAIRPERSON HILL: Okay. I'm going to let my
6 board members please --

7 MR. HART: Mr. Chair, yeah. I'm a little bit
8 confused by that last statement that you just made.
9 There are -- and maybe I'm just missing where the
10 stairs are, but you're not touching the first or
11 second floor. The first floor we don't know really
12 much what's in it because there's no actual image
13 that's there. But, if you look at the second floor,
14 the existing floor, there doesn't seem to be a -- any
15 stairs in the rear. And the third floor has a --
16 shows where the deck is, but there's no way to get
17 down from that --

18 MR. BARKER: Yeah, I'm sorry. This drawing
19 doesn't reflect the deck. What I actually want to do
20 is extend over and have a deck out the back. I'm
21 sorry, this drawing is a little bit old.

22 MR. HART: Are there -- so the drawing that --

23 MR. BARKER: We just didn't submit any
24 drawing.

25 MR. HART: -- you're talking about are not

1 reflected in -- there's no exhibit. That would not
2 be --

3 MR. BARKER: Right. There's no exhibit for
4 the deck, right.

5 MR. HART: So, I think it would be helpful to
6 -- I think some of the concerns that the -- your
7 neighbors have raised, and you know, one of the
8 reasons that this particular process is very helpful
9 for you is that while you've heard from the ANC, you
10 can now hear from your back door, the neighbors that
11 are behind you, the neighbors that are next to you,
12 and actually understand if there were some issues that
13 you -- they may not have been aware of the ANC
14 meeting, or they may have been sick, whatever.

15 Now, you're able to kind of hear some of these
16 concerns and then be able to kind of say well, maybe
17 this will make my project better and you can address
18 some of the issues that they have.

19 I think what is happening in some cases is
20 that the trash can problems may be because people
21 don't have direct access to the back, and so they are,
22 you know, like I've got to walk around the entire
23 building to actually pick up the trash can or
24 whatever, if they can have that access to the rear,
25 that may actually help them be able to -- the tenants

1 and the people that are in your building, be able to
2 get out to the back and be able to do whatever they
3 need to do to fix the trash cans and do that.

4 So, I'm hopeful that that can be addressed
5 through that. It would be also -- I think this is
6 probably one of the things that is good for your
7 process or your project, is that we do need to have
8 the most recent drawings. And, I'm trying to see what
9 the date is for these last ones. I can't find one.

10 But, it's helpful for us to have the kind of
11 the drawings that you have, so that then we can
12 understand what it is that we're approving, and what
13 we are deliberating on.

14 I think it might be helpful to at least have
15 some sort of -- so this is, I'm sorry, I'm moving to a
16 different issue. Your neighbor, Ms. Roy, raise an
17 issue about kind of light and air. And that the
18 addition that you are proposing, the kind of moving up
19 five feet or so, five or six feet, what that would do
20 in terms of causing a shadow on to her property if
21 that's greater or not. That may be helpful for us to
22 -- sorry, that would be helpful for us to have so that
23 we can understand what it is that that impact will be
24 on your adjacent neighbor. And it's just, again,
25 helpful for you to understand. You are living there,

1 you're likely going to be living there, assuming in
2 the future. And having neighbors that you get along
3 with is also very helpful because it's just, it is a
4 very good thing to do.

5 So, we would just suggest, I would suggest,
6 that you take the issues that they've raised to heart,
7 and understand that they're really trying to -- they
8 are concerned because they are neighbors and they live
9 there, and that you should be concerned as well
10 because there may be things that happen that someone
11 else does that impact you, and you can understand how
12 they're -- where they are coming from.

13 So, the issue about kind of where the sun kind
14 of, you know, hits on the adjacent neighbors, I'd
15 probably look at, you know, just different times
16 during the day.

17 Also, looking at the most updated drawings,
18 understanding where that rear access is, I was going
19 to ask you where that rear access was.

20 And also, kind of a curiosity, there's no
21 bathroom on the top floor, and I just thought that,
22 there was a bedroom up there, there were some other
23 rooms, but I just didn't know if that was missing on
24 purpose or just by accident.

25 MR. BARKER: The architect was actually just

1 going to leave that third floor space blank, since it
2 wasn't important for the height variance.

3 MR. HART: I mean, this is the floor that
4 you're actually -- I think that's the one that you're
5 popping up.

6 MR. BARKER: Right. The new one?

7 MR. HART: Yeah.

8 MR. BARKER: Yeah. I asked him not to put any
9 time into drawing something there if we didn't need it
10 for this variance, which he thought he didn't, just
11 because his time is so extremely expensive.

12 MR. HART: I understand. I guess it's -- I
13 guess what you're also hearing is because of the
14 issue, and I understand that it may not be a fourth
15 unit, but seeing floorplans helps us understand what's
16 actually going on, and if there is a fourth unit,
17 that's how we would understand that. If we don't have
18 the drawings, then we have to start guessing.

19 MR. BARKER: Right.

20 MR. HART: And that's not a good -- as you can
21 hear, not a good thing for us to do. So, it would be
22 helpful to have the floorplans for all the floors that
23 you're proposing, which would include that stairway,
24 wherever that stairway is on the rear of the building.

25 CHAIRPERSON HILL: So, before we go over to

1 Mr. Turnbull. So, just to keep track, like so Mr.
2 Hart was just asking for a shadow study for your
3 neighbors, I guess. And then also now we wanted to
4 get the architectural drawings for the first floor. I
5 suppose if you can really clearly show again where
6 this exit is that would be happening, concerning some
7 of the issues that your neighbors have brought up. I
8 mean, just clearly for me, just real quick like,
9 you're matching the roof line to the people that are
10 to your right and left, correct?

11 MR. BARKER: That's correct.

12 CHAIRPERSON HILL: Okay. And, Ms. Roy, are
13 you directly next door?

14 MS. ROY: Directly next door. And also, it's
15 not going to match my roof line because the individual
16 that's at 823, he's already extended a third floor up.
17 So, his proposal will match his roofline, and by
18 doing so both would be above my roofline.

19 And also, by him extending out, they're asking
20 an additional nine and a half feet on the back side of
21 the house, that he's -- the room that he's proposing.
22 By him going up nine and a half feet, already I'm
23 looking at a wall. Like this is my trees right here.
24 These are the -- this is the wall. So, he's asking
25 an additional nine and a half feet above this area,

1 which is going to totally block me in.

2 CHAIRPERSON HILL: Okay. Ms. Roy, is your
3 microphone on, first of all, just so it's easier for
4 the transcriptionist?

5 MS. ROY: Oh, I'm sorry.

6 CHAIRPERSON HILL: That's okay. Did you get
7 all that? Is that -- okay.

8 And then, the --

9 MS. ROY: So the space in the --

10 CHAIRPERSON HILL: Oh, I'm sorry. If you
11 could just, what you just held up, if you could submit
12 that into the record, and the secretary can help you
13 do that.

14 MS. ROY: Okay.

15 CHAIRPERSON HILL: And then, just again to
16 clarify, he can go up to 35 feet by right. He's just
17 going up another four feet above what he's able to do
18 by right. So, I mean, I know you guys are talking
19 about the nine feet.

20 MS. ROY: Yeah, I understand that, but the
21 fact that by him going up that amount of space it's
22 going to -- well, the actual extra five feet or so,
23 that's going to actually going to be above -- it's
24 going to be like three stories high, blocking me in on
25 that side.

1 CHAIRPERSON HILL: Okay.

2 MS. ROY: And the shade. And also, the deck
3 that he's talking about putting in is going to also
4 invade my privacy.

5 CHAIRPERSON HILL: Okay.

6 MS. ROY: Because it will be you know --

7 CHAIRPERSON HILL: Okay. Well, I mean again
8 like, what we look at is just the things that are for
9 this application, like we don't look at the deck.
10 We're just here for the height.

11 MS. ROY: The height, okay.

12 CHAIRPERSON HILL: You know. And so, and I
13 think you guys have made valid points as to why you're
14 opposed to --

15 MS. ROY: The height. Yeah.

16 CHAIRPERSON HILL: -- the height, and also but
17 you're now speaking again about trash and parking, but
18 -- so, Mr. Barker, again, if you could do the shadow
19 study and then the drawings.

20 And so, Mr. Turnbull, did you have some
21 questions?

22 MR. TURNBULL: Oh, thank you, Mr. Chair.

23 Regarding the parking, do you have RPP in this
24 area?

25 MS. LYLES: Yes.

1 MR. TURNBULL: You do have a permit?

2 MS. LYLES: Yes.

3 MR. TURNBULL: So, obviously still have some
4 scofflaws that park in your area that don't have a
5 permit if they're going to Metro.

6 MS. LYLES: Well, what we discovered is that
7 the people that park there to go to Metro, they have
8 permits. They come from --

9 MR. TURNBULL: Oh, they're from the -- oh,
10 okay.

11 MS. LYLES: The other --

12 MR. TURNBULL: They're in the neighborhood.

13 MS. LYLES: Other places in the neighborhood.

14 MR. TURNBULL: Yeah. Okay.

15 MS. LYLES: And they park on our street
16 because we mostly park out back because number one,
17 there was a police station -- there is a police
18 station across from us and we had an issue with them,
19 which was the reason that we applied for a residential
20 permit parking.

21 MR. TURNBULL: Right.

22 MS. LYLES: And, after we cleared up the issue
23 with them and we actually got our parking permit, as I
24 said, we all had got used to parking out back.

25 Our neighbors from other areas right there,

1 started coming and taking the parking spaces and
2 walking to the subway, so.

3 MR. TURNBULL: Yeah.

4 MS. LYLES: You know, parking is a big problem
5 right now in our area.

6 MR. TURNBULL: Okay.

7 MS. LYLES: Even though we only have five
8 families.

9 MR. TURNBULL: Thank you.

10 MS. MUNOZ-KING: Can I ask --

11 MR. TURNBULL: Slap my hands, I tell you.

12 MS. MUNOZ-KING: -- one question?

13 CHAIRPERSON HILL: Just one moment. Let Mr.
14 Turnbull go first. Thank you.

15 MR. TURNBULL: Mr. Barker, when you started
16 this did you talk with either neighbor on either side
17 of you or --

18 MR. BARKER: I talked to the neighbor on my
19 right about this and he was in support of it. He's
20 done the same thing with his property.

21 I actually didn't talk with Patricia. We have
22 a long history together. I overheard a conversation
23 with her and Jeremy, her saying that she wasn't going
24 to fight it. So, I was like, okay, well maybe I don't
25 have to worry about that. And then when I got through

1 the ANC I was like, okay, things are going to be okay.
2 So.

3 MR. TURNBULL: Yeah. Part of the problem, or
4 what happens when we get into these cases is that
5 you're asking for a specific certain relief that we're
6 looking to approve or not approve.

7 And, part of the issue that gets into this is
8 impacts, what does this impact your neighbors in
9 certain ways. And a lot of times that brings out
10 issues that are sort of not related to what you're
11 really looking for, but it does bring out issues. And
12 in this case of your neighbor, Ms. Roy, she's
13 concerned we've already asked for a shadow study, the
14 impact on light and air on her property.

15 And the other thing would be is that you're
16 not asking for a relief on your deck or anything, but
17 the deck is part of the project, not for the height
18 but as the overall building, is going to impact her
19 privacy.

20 So, I mean, a lot of these things tie in. I
21 mean, they're not directly related, but for us to look
22 at it, we're concerned about what, giving you the
23 ability to do this extra five feet is going to cause
24 on her and the other neighbors.

25 So, you need to take a look at some of these

1 issues. They're concerned about the four units versus
2 three units. OP is going to look at it. I mean, we
3 started looking at the impact of more units in the
4 neighborhood, trash in the area. It sounds like you
5 really need to solve your trash problem and deal with
6 that in a way that you can confine it or something so
7 it doesn't become an issue for these people.

8 But, again, that doesn't get -- it's sort of
9 an end-run around your main issue of your height. But
10 it's those kind of issues that come back to us and
11 say, is this something that maybe -- OP obviously
12 really hasn't -- didn't realize the impact on Ms. Roy.

13 So, I mean --

14 MR. BARKER: I'd like to address some of those
15 issues, if I could.

16 MR. TURNBULL: Alright. But what I'm saying
17 is that this leads to these other things. And so,
18 when you come to us we're, as I say, maybe if the
19 order or the description of what you wanted was wrong,
20 you could have maybe pointed that out to the BZA
21 secretary earlier and said, oh by the way, I think
22 there's a mistake here.

23 But anyways, it's those kinds of issues, and I
24 think the shadow study is going to be important for
25 us. I think the updated drawings, and I think you

1 need to definitely show exiting like that. I mean,
2 they're not totally related. They're part of the
3 overall aspect of asking for the additional height.
4 It brings us to a concern about how critical is this
5 and what you're trying to do. So, I mean, we need
6 these answers and if you want to answer some now, go
7 right ahead.

8 MR. BARKER: Sure. So, about the privacy
9 issue with the deck, the Office of Planning
10 recommended that I put a screen on the side and maybe
11 both sides of the deck, but certainly on her side.
12 I'm happy to do that. That's not a problem.

13 MR. TURNBULL: Okay. And I guess --

14 MR. BARKER: About the --

15 MR. TURNBULL: They're adjunct aspects of the
16 height. You need to address those and at least tell
17 us so that the -- I mean, if you've had a conversation
18 with OP that's one thing. But I think it would be
19 good for you to address that and what you're trying to
20 do here, and for the relief that you want.

21 MR. BARKER: Sure. Okay.

22 CHAIRPERSON HILL: Okay. So --

23 MR. BARKER: And I just want to say one thing
24 about the trash.

25 CHAIRPERSON HILL: Yeah. Just, yeah,

1 before --

2 MR. BARKER: Alright.

3 CHAIRPERSON HILL: I'm going to let everybody
4 talk again. Just give me one second again.

5 MR. BARKER: Okay.

6 CHAIRPERSON HILL: So again, now, the fencing
7 or -- what did you just say the Office of Planning had
8 mentioned for the --

9 MR. BARKER: Screening.

10 CHAIRPERSON HILL: Screening. Thank you. So,
11 what I'd like to see as you do kind of move forward, I
12 mean, and I'd like the Office of Planning to
13 specifically speak to the property. Ms. Roy, what's
14 your address again, please?

15 MS. ROY: 819 Randolph Street.

16 CHAIRPERSON HILL: Okay. If the Office of
17 Planning could again speak to that aspect in terms of
18 the light and air for Ms. Roy's property.

19 And then, if Mr. Barker, if you could maybe
20 submit a picture of -- I know the architectural
21 drawings that you have here, it seems to me that
22 you're just trying to match the two houses on either
23 side. But Ms. Roy seems to say that that's not the
24 case. So, I'm a little confused because it looks like
25 -- so, why is it not the case?

1 MR. BARKER: You would have to ask them
2 because that is the case.

3 CHAIRPERSON HILL: Okay, so then -- okay.
4 Then let me just take -- then just take a photograph
5 for me, okay, of the front. Okay?

6 MR. BARKER: There should be a photograph in
7 the exhibits, I think.

8 CHAIRPERSON HILL: Do you know which exhibit?
9 Oh, 6 again?

10 Okay. Alright. So, you're just matching the
11 -- you're lining it up then, right?

12 MR. BARKER: That's correct.

13 CHAIRPERSON HILL: Okay.

14 MS. LYLES: That's the front of the house,
15 right?

16 CHAIRPERSON HILL: Yes. Yes. And so the --
17 so, what -- and you can go ahead and speak to the
18 trash in one second, but what I'd like to just
19 actually see happen is go ahead and meet with the
20 three people that are here, and try to see if you can
21 kind of, in a memo or something, address the trash
22 issue and maybe how people will walk through the back
23 now, because there's going to be an exit and a deck,
24 and kind of memorialize that in some way.

25 And then also, the screening, if that's

1 something that you could talk to with Ms. Roy in terms
2 of if there -- if you would be willing, Ms. Roy, to
3 talk about if there were any screening concerning the
4 deck, okay, what you might like to see if in fact it
5 did happen. It might not happen, but if in fact it
6 did happen. Well, the deck actually is not in our
7 purview anyway, so it sounds like the deck is
8 happening either way. So, you might get some
9 screening out of this that you wouldn't necessarily
10 have gotten out of it.

11 Go ahead, Ms. Roy.

12 MS. ROY: The main issue is by him building --
13 this is the front of the house here, going back here,
14 my issue mainly is from this point here, back to that
15 point. This is the main issue because this is the
16 part right here that's going to be over above the
17 extra nine and a half feet.

18 CHAIRPERSON HILL: It's the rear.

19 MS. ROY: It's the rear.

20 CHAIRPERSON HILL: Right.

21 MS. ROY: The problem -- I don't have a
22 problem or issue with the front because the, Jeremy,
23 the next door -- next to him, he built up the third
24 floor as well.

25 CHAIRPERSON HILL: Uh-huh.

1 MS. ROY: But he did not go all the way back.
2 he went just, you know, up to about the same
3 distance. And I have pictures to show that too.

4 My issue is him going all the way back and
5 blocking my air flow, and the shade, and the privacy
6 back here.

7 CHAIRPERSON HILL: Okay.

8 MS. ROY: Not the front part.

9 CHAIRPERSON HILL: Okay. Well, we'll see
10 then, and again the Office of Planning can address
11 that specifically, the design and how the going back
12 is going to affect the property, Ms. Roy's property.

13 MS. LYLES: May I add something?

14 CHAIRPERSON HILL: One second. I'm sorry.

15 MR. GOLDEN: So, the main consideration was
16 that the proposed addition mirrors the roofline of the
17 adjoining properties.

18 So, the rest falls in under, if the relief was
19 granted, by right. So, we didn't think that the light
20 and air would be impacted because there is no
21 additional rear extension. It's just building up from
22 the existing footprint.

23 And then for the question of privacy, there
24 was a recommendation for screening on both sides of
25 the deck for the applicant to work out with the

1 neighbors.

2 CHAIRPERSON HILL: Okay. So, you're coming
3 back anyway with a report for us again. Just if you,
4 again just specify the issues that Ms. Roy is bringing
5 up with concerning her property with light and air.

6 So, I'm going to let you go with the trash in
7 a second. You guys, I normally -- by the way, you
8 only get three minutes usually, and we're having a
9 long discussion. So, you did have something you
10 wanted to say?

11 MS. LYLES: Yes, I did. He keeps referencing
12 Jeremy that leveled up, that's next door to him.

13 CHAIRPERSON HILL: Uh-huh.

14 MS. LYLES: Jeremy leveled up, yes he did.
15 But, Mr. Barker here, they also extended out the back.

16 CHAIRPERSON HILL: Uh-huh.

17 MS. LYLES: So, Jeremy, he didn't do that.
18 The back is still the original -- the house is still
19 the original size. He just added a small level. If
20 not his level does not even run the full length of his
21 house. Maybe about a third of his house or something
22 like that. Jeremy's runs.

23 But in the rear of their house, they have
24 already -- and they didn't do it, the previous owner
25 did, already extended out.

1 MS. ROY: Almost four feet.

2 MS. LYLES: So, when they add that upper
3 level --

4 CHAIRPERSON HILL: Uh-huh.

5 MS. LYLES: -- it's just going to be massive
6 back there.

7 CHAIRPERSON HILL: Okay.

8 MS. LYLES: It's gotten huge.

9 CHAIRPERSON HILL: Well, we, I mean, we as a
10 board, this happens a lot now in terms of what one is
11 able to build and how the Zoning Commission is
12 actually set up, you know, what one is able to build.
13 Like, if people are able to do things by-right,
14 that's what -- you know, he's already going to be able
15 to do what he can do by right. He's here before us,
16 basically, for four feet, three inches, above what he
17 can do by right.

18 So, that's why I'd like to kind of -- and you
19 guys, you know, you're not immediately adjacent
20 neighbors but you have come forward and you have
21 addressed some issues concerning trash and how, you
22 know, this might get resolved.

23 So, in other words, if you can work with him,
24 with Mr. Barker, just to see what discussions you
25 could have concerning the trash. The parking, just to

1 let you know again, to clarify, he's only -- he only
2 needs to give one parking space. He has four parking
3 spaces. So, he's already giving more parking spaces
4 than he's supposed to give, which is not normally
5 something we see.

6 So, the parking, you know, is not something
7 that I think you know, just you have -- that's just
8 the way it is with the parking, you know. And you're
9 so lucky to be fortunate next to the Metro, or
10 unfortunately, I guess.

11 Now, Ms. Munoz, you had one last thing to say.
12 Go on. Go on.

13 MS. MUNOZ-KING: He has four parking. He say
14 that he give up four parking. The reason why his
15 trash can are not inside his yard is because if those
16 trash can are inside his yard, he's not going to be
17 able to park all the cars, he would not have the space
18 for four parking.

19 CHAIRPERSON HILL: Okay. So, you'll lose a
20 parking spot, then?

21 MS. MUNOZ-KING: Yes, because I've noticed
22 when the garage door is up, he already have two or
23 three --

24 CHAIRPERSON HILL: Right. So, then you guys
25 are going to have to decide --

1 MS. MUNOZ-KING: And then the back, he have
2 more trash can. So, if he's making another storage
3 unit --

4 CHAIRPERSON HILL: He's not making another
5 unit.

6 MS. MUNOZ-KING: Oh, extension.

7 CHAIRPERSON HILL: He's just -- yeah, he's
8 just raising up.

9 MS. MUNOZ-KING: And if he's going to rent it,
10 that means that there is more tenants, right?

11 CHAIRPERSON HILL: Well, it's only -- he's not
12 getting an additional unit. He still has the same
13 number of units. Yeah.

14 MS. MUNOZ-KING: But right now I've noticed
15 that most of his trash cans are in --

16 CHAIRPERSON HILL: Okay.

17 MS. MUNOZ-KING: They are not even --

18 CHAIRPERSON HILL: Ms. Munoz, I understand.
19 You've talked about the trash a lot.

20 MS. MUNOZ-KING: Yes.

21 CHAIRPERSON HILL: I understand. Right.

22 MS. MUNOZ-KING: It's on the other neighbor's
23 side.

24 CHAIRPERSON HILL: Right. Right. Okay.

25 MS. MUNOZ-KING: And when I come in and out of

1 my parking lot --

2 CHAIRPERSON HILL: Right. Okay.

3 MS. MUNOZ-KING: -- you know, I can't come out
4 because of the --

5 CHAIRPERSON HILL: Alright. Okay. I
6 understand. I understand. So, so --

7 MS. MUNOZ-KING: Okay? So, what I'm saying
8 that, he might have four parking spaces, but the trash
9 can that he had there are occupying space from his
10 parking.

11 CHAIRPERSON HILL: Okay. So, then when you
12 guys are talking or discussing, then it sounds like
13 you're either going to lose a parking space, which is
14 going to cause more congestion for you.

15 MS. MUNOZ-KING: Uh-huh.

16 CHAIRPERSON HILL: Or you just let him deal
17 with the trash the way it's been done, but maybe in a
18 way that isn't as messy, you know.

19 So, in any case, if you all could get together
20 before the next time you meet? And again, just to let
21 the people that are in opposition know, and I'll let
22 the Board have the last word here, that this has
23 already gone through the ANC. Right? So, the ANC has
24 already approved this, okay?

25 And so, the Office of Planning has already

1 approved this. At least as far as what I thought was
2 in the application. So, we'll see what happens after
3 they come back with a supplemental report.

4 We, as a board, listen very closely to the
5 immediate neighbor. I mean, you're the one that I'm
6 really concerned about your light and air because the
7 light and air is actually what is at issue here. The
8 trash and the parking, that's actually something that
9 I'm trying to get to a place where you might be more
10 amenable to the project. As Mr. Turnbull said, it's
11 all kind of together to a certain extent. You know,
12 it's not really in our purview about trash. But it
13 didn't -- but the drawings that we have also aren't
14 clear enough as to what's being built, and so it's
15 kind of difficult for us to review things.

16 So, like the screening, if I could see the
17 screening. If you could talk to your neighbor about
18 the screening and come to a, you know, a discussion
19 about the screening, that would be great.

20 And again, whether you come to no decision,
21 whether you come to some decision, I just need
22 something, right, that explains that you tried. Okay?

23 Does anyone else have anything to add?

24 Okay. So, then with that, I'm going to see
25 when we're going to come back.

1 MR. MOY: Mr. Chairman, at the risk of
2 prolonging this, I don't want to do that, but because
3 we've already gone beyond the issue of whether three
4 units or four units, but I kind of feel a little
5 inspired to point out in the record, that under
6 Exhibit 4, under intended use and intended future use,
7 the applicant did state that it was for four units.
8 Apparently, it was a typo but -- and that's how the
9 staff followed through on the description of the
10 record.

11 CHAIRPERSON HILL: I see.

12 MR. MOY: I just wanted to state that for the
13 record.

14 CHAIRPERSON HILL: It wasn't your fault, Mr.
15 Moy.

16 MR. MOY: No, well, we make mistakes. We're
17 human.

18 CHAIRPERSON HILL: Right.

19 MR. MOY: But we're -- I like to be correct --

20 CHAIRPERSON HILL: I agree. I agree.

21 MR. MOY: -- 99.9 percent of the time.

22 CHAIRPERSON HILL: That was the applicant's
23 fault.

24 MR. MOY: Right. Not pointing any fingers.

25 CHAIRPERSON HILL: No.

1 MR. MOY: Okay. So, to future dates. Let's
2 see. Depending on whether this is a continued hearing
3 or a decision, Mr. Turnbull is back with the Board on
4 the 22nd of February. If you want something earlier,
5 we could do that.

6 CHAIRPERSON HILL: I'm fine with the decision,
7 and I'm fine with the 22nd of February.

8 MR. MOY: Okay.

9 CHAIRPERSON HILL: Alright. So, that means
10 that you have to get together with your neighbors and
11 also then get together with the Office of Planning,
12 resubmit your certification, not to list the fourth
13 unit, okay. And again, I don't know how it got -- I
14 shouldn't say how it got confusing. I mean, I
15 understand that if you went to the ANC and the ANC
16 said you could have a fourth unit, I'd leave it on my
17 application also.

18 So, but it is in Exhibit 4 that you did
19 whatever is put there. I guess that was you, has the
20 four units.

21 So, maybe today, if you guys can talk about
22 when you all might be able to meet and just discuss
23 the issues that had been brought before. And please,
24 try to just calmly -- I mean, really you know, he's
25 trying to do what he's trying to do. You guys don't

1 like the way the trash is. You don't like the way
2 your light and air is affected. The Office of
3 Planning is going to tell us what their thoughts are
4 on the light and air. But try to work with him as
5 best you can on the screening or maybe it will just
6 blow up and you guys won't be able to get to anywhere.
7 But do your best, okay?

8 So then --

9 MR. MOY: So --

10 CHAIRPERSON HILL: Sorry.

11 MR. MOY: So, Mr. Chair, so, so, this would be
12 for decision-making on Wednesday, February 22nd. If
13 the applicant can make a filing addressing all the
14 issues and concerns that's been raised by the Board by
15 Monday, February the 20th. And I'm guessing then,
16 does the Board want a supplemental report from OP two
17 or three days after the 20th?

18 CHAIRPERSON HILL: Yeah, will that work with
19 OP? Okay.

20 MR. MOY: Okay. We'll give OP three days to
21 Wednesday, the 15th.

22 So, let me go back, backtrack a little bit.
23 So, the applicant to file the 13th. I was looking at
24 the wrong date. The 13th of February. Office of
25 Planning file by the, let's say the 15th of February.

1 No submissions from neighbors, correct?

2 CHAIRPERSON HILL: No, I mean --

3 MR. MOY: Okay.

4 CHAIRPERSON HILL: -- there's just the shadow
5 study and then --

6 MR. MOY: They're going to work with the --

7 CHAIRPERSON HILL: They're going to work with
8 the applicant.

9 MR. MOY: Okay.

10 MS. ROY: You want me to show the pictures
11 that I have, right?

12 CHAIRPERSON HILL: Yeah, if you go -- I'm
13 sorry. That's right. Correct. Thank you.

14 Mr. Moy, if you could allow Ms. Roy to submit
15 her photographs?

16 MR. MOY: Yes, of course. She could hand that
17 to me then --

18 MS. ROY: Okay.

19 MR. MOY: -- we'll enter that into the record
20 for you.

21 MS. ROY: Okay.

22 CHAIRPERSON HILL: Okay. And then -- okay.
23 And then again, just to be clear for everyone here,
24 we're going to have a decision the next time. So,
25 we're not going to be -- we're not taking testimony.

1 Okay? Mr. Turnbull.

2 MR. TURNBULL: Yeah, and I just want to be
3 clear. We need definitely up to date architectural
4 drawings that are correct. I mean, right now I show
5 that your proposed third-floor shows a stair going
6 down. But your second floor, existing, only shows a
7 stair going down. It doesn't show a stair going up.
8 But that's the drawings we have. So, I don't know how
9 you go up if you've only got a stair going down. So,
10 there must be another link going up that's not shown.

11 It also shows that you can go up to the --
12 well, we need better drawings.

13 MR. BARKER: Sure.

14 MR. TURNBULL: You need to send us actual -- I
15 mean, the accurate, up to date drawings. And with the
16 improvements that you may be making for this project.

17 CHAIRPERSON HILL: Okay. Anything else? Mr.
18 Hart? Okay. Alright.

19 Then with that, I'm going to close the
20 hearing, other than for the information requested.
21 Alright?

22 MR. BARKER: Yes. So, what is the -- what are
23 you guys looking for in terms of the memo, memorandum
24 of understanding from us? I just write up something
25 that says we came to an understanding?

1 CHAIRPERSON HILL: You discuss the issue of
2 the trash, the screening, and yeah, that's what I'm
3 kind of interested in. And I suppose, you know, the
4 height issue is going to be addressed by the Office of
5 Planning.

6 MR. BARKER: Okay. Okay.

7 CHAIRPERSON HILL: Ms. Roy?

8 MS. ROY: And what about the runoff of the
9 water?

10 CHAIRPERSON HILL: Ms. Roy, let's just stay
11 with what I've got. I've got the trash --

12 MS. ROY: I didn't mention that, but, you
13 know.

14 CHAIRPERSON HILL: I've got the trash and I've
15 got the screening. And your concern about -- I mean,
16 honestly, if you can get to something that Mr. Barker
17 would get your approval on, if you want to ask him for
18 something and he's able to do it, I'm sure he'd be
19 happy to do it. Okay? So, go ahead and speak with
20 him. Just talk with him, try really hard to get to a
21 place that you get something out of this. Okay?

22 MS. ROY: Okay.

23 CHAIRPERSON HILL: Because again, you know,
24 the ANC has approved this, the Office of Planning has
25 approved this, I don't know if we're going to approve

1 it or not. But if you can work with your neighbor and
2 get screening that you like, get some runoff issues
3 that you think you like, you know, and you guys can
4 talk about the trash, then that will be great if you
5 can come together and say, you know, we've talked,
6 this is the things we wrote up that we're going to do.
7 Mr. Barker is going to do. And, because he'd rather
8 get you guys, you know, in agreement so that this can
9 move forward. You know.

10 So, just take real -- and as I said before, I
11 live in the city. I live in a dense part of the city.
12 I have to deal with all kinds of stuff and I'm
13 dealing with something right now, okay? And so, you
14 know, just go ahead and do your best. Okay?

15 MS. ROY: Can I get back with the ANC on this
16 as well?

17 CHAIRPERSON HILL: You can do whatever you
18 want to do.

19 MS. ROY: Okay.

20 CHAIRPERSON HILL: But I think the ANC has
21 already made their decision. So, I don't think
22 they --

23 MS. ROY: They can retract their statement,
24 can't they?

25 CHAIRPERSON HILL: That's, you can talk to the

1 ANC.

2 MS. ROY: Okay.

3 CHAIRPERSON HILL: Okay. Alright. But that
4 doesn't sound like you're trying to work. Okay?
5 Like, just trying to -- okay, alright. Try to talk to
6 your neighbor. Okay?

7 MS. ROY: Okay.

8 CHAIRPERSON HILL: Alright. Thank you.

9 MS. ROY: Okay.

10 MR. BARKER: Thank you.

11 CHAIRPERSON HILL: We're going to take a five-
12 minute break. Okay? Alright.

13 [Recess from 11:17 a.m. to 11:26 a.m.]

14 MR. MOY: So, the next application in the
15 batting order is 19405 of Hampstead Jefferson
16 Partners, L.P., as captioned and advertised for a
17 special exception relief under Subtitle E, Section
18 5201 from the lot occupancy requirements of Subtitle
19 E, Subsection 304.1, rear yard requirements, Subtitle
20 E, Section 306.1.

21 This would allow the location of new
22 mechanical in the rear yard of an existing three-story
23 apartment building, RF-1 Zone, 812 Jefferson Street
24 Northwest, Square 2999, Lot 803.

25 CHAIRPERSON HILL: Is the applicant here? Oh,

1 great. Please, yeah, come forward.

2 Okay, yeah, I'm sorry. If you could just go
3 ahead and introduce yourself and give us your address.

4 MR. NIX: Sure. Good morning. My name is Ray
5 Nix, 1226 Vermont Avenue Northwest, Suite 200. I'm
6 the president and managing general partner of Urban
7 Matters Development Partners. We're a D.C. based CBE
8 affordable housing company, and we are the general
9 partner of the applicant.

10 CHAIRPERSON HILL: Okay. Great. Thank you.

11 MR. SIDORCZUK: I'm Mark Sidorczuk. I'm the
12 project architect on the job. I live at 6931
13 Whittabear Lane, Bethesda, Maryland.

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

16 MR. SIDORCZUK: Sidorczuk, S-I-D-O-R-C-Z-U-K.
17 You can just call me Mark.

18 CHAIRPERSON HILL: Okay. Let's see. Alright,
19 great. So, I am interested in hearing you know, your
20 proposal. I mean, sorry, your presentation. And how
21 again the things are that you're requesting and how
22 you're meeting the standard.

23 Specifically for me, however, I guess there's
24 two issues, and I'll let the Board speak to what
25 specifically they might have in terms of what they'd

1 like to hear from your presentation. I know that
2 there had been some confusion as to where the chiller
3 is actually going, whether it's on the roof or the
4 back yard.

5 And then myself, I know that it seems as
6 though that you hadn't gotten -- I haven't gotten a
7 report yet from the ANC 4D. And so, you can kind of
8 speak to that. Does the Board have any other things
9 they'd like to hear from, from the applicant?

10 Okay.

11 MR. TURNBULL: I think you've covered it.

12 CHAIRPERSON HILL: Okay, great. Thank you.
13 So, then go ahead and give your presentation. That
14 would be great. Thank you.

15 And, I'm sorry. There was -- I guess the OAG
16 has just given me some information again. There was
17 some additional relief that the Office of Planning
18 thinks that you require. And, you know, if you want
19 to go ahead and speak to that and then I'll obviously
20 get a chance to hear from the Office of Planning and
21 see if you guys can match up, but -- so, those are the
22 issues. Thank you.

23 MR. NIX: Thank you. I'm going to give a,
24 just context to the project on the overall scope, and
25 then I'll turn to Mark to handle the details of the

1 special exception request.

2 So again, good morning. On behalf of our
3 development team, thank you for the opportunity to
4 present our request for the Homestead Apartments
5 before the Chair and the Members of the Board. We
6 appreciate your full consideration.

7 Homestead Apartments is a 55-unit affordable
8 public/private housing development that was initiated
9 by the tenants of 812 Jefferson Avenue, through the
10 District of Columbia's TOPA process. The development
11 team was selected by the residents in April of 2015 to
12 lead the acquisition and redevelopment of the property
13 while ensuring and preserving long-term affordability
14 for the residents of the building and the District of
15 Columbia.

16 The project total development cost is \$13.2
17 million. The improvements to each of the 55 units,
18 upgrades to the building's electrical and mechanical
19 systems, not only the garage but also new community
20 space for resident activities was part and parcel to
21 the entire redevelopment plan approved by the
22 District.

23 This project was funded by the District's
24 Housing Production Trust Fund, as well as through the
25 low income housing tax credits and tax exempt bonds

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1 issued through D.C. Housing Finance Agency, along with
2 private financing.

3 We have an ongoing working partnership with
4 the tenants of the building. We meet with the Board
5 on a regular basis and communicate with their
6 leadership quite often to flush out and identify
7 solutions to issues, and we have a very good working
8 relationship with the single-member district
9 commissioner of the ANC.

10 We've secured full support of our single-
11 member ANC commissioner for the BZA request. I will
12 add that I just checked to see if, on the record,
13 there was some indication of the ANC's position and it
14 seems that there isn't.

15 On November 22nd, and I can -- I'm sorry, go
16 ahead.

17 CHAIRPERSON HILL: No, that's okay.

18 MR. NIX: I can do a zip drive and transfer
19 the e-mail. But on November 22nd the single-member
20 district commissioner apologized of not being able to
21 have a quorum in an ANC meeting because of the
22 holidays when he was first notified, but did speak
23 directly with the tenants of the building, as well as
24 key stakeholders in the community, and expressed his
25 full committed support on the project. And at the

1 appropriate time I'd like to put that on the record,
2 with your instruction.

3 CHAIRPERSON HILL: Yeah, if you can submit
4 that to the record that would be great.

5 MR. NIX: Absolutely. We believe that our
6 approach in today's request before the Board is both
7 consistent with the betterment of the project, the
8 neighborhood stakeholders, and the residents of
9 Homestead. And I'll let Mark drill down on the
10 details.

11 MR. SIDORCZUK: I'm going to just give you a
12 quick description of the chiller and the location.
13 Like Ray said, it's an existing 55-unit building.
14 We're converting it from wall-mounted units, air
15 conditioning units, and we're going to centralize the
16 system with a centralized chiller. The building is
17 located on 812 Jefferson Street. It's kind of this H
18 shape, if you can look at the plan diagram. Plan
19 diagram over there.

20 Obviously if it's height, urban site, and
21 there was difficulty in finding an appropriate
22 location for the chiller. But we believe kind of in
23 this alley space in the back, kind of this back corner
24 where the cursor is right now, this is the ideal
25 location for the chiller. If you look at this

1 picture, in kind of the lower corner, this is the
2 chiller location. It's screened by this back wall of
3 the parking garage right here. And then we'll enclose
4 the chiller with a, kind of an architectural louver
5 screen here to kind of seclude and to kind of make a
6 knot, you know, apparent in the building, and kind of
7 be part of the historic context of the building.

8 Here is a section cutting through the chiller
9 kind of showing the location or the footing of the
10 chiller. It's essentially a slab on grade with a
11 three-sided enclosure on it.

12 And if you have any questions, feel free to
13 ask.

14 CHAIRPERSON HILL: Does the Board have any
15 questions? Okay. Well, then, if that's the case, I'm
16 actually going to turn to the Office of Planning
17 because there were some discrepancies in terms of some
18 of their requested relief. So, if it's okay, going to
19 turn to the Office of Planning.

20 MS. MYERS: For the record, Crystal Myers for
21 the Office of Planning. In general, we recommended
22 approval for this project, but we did recommend
23 additional relief, C202.2, because the existing
24 building is currently nonconforming with the rear yard
25 requirement. And the proposal will be extending that

1 nonconformance to zero. So, that was the only reason
2 why. The regulation is for a 20-foot minimum, and the
3 existing is 10 feet. So, that relief request also
4 required the additional 202.2 because we are extending
5 that existing nonconformance.

6 But otherwise, rest on the record of the staff
7 report.

8 CHAIRPERSON HILL: Does the applicant
9 understand what Office of Planning is speaking about,
10 and would you then amend your application?

11 MR. NIX: Yes.

12 CHAIRPERSON HILL: Okay. Alright. Does the
13 Board have any questions for the Office of Planning?

14 MR. TURNBULL: Just one. Just to clarify that
15 the rear yard -- the rear yard, they're only -- it's
16 only for about 10 feet of the rear yard, so I mean,
17 it's not like they're using up the entire rear yard.
18 It's only in that one corner.

19 MS. MYERS: Their proposal was requesting a
20 zero-foot rear yard, and the existing is 10 feet. But
21 that's still less than the requirement of 20 feet.

22 MR. TURNBULL: Okay. I'm just saying, they
23 still have a 10-foot rear yard except for 10 feet of
24 it. They're not building out the whole rear yard.

25 MR. NIX: Correct.

1 MS. MYERS: Well, according to the, I believe
2 the chart, it actually says zero feet is what they are
3 requesting to do with this proposal.

4 MR. TURNBULL: Well, I guess technically if
5 you put something in that 10-foot space, you're
6 getting a zero-foot rear yard. But in actuality they
7 still have a 10-foot rear yard for most of the
8 property.

9 MS. MYERS: I mean, like I said, I would leave
10 it up to the Board according to the Office of Planning
11 we would consider that a request for a zero --

12 MR. TURNBULL: Okay. That's fine. No, we
13 understand. I just wanted to point out on the record
14 that there's still a significant -- there's still 10-
15 feet or rear yard there, for most of the rear yard.
16 But I understand from a technical standpoint you're
17 saying it's zero feet.

18 CHAIRPERSON HILL: Okay. Does the applicant
19 have any questions for the Office of Planning?

20 MR. NIX: No.

21 CHAIRPERSON HILL: Okay.

22 MR. NIX: No.

23 CHAIRPERSON HILL: So you guys, again,
24 understand how to amend your application? Okay.

25 And then you can submit into the record the

1 item concerning the SMD. Or, I think it was the SMD,
2 right, the --

3 MR. NIX: David Sheon, correct.

4 CHAIRPERSON HILL: And he wasn't -- and that
5 you weren't able to have your -- get on the agenda
6 because they couldn't have a quorum for the actual
7 meeting.

8 MR. NIX: Because of the holiday season,
9 right.

10 CHAIRPERSON HILL: Okay. Okay. Alright.

11 MS. GLAZER: Mr. Chair.

12 CHAIRPERSON HILL: Yes.

13 MS. GLAZER: Pardon me, but I think there is
14 already an e-mail submission from the single-member
15 district. What I assumed the Board was referring to
16 was the full ANC report. But the e-mail that's in the
17 record says that it was unlikely that the ANC would
18 have a meeting in time before this hearing.

19 CHAIRPERSON HILL: Okay. But what I didn't
20 understand was that -- I know there is something there
21 in the record, but it sounds like you have something
22 that specifically speaks to the fact that they didn't
23 have a quorum, or weren't able to have a quorum.

24 MR. NIX: Right. I don't know if we're
25 looking at the same e-mail from November 22nd, but I'm

1 basically paraphrasing the e-mail. And they do
2 reference the fact that, you know, due to the -- I
3 think my words are, due to the holidays. But there is
4 reference to there being no quorum and no meeting
5 held. But they wanted to get in on a timely fashion,
6 their full support and approval.

7 MS. GLAZER: That's already in the record as
8 Exhibit --

9 CHAIRPERSON HILL: Do you know which exhibit?

10 MS. GLAZER: -- 30. It's an e-mail from David
11 Sheon. I don't know how to pronounce it. S-H-E-O-N,
12 from the single-member district.

13 CHAIRPERSON HILL: Yeah, no. I have that e-
14 mail and I have it printed out here, and I'm looking
15 at it. But again, it didn't -- yeah, I guess again,
16 in the e-mail it says, you know, I don't believe we
17 can have a full ANC 4D vote on the issue. So, it
18 didn't speak again to the fact that they weren't --
19 oh, it did say. I'm sorry. The quorum. Okay. So,
20 this is the e-mail that you're speaking of. You don't
21 have to submit it.

22 MR. NIX: Correct. The second paragraph,
23 second line.

24 CHAIRPERSON HILL: Okay. Alright. And I know
25 you just spoke to it again, Mr. Nix, but so you did go

1 ahead -- just tell me, again, about the SMD and how
2 you met with him. He wasn't able to -- they weren't
3 able to get a -- this is the only part -- I'm having a
4 little bit of an issue that you don't have a report
5 from the ANC. And so, they did -- they weren't able
6 to get a quorum together, so I'm just clarifying, I
7 guess, what you said. They weren't able to get a
8 quorum together, but he did now again, speak with the
9 residents of the property. Is that correct?

10 MR. NIX: Correct. Correct. When we were
11 selected through the TOPA process, you know, part of
12 our commitment to, not only the neighborhood but
13 specifically the tenants of the building that chose us
14 through their procurement process, was that we would
15 involve the residents in all types of decision-making.
16 Whether it was construction, whether it was design
17 and unit amenities, or the ongoing practices of the
18 building.

19 So, when it came up that we needed to, for a
20 more efficient plan, come into the city for regulatory
21 approval for the location of the chiller, you know, we
22 took it internally through our own process, and I
23 reached out to David, excuse me, the single-member
24 district commissioner, as we always do, and he said
25 you know, that's great. I understand your position

1 but I need to talk to the residents.

2 So, he connected with the Board. They have a
3 tenant association board. And I'm not sure if he
4 physically met with them, or if it was simply through
5 verification through e-mail. But he did discuss with
6 them, both our application and their position. They
7 had expressed support to us internally, and he found
8 the same, that they merit our understanding.

9 CHAIRPERSON HILL: Okay. Okay, great.
10 Alright. I'm comfortable with what's been now stated
11 into the record again.

12 Does the Board have any other questions for
13 the applicant? Okay. I'm going to turn to the
14 audience here. Is there anyone here from the ANC? Is
15 there anyone here wishing to speak in support of the
16 application? Is there anyone here wishing to speak in
17 opposition? Alright. Well, with that I'm going to
18 close that portion of the hearing.

19 Would the applicant like to say anything in
20 conclusion?

21 MR. NIX: No.

22 CHAIRPERSON HILL: Okay. Alright. Then, does
23 the Board have any further questions for the
24 applicant? Okay. Then, I'm going to close the
25 hearing. Is the Board ready to deliberate? Okay.

1 MR. TURNBULL: Mr. Chair, I don't know about
2 the rest of you but I feel comfortable. I think
3 they've met -- after hearing the explanation I think
4 the fact that they're putting in a chiller to upgrade
5 these units and get rid of those window units and have
6 a better air conditioning system for everybody in the
7 building, I think that's commendable and I think that
8 this is a project that, as I say, it's a big group
9 effort to move forward and rehabilitate everything,
10 and I think it's worthwhile and I have no problem
11 granting the relief.

12 MR. HART: I would second that, those comments
13 from Commissioner Turnbull. I think this is a
14 worthwhile project and it has a lot of things that
15 kind of check a lot of very good boxes off for the
16 community, and would also be in support of the
17 application, Application 19405, which I want to make a
18 motion or --

19 CHAIRPERSON HILL: You can go ahead and make a
20 motion, yeah.

21 MR. HART: Do you mind if I make a motion for
22 it, for that, for approval of it?

23 CHAIRPERSON HILL: So, you made a motion for
24 Application No. 19405, approving that application. I
25 second that motion.

1 Motion has been made and seconded.

2 [Vote taken.]

3 CHAIRPERSON HILL: The motion passes, Mr. Moy.

4 MR. MOY: Staff would record the vote as
5 three, to zero, to two. This is on the motion of Mr.
6 Carlton Hart to approve the application for the relief
7 requested. It's amended to include nonconforming
8 structure provisions under Subtitle C, Section 202.2.
9 Seconded the motion, Chairman Hill. Also in support,
10 Mr. Michael Turnbull. Two seats vacant. Motion
11 carries, sir.

12 CHAIRPERSON HILL: Thank you. Can we get a
13 summary order?

14 MR. MOY: Thank you.

15 CHAIRPERSON HILL: And again, the applicant
16 can go ahead and just confirm with how their
17 application has been adjusted. Thank you, Mr. Moy.
18 Thank you, gentlemen.

19 MR. MOY: Alright. Next in the batting order,
20 Mr. Chair, Mr. Chairman, is parties to the table to
21 Application No. 19411 of 2814 Georgia, LLC., captioned
22 and advertised for special exception relief under the
23 parking requirements, Subtitle C, Section 703.2.

24 This would combine two lots and permit the
25 construction of a new four-story, 10-unit apartment

1 building, MU-4 Zone, 2812 through 2814 Georgia Avenue
2 Northwest, Square 2886, Lot 330 and 331.

3 CHAIRPERSON HILL: Okay, great. Thank you.
4 Good afternoon or good morning. Good morning,
5 gentlemen. If you could please introduce yourselves
6 for the record.

7 MR. SULLIVAN: Good morning, Mr. Chair and
8 Members of the Board. My name is Marty Sullivan with
9 the law firm of Sullivan and Barros on behalf of the
10 applicant.

11 MR. SCHNECK: Good morning. My name is Ron
12 Schneck. I'm Principle of Square 134 Architects.

13 CHAIRPERSON HILL: Okay. So, Mr. Sullivan, I
14 don't have a lot of different questions about this.
15 Originally, again, you didn't have a report from the
16 ANC and now we do have something that is in there that
17 shows that you have support of the ANC with an 11 to
18 zero vote.

19 There are a few conditions that the Office of
20 Planning has recommended as well as DDOT, and I guess,
21 you know, if you could give kind of a high-level
22 presentation and then speak to those conditions, as
23 well as, I guess, speak to the relief you're
24 requesting and how you meet the standard.

25 Does the Board have any other things they'd

1 like to hear from the applicant? Okay.

2 So, Mr. Sullivan, I'll turn it over to you
3 then, at this point.

4 MR. SULLIVAN: Thank you, Mr. Chair and
5 Members of the Board. Regarding the relief, we're
6 asking for relief of one parking space, and that is
7 now under the new regulations, provided for under
8 Section C, 703.2, a reduction of required parking
9 spaces. That is available for various different
10 reasons. This one is very clear, it's a landlocked
11 lot.

12 So, we have no possibility of doing parking.
13 And as it says in the Office of Planning report, to do
14 a curb cut here would not be supported, and would not
15 fit in with the character of the street here. And I
16 also would put forth the lot is not large enough to
17 have a curb cut and actually still also provide a
18 building.

19 So, we meet the criteria under 703.2(a), the
20 physical constraints of the property, and also as OP
21 also said, it was not possible to find an additional
22 parking space anywhere within 600 feet to satisfy that
23 requirement.

24 Regarding the conditions, the applicant of
25 course is fine with the conditions. I think from DDOT

1 -- and DDOT, in their report, I don't think even
2 mentioned the transportation demand management plan.
3 Probably because it's just one parking space. But we
4 did submit something that was, I think, in line with
5 requests for parking relief of this minor nature.

6 And then the other conditions all related to
7 public space requirements that would be handled as
8 part of the permitting process, anyway. So, we would
9 have to comply with those, whether they are conditions
10 of a BZA order or not. So, of course we're willing to
11 comply with those as a condition or not.

12 CHAIRPERSON HILL: So, just to clarify what
13 I've got here. Again, from the Office of Planning the
14 applicant shall implement the transportation demand
15 management plan in Exhibit 32A of the record.

16 MR. SULLIVAN: If that's -- yeah.

17 CHAIRPERSON HILL: Yeah, I'm just asking.
18 Okay.

19 MR. SULLIVAN: Yeah, that's --

20 CHAIRPERSON HILL: Okay. So, you're fine with
21 that.

22 MR. SULLIVAN: Yeah, that sounds like the --

23 CHAIRPERSON HILL: And then the other was that
24 even though trash isn't necessarily within our
25 purview, this has been a trash day, trash shall be

1 stored within private property?

2 MR. SULLIVAN: Yes.

3 CHAIRPERSON HILL: Okay. Alright. So, the
4 applicants were fine with both those conditions.
5 Alright. So, you can keep going forward. Thank you.

6 MR. SULLIVAN: The only other thing I would
7 mention is that the design of the building is still in
8 process, so the applicant would like the flexibility.

9 Although, I understand it's not changing much and the
10 architect is here with us to answer any questions.

11 But, it was an initial concept design. Not a lot was
12 invested in it because we wanted to make sure we got
13 the relief, because if we didn't get the relief then
14 you couldn't build a building here at all.

15 So, the architect is available to answer any
16 questions, and that's all I have. Thank you.

17 CHAIRPERSON HILL: Okay. Thank you. And does
18 anybody have any questions for Mr. Sullivan? Alright.

19 Oh, sorry. Go ahead.

20 MR. TURNBULL: I'm sorry, Mr. Chair. My only
21 concern about granting relief flexibility for the
22 design of the building is that we often -- we've had
23 instances in the past where things have changed
24 substantially. I would like to say that if what we're
25 seeing schematically here, if this is -- I don't want

1 the ZA to suddenly say that he can do, and suddenly
2 find that this is totally different from what we're
3 looking at in the picture. I mean, there are
4 ramifications to the neighborhood and everything else.
5 People are expecting this Board to approve a set of
6 plans that we think are going to go forward.

7 So, I would not want to suddenly see that this
8 suddenly be showing up as being end rivet, or some
9 other material that would be totally contrary or out
10 of character with the neighborhood.

11 I mean, you're showing something now, which I
12 think is architecturally fitting. I think it's fine.
13 I would not want to see something totally different,
14 either in vinyl siding or I'm just concerned that what
15 we're seeing here is what we could expect.

16 CHAIRPERSON HILL: And, Mr. Schneck, to echo
17 Mr. Turnbull's comments, I mean again, what we have
18 had in the past, we have come up with different issues
19 where we've allowed for flexibility, and that
20 flexibility is actually -- I don't exactly even know
21 how flexible it ends up being, right?

22 So, if you could speak to whatever you're
23 considering flexibility right now, that might be
24 something we can talk and address to, and whether we
25 decide that we need final plans from you before moving

1 forward, then we can talk about that as well.

2 MR. SULLIVAN: I just, I would like to --
3 everything regarding the design is matter of right.
4 We're only asking for parking relief of course. So, I
5 don't think that -- I think we would have flexibility
6 anyway, because if we change something it would not --
7 unless we change the number of units and the parking
8 requirement, it wouldn't have anything to do with the
9 relief being requested.

10 MR. TURNBULL: Well, then why are you asking
11 for it?

12 MR. SULLIVAN: Just for -- because it's a
13 point of confusion at DCRA sometimes.

14 So, I would like to make it clear. But I
15 think --

16 CHAIRPERSON HILL: And that's fine. And, Mr.
17 Sullivan, I'm just letting you know, like, I'm going
18 also clear, right. We approve things, and then things
19 get changed. And then they come back again and you
20 went through the ANC, everybody agreed with what it
21 was going to look like, and now it doesn't look like
22 that anymore.

23 MR. SULLIVAN: Okay.

24 CHAIRPERSON HILL: So, if you didn't need our
25 approval, you wouldn't be here.

1 MR. SULLIVAN: For the parking, right.

2 CHAIRPERSON HILL: Yeah, whatever. For the
3 parking. Exactly.

4 MR. SULLIVAN: Alright.

5 CHAIRPERSON HILL: Okay. So, please, go
6 ahead.

7 MR. SCHNECK: So, just to give you some
8 context. These plans are schematic, preliminary.
9 They were sort of developed by ownership and we,
10 within the last month, they brought us on board to
11 complete the design. So, we're sort of somewhere in
12 the schematic design phase.

13 In terms of zoning envelop, nothing is
14 substantially changing. It's basically the same
15 footprint, the same massing. What we're doing mostly
16 is, you know, we are slightly modifying some of the
17 unit layouts. We're not changing the demising
18 partition substantially.

19 And then in terms of the exterior, we're
20 proposing a brick and probably not a -- definitely not
21 a vinyl or a stucco material. We're probably going to
22 propose brick and a Hardy reveal system. Slightly,
23 you know, somewhat contemporary. You know, we're not
24 going to try to, you know, duplicate what's there, but
25 we're definitely going to -- we're definitely having

1 brick. We think that's the correct response here.

2 The only probably difference is currently
3 there are bays, sort of balconies on the front of the
4 building. We're proposing, in closing, those either
5 entirely or some of them jus to create some indoor
6 space. We're not too sure how successful balconies
7 would be off of Georgia Avenue.

8 MR. TURNBULL: So, they would look like the
9 top floor?

10 MR. SCHNECK: They would look like the top
11 floor, correct. We're probably not going to have that
12 balcony that you're seeing.

13 MR. TURNBULL: Okay.

14 MR. SCHNECK: At the third floor.

15 MR. TURNBULL: Okay.

16 MR. SCHNECK: Other than that, like I said,
17 we're not finished the design yet.

18 MR. TURNBULL: Right.

19 MR. SCHNECK: But that's sort of where we are
20 in the phase.

21 MR. TURNBULL: Okay.

22 MR. HART: And no balcony on -- I'm sorry, no
23 balcony on the -- no roof deck on the top either?

24 MR. SCHNECK: Well, what you're looking at
25 here is the penthouse sets far back from the front,

1 and so there will be a roof deck there. However, it
2 won't be visible, necessarily from Georgia Avenue
3 because it is set so far back.

4 And with the new regulations you have to have
5 the handrails back one-to-one, so that will be the
6 case at the penthouse.

7 MR. HART: Yes, right.

8 MR. SCHNECK: So, there will be a, not a roof
9 deck for common use, but a roof deck just for that top
10 unit.

11 MR. HART: Actually, I was just -- I was just,
12 I was more curious because you had said that having
13 the balconies on Georgia Avenue, I wasn't sure if you
14 were also meaning just anything on the front. You
15 were just saying the balconies, which is fine.

16 MR. SCHNECK: On the main façade. Yes, sir.

17 MR. HART: Okay. Thank you.

18 CHAIRPERSON HILL: Okay. Does the Board have
19 any further questions for the applicant? Okay.

20 I do have just a little bit again, for the
21 architect again. Again, and I'm not an architect. So
22 again, just understanding what the flexibility is that
23 you're asking for within the designs, that's something
24 that I would be more comfortable with, if you could
25 clearly articulate that. And so, either you can think

1 about it now and maybe I can get it on the record,
2 just as you just stated it, okay, those are the things
3 that could possibly be changed. If you'll repeat that
4 for me, that might be enough for me.

5 But let me turn to the Office of Planning.
6 And it might be the rest -- okay for the Board. I
7 don't know.

8 MR. MORDFIN: Good morning. I'm Stephen
9 Mordfin with the Office of Planning. And the Office
10 of Planning continues to support this application,
11 recommending approval and as amended by the -- the
12 conditions as amended by the way the applicant has
13 presented with the transportation demand management
14 plan that has been through DDOT.

15 CHAIRPERSON HILL: Okay. Does the Board have
16 any questions for the Office of Planning?

17 Okay. Does the applicant have any questions
18 for the Office of Planning?

19 MR. SULLIVAN: No, thank you.

20 CHAIRPERSON HILL: Okay. So, if you could,
21 Mr. Schneck, yeah again, just for me, if you could
22 outline what the flexibility exactly is that you want
23 to maybe change and just keep open?

24 MR. SULLIVAN: Would it be easier to submit a
25 revision post hearing? If it's possible to do it

1 post-decision, or if we could have a decision
2 scheduled for not too far out, it would make it --

3 CHAIRPERSON HILL: Okay. Alright.

4 MR. SULLIVAN: Could be more clear.

5 CHAIRPERSON HILL: I appreciate you guys
6 helping me out. Okay. So, alright, I'd like to see
7 plans then. Whatever it is that you're actually --
8 whatever it is that we're approving is helpful so that
9 I don't have to deal with something later. Okay?
10 Alright.

11 Let's see. So, I'm going to turn to the
12 audience here. Is there anyone here from the ANC?

13 [No audible response.]

14 CHAIRPERSON HILL: Alright. Is there anyone
15 here wishing to speak in support of the application?

16 [No audible response.]

17 CHAIRPERSON HILL: Is there anyone here
18 wishing to speak in opposition of the application?

19 [No audible response.]

20 CHAIRPERSON HILL: Alright. With that then,
21 I'm going to close it.

22 How come no one ever comes to speak in support
23 of the application?

24 Let's see, okay. Does the applicant have
25 anything they'd like to add?

1 MR. SULLIVAN: No, thank you.

2 CHAIRPERSON HILL: Okay. Then, does anybody
3 have any questions for the applicant? Further
4 questions?

5 [No audible response.]

6 CHAIRPERSON HILL: Okay. So, I'd like to see
7 drawings. I don't really have an issue with -- I
8 mean, again, you've gone through the ANC. I think
9 that the Office of Planning has done a good job
10 getting to where I feel comfortable with what is being
11 asked for. But I just want to see whatever it is
12 we're actually approving. And so, if you can submit
13 that to me we can put this on for decision. How
14 quickly can you get whatever drawings you need?

15 MR. SULLIVAN: Two weeks.

16 CHAIRPERSON HILL: Two weeks. Okay. So, then
17 Mr. Moy.

18 MR. MOY: So, we're looking then, Mr.
19 Chairman, at --

20 CHAIRPERSON HILL: Is that the 8th?

21 MR. MOY: I would say a decision on February
22 the 8th.

23 CHAIRPERSON HILL: Okay. So, then you'd need
24 to get the drawings by when?

25 MR. MOY: By, let's say, let's say Friday the

1 -- can we make it Thursday, the 2nd? Is that
2 possible? Okay.

3 CHAIRPERSON HILL: Okay. Okay. Then other
4 than that I'm going to close the record except for
5 those drawings, and we'll put you on for decision on
6 the 8th.

7 MR. SULLIVAN: Thank you.

8 CHAIRPERSON HILL: Thank you.

9 MR. MOY: The next application before the
10 Board is Application No. 19414 of Power Brokers
11 Property, LLC., captioned and advertised as amended
12 for special exception relief under Subtitle E, Section
13 5201, from the nonconforming structure requirements of
14 Subtitle C, Section 202.2, lot occupancy requirements
15 of Subtitle C, Section 304.1, Special exception from
16 the height requirements, Subtitle E, Section 303, or
17 rather 303.1 and 5203.1. This would renovate an
18 existing 20-unit apartment building, RF-1, 1315 Park
19 Road Northwest, Square 2838, Lot 823.

20 CHAIRPERSON HILL: Okay. If you could please
21 introduce yourselves. Maybe we'll go from left to
22 right. Oh, has everyone been sworn in?

23 UNIDENTIFIED SPEAKER: No.

24 CHAIRPERSON HILL: Okay. If whoever has been
25 sworn in, and if there's anybody else here that hasn't

1 been sworn in, if you could stand up and let Mr. Moy
2 administer the oath? Thank you.

3 [Oath administered to the participants.]

4 CHAIRPERSON HILL: I always love the oath.
5 It's so great. It means you can't lie. That's what
6 it really comes down to. And hopefully that's what
7 people really don't do.

8 Okay. So, if you could please introduce
9 yourself from my left to right?

10 MS. MOLDENHAUER: Good morning. My name is
11 Meredith Moldenhauer, land use counsel for the
12 applicant.

13 MR. HERNANDEZ: My name is Bill Hernandez, and
14 I am the applicant.

15 MS. MAZO: Samantha Mazo, also land use
16 counsel for the applicant.

17 MR. BUCHER: Ward Bucher, architect for the
18 applicant.

19 CHAIRPERSON HILL: Okay, great. Ms. Mazo, are
20 you going to be presenting for us today? Okay.

21 MS. MAZO: Thank you.

22 CHAIRPERSON HILL: Okay, great. So, Ms. Mazo,
23 I mean, I specifically am interested, I guess, in kind
24 of making sure that the Office of Planning and you
25 guys are all on the same page, is what the relief is

1 that you're asking. I mean, you can kind of go
2 through that a little bit. I think that you have
3 clarified that on the record, but that was something
4 that kind of came up at the last minute for us in
5 terms of trying to figure that out. So, that's one
6 thing.

7 I always do appreciate the slide presentation
8 that you guys give ahead of time because it makes it
9 easier for us to go through the record, or the
10 presentation, I should say. And so, I guess unless
11 anyone else has anything else beyond that, I'd go
12 ahead and just ask you to walk through your
13 presentation. Also, again highlighting the request
14 that you're asking, and then how you meet the standard
15 for those requests.

16 Does the Board have anything else they'd like
17 specific?

18 [No audible response.]

19 CHAIRPERSON HILL: Okay. So, please, go
20 ahead.

21 MS. MAZO: Sure. Thank you. We're happy to
22 be here today. We are going to very briefly walk the
23 Board through this proposal. And initially just to
24 clarify, as we informed the Board in our submission of
25 January 12th, which is Exhibit No. 51, we have

1 clarified the areas of relief that are requested for
2 this project. And to be clear, first of all, they are
3 all special exceptions, and it's special exception
4 from Subtitle E, 303.1, which is to increase the
5 building height by approximate one-foot, seven-inches,
6 in order to expand the existing partial fourth story.
7 Sorry.

8 Furthermore, to -- a special exception from
9 Subtitle E, 304.1, for the vertical expansion of the
10 fourth story. And that expansion has been pulled back
11 from our initial application. And so, instead of
12 going up for the entire fourth story, we have pulled
13 that back to 70 percent lot occupancy. The existing
14 structure, as we'll discuss very briefly, has a 75
15 percent lot occupancy. And so, accordingly for that
16 vertical expansion we are seeking a special exception
17 pursuant to Subtitle E, 5201.1(a), and then also
18 subtitle C202.2, to expand the nonconforming
19 structure.

20 The existing structure has a few
21 nonconformities. One of which that is being expanded,
22 which is the side yards, the existing nonconforming
23 side yards are being expanded, just slightly due to
24 the minor height increase.

25 I think maybe the issue that you are

1 addressing is one that we worked -- or that OP raised
2 and OP had a discussion with OAG in regards to whether
3 any relief was needed. We're not adding units to this
4 project as Mr. Bucher will explain. The property is
5 an existing 20-unit apartment house in the RF Zone.
6 It has been that way since 1916, when it was
7 constructed. So, it's considered, falls into this
8 category of the purposes-built apartment houses.

9 If units were being added, then relief would
10 be required, most likely from the 900-square foot
11 requirement. However, in this instance no units are
12 being added. The structure has 20 units now.
13 Following this minor renovation it will continue to
14 have 20 units.

15 But what is being increased is that the units,
16 the six units in the rear of the existing third-story
17 are being expanded in size to add bedrooms in order to
18 make them more family friendly. And so, there was a
19 question about whether or not specific relief was
20 required in order to expand the sizes of those units.

21 And my understanding, and Ms. Fothergill can speak to
22 it more directly because she was a party to the
23 discussions with OAG, but Meredith, my colleague and
24 I, had a conversation with the Zoning Administrator on
25 this issue, and I know the Zoning Administrator's

1 office also looked into it. And the ultimate decision
2 was, is that an existing 20-unit structure in the RF
3 itself is not deemed to be a nonconforming use. And
4 so, accordingly, simply expanding the sizes of those
5 units does not trigger any relief.

6 And that's the discussion. And that is also
7 supported by other prior decisions of this Board. One
8 that came in front of you back in the spring, it was a
9 12-unit apartment house on Park Road, and they were
10 increasing the size of those units, not adding any
11 units. And in that case the decision was made that
12 there was no additional require -- sorry, no
13 additional relief necessary to expand the size of
14 those units. And then there have been a few of these
15 other cases, kind of throughout the -- I'd say since
16 2013, 2014, where this particular issue has been
17 raised or addressed and you know, and it was just the
18 Board made decisions that did not require additional
19 relief to expand simply the size of those structures,
20 not to expand the units.

21 So, that's on the relief side. I'm going to
22 now just talk -- have Ward Bucher talk you through the
23 project a little bit more specifically. But also, we
24 do want to raise, and we're going to discuss issues
25 that had -- we have addressed in our presentation, but

1 also adjacent neighbors from 1319, which is this
2 existing 52-foot, 24-unit apartment house directly to
3 the right? Left? Directly to the side of our
4 property are here. And we have had some discussions
5 with them in regards to some of their concerns. And
6 so, I'm sure they will speak for themselves. But we
7 did want to address some of those issues now to the
8 Board and point them out, because quite frankly until
9 today when we had an opportunity to speak with these
10 individuals we didn't know that these issues were
11 going to be of concern.

12 And so, while they are addressed, and also as
13 we'll discuss, many of them are not directly germane
14 to the zoning relief that's required. So, you know,
15 we'll prime -- not prime. We'll give the Board some
16 information on that.

17 So, just briefly, I'm going to have --

18 CHAIRPERSON HILL: Just real quick before you
19 move on.

20 MS. MAZO: Sure.

21 CHAIRPERSON HILL: Just as far as like the
22 relief requested. I was pointed out that Office of
23 Planning says that you needed E, Section 306, and E-
24 203 for nonconforming rear yard and court. Did you
25 speak to that already?

1 MS. MAZO: Well, first of all I will -- in
2 terms of the rear yard, the rear yard is not
3 expanding. The rear yard is not changing at all. So,
4 I am of the opinion that we would not need relief for
5 that because that's simply a nonconforming -- a
6 nonconforming portion of the structure that's not
7 changing. And so, in terms of the courts, we're happy
8 to speak to that.

9 CHAIRPERSON HILL: That's fine. You don't
10 have to talk about it now. We can --

11 MS. MAZO: Yeah. Yeah. Okay.

12 CHAIRPERSON HILL: -- hear from the Office of
13 Planning first.

14 MS. MAZO: We're happy to speak to that.

15 CHAIRPERSON HILL: Yeah.

16 MS. MAZO: And, you know, but we're addressing
17 that directly through our request for a special
18 exception from 202.2, which is the nonconforming
19 structure. And I would note, and again, be happy to
20 talk through this. But the special exception for
21 202.2, for the nonconforming structure and the
22 expansion of nonconforming structures, is subject to
23 the same special conditions as would be a special
24 exception from a court size. So, really we're
25 addressing the same issue.

1 CHAIRPERSON HILL: Okay. Okay. Alright.

2 MS. MOLDENHAUER: And, I'll just jump in and
3 add that the way that we're asking for relief under
4 the nonconforming section as Ms. Mazo has identified,
5 is consistent with a long history of board decisions,
6 and there has been a long history of OP sometimes
7 asking applicants to ask for each individual area that
8 was existing as nonconformity. But as long as you're
9 not increasing that nonconformity, then it has been
10 determined in prior cases and prior permits, that DCRA
11 has not deemed relief to have to be requested under
12 each of those subsections. But rather, as Ms. Mazo
13 identified, under the broader nonconforming structure
14 element of the zoning requirement.

15 CHAIRPERSON HILL: Okay. I was just
16 mentioning and then we can get to the Office of
17 Planning, and so, okay. But thank you.

18 MS. MAZO: Alright. I'm now going to turn it
19 over to Mr. Bucher to, first of all explain the
20 existing structure because just briefly, we do have an
21 existing structure from 1916 that has structural
22 nonconformities, as many of these apartment houses do.
23 So, Mr. Bucher, can you just explain those, please?

24 MR. BUCHER: Good morning. So, the current
25 illustration of -- if we can -- okay. So, we want to

1 -- there's already a current fourth floor. We have a
2 basement level that has four apartments and some
3 mechanical space. We have a first floor that has
4 eight units. None of those units will be altered in
5 our proposal at all.

6 The second floor there is also eight units.
7 Two of which are two-story units in the front of the
8 building. So, what the basic proposal is, is to
9 complete the what by zoning terms is a fourth story.
10 It's the third floor. Complete that to the back of
11 the building. That would allow us to expand six
12 apartments to be also two-story units, and increase
13 their size so that they go from the size for a one-
14 bedroom or efficiency to two or three bedrooms, to be
15 more family sized.

16 And so, the current height is a little over
17 the current permitted zoning. It's 35 feet, 10
18 inches. And we're asking to increase that by one
19 foot, seven inches. One, to make the ceiling height
20 in the two units that are already two stories, they
21 average seven feet, which is permitted by the building
22 code, but -- and the housing code. But it's quite
23 low.

24 MS. MAZO: Sorry. Mr. Bucher, can you just
25 put on the record how the height of our -- the maximum

1 height of this proposal will compare with the heights
2 of the two adjacent buildings, and both of which are
3 apartment houses, correct?

4 MR. BUCHER: Yes, they're both apartment
5 houses. To the west of the Wisteria Building, which
6 is our project, is 1319 Park Road, which has a current
7 height of 52-feet, 9-inches. And our building, with
8 our proposed increase, minor increase of the roof
9 height, would be 37-feet, 5-inches.

10 And then to the east of the building, to the
11 right on the illustration, is 1309 Park Road, which
12 currently has a height of 33-feet, 10-inches.

13 So, our building, even after the renovation,
14 would be considerably lower than the adjacent
15 building.

16 MS. MAZO: Okay. Mr. Bucher, can I now just
17 ask you very quickly to walk through -- again, you've
18 kind of given an overview, but the proposal in terms
19 of how the elevation, the difference in the
20 elevations? And then we will talk through the
21 floorplans for the buildings.

22 MR. BUCHER: Okay, so --

23 MS. MAZO: For the additional floors.

24 MR. BUCHER: So, this building is a very sort
25 of skinny across. It has two stubby wings that stick

1 out. And on the long elevations we'd be increasing
2 the height in the middle of the building, but not on
3 top of the little wings. This will keep our new
4 project further away from the adjacent project.

5 And at the rear there will also be two
6 balconies at the corners.

7 MS. MAZO: Alright.

8 MR. BUCHER: So, in this illustration the
9 colors simply represent the different apartments so
10 that you see that on the left is the second floor
11 illustration. In the middle is what would be the
12 proposed third-floor, so that the apartments will
13 become two-story units, all with an interior stair.
14 But where the little wings stick out, those would be
15 balconies. And then there's little balconies in the
16 upper right and left corner at the upper level.

17 MS. MAZO: Right.

18 MR. BUCHER: Again, this keeps the building
19 back from adjacent properties.

20 MS. MAZO: Okay. Mr. Bucher, can you clarify
21 that on the -- I think you were getting to it, but on
22 the fourth floor that the proposal is to pull the
23 structure in from the sides of the wings?

24 MR. BUCHER: Right. I think if you look at
25 the roof plan, that makes it clear. So, the roof of

1 the proposed roof will be just a rectangle. It won't
2 have any roof over the little wings. And it won't
3 have any roof over the corner balconies.

4 MS. MAZO: Okay. Now, Mr. Bucher, we are not
5 requesting any relief in regards to the roof plan.
6 However, we understand that the owners of 1319, the
7 building, the adjacent apartment house building, the
8 owners and managers of that apartment house, have
9 raised questions in regards to the roof plan. So, can
10 you please first just explain the height and purposes
11 of the roof structure that's proposed? And then also
12 discuss the proposed green roof as well as the roof
13 deck and the proposed plantings around the roof deck,
14 please?

15 MR. BUCHER: So, we are proposing that the
16 main stair be extended to the roof. It's enclosed by
17 a 10-foot tall penthouse. It's only function is for
18 the stair. There's no -- other than the landing at
19 the top of the stair there's no floor area that's
20 usable. And that leads to a roof deck for the use of
21 the tenants.

22 MS. MAZO: Okay. And then in terms of the
23 roof deck -- well, first of all, how far set back is
24 the roof structure going to be from the two -- from
25 the front, side, and rear roof lines?

1 MR. BUCHER: Well, if I can answer it this
2 way, the closest it comes is to the side of the
3 building, and that's 17-feet, five and a quarter
4 inches. So, much less than its height.

5 MS. MAZO: Okay. So, in other words, that
6 roof structure itself, you said, was 10-foot.

7 MR. BUCHER: Ten feet.

8 MS. MAZO: So, that far exceeds the setback
9 requirements.

10 MR. BUCHER: Correct.

11 MS. MAZO: Okay. And then in terms of the
12 small roof deck that is only going to be located on
13 near the front of the building --

14 MR. TURNBULL: Excuse me, Ms. Mazo.

15 MS. MAZO: Sure.

16 MR. TURNBULL: Can I ask one question?

17 MS. MAZO: Sure.

18 MR. TURNBULL: Do we have those -- other than
19 in the PowerPoint, my drawings that I'm looking at do
20 not -- they show -- well, maybe I do.

21 MS. MAZO: Yeah.

22 MR. TURNBULL: Maybe I'm looking at the wrong
23 drawing.

24 MS. MAZO: No problem. I would just direct
25 the Board to the applicant's prehearing statement, the

1 Tab A of the applicant's prehearing statement which is
2 located at Exhibit --

3 MR. TURNBULL: Okay.

4 MS. MAZO: Hold on. I believe it's -- hold
5 on. Let me get the exhibit.

6 [Pause.]

7 MS. MAZO: Sorry. Exhibit No. 37. Exhibit
8 No. 37 includes a statement, and then there's a Tab A
9 to the Exhibit 37, and that includes the revised plans
10 which also includes the roof.

11 Now, we know --

12 MR. TURNBULL: Okay. Thank you.

13 MS. MAZO: Yeah. No problem. So, in terms of
14 the roof deck, can you please explain -- Mr. Bucher,
15 can you please explain? It appears to me that there
16 is a -- you're proposing a small roof deck that will
17 be surrounded by planters. Is that correct?

18 MR. BUCHER: Correct.

19 MS. MAZO: And what is the height of those
20 planters?

21 MR. BUCHER: The proposed height is three and
22 a half feet.

23 MS. MAZO: And then the setback from those
24 planters to the side of the building is what? Sorry,
25 the side of the building closest to 1319.

1 MR. BUCHER: They're set back a little over 10
2 feet.

3 MS. MAZO: Okay. And is there a separation in
4 that area between the size of the subject property and
5 the side wall of the 1319?

6 MR. BUCHER: In the rear L of the 1319, there
7 is a setback of -- from the deck would be 27-feet,
8 five and a quarter inches.

9 MS. MAZO: So, based on that information,
10 we're to understand that the closest those units would
11 be would almost -- approximate 27 feet in height. I
12 mean, in width.

13 Okay. Next, we have also submitted into the
14 record, a project line of site that -- and, Mr.
15 Bucher, can you explain the project line of site?

16 MR. BUCHER: Yes. We wanted to be sure that
17 whatever we did on the roof wouldn't be seen from the
18 public way. So, you can see the site line of someone
19 standing on the sidewalk across the street, looking up
20 at the front of the building, would only see the
21 original existing roof of the building, the terracotta
22 mansard roof. And you wouldn't be able to see either
23 the planters or the new penthouse from that viewpoint.

24 MS. MAZO: And the project line of site does
25 show an illustrative of those proposed planters that

1 would surround the deck. Is that correct?

2 MR. BUCHER: Correct. Shows the planters and
3 we're showing some plants that would be higher than
4 that, with the intent to screen the view from any
5 adjoining properties.

6 MS. MOLDENHAUER: Can you just refresh the
7 Board's memory on how the front façade will be
8 preserved and any improvements that will occur to it?

9 MR. BUCHER: Yes. There was a portion of the
10 original building that was in poor condition, had to
11 be removed for safety reasons. We've obtained, the
12 owner has obtained a building permit to replace that
13 and to fix the terracotta roof, and that work is under
14 construction.

15 MS. MAZO: Next, just quickly for --

16 MR. TURNBULL: I wonder if I could just
17 interrupt. I didn't mean to interrupt you, but just
18 to be clear, that little section, the eve repair
19 detail, if I'm looking at Drawing A-201, which shows
20 the candle, the bracket system that comes out, so that
21 mimics the existing condition.

22 MR. BUCHER: Yeah, we still have the brackets
23 so we're copying them exactly, and so it will look
24 exactly like the -- to the extent we can with
25 construction, exactly like the original construction.

1 MR. TURNBULL: So, on your line of site
2 section --

3 MR. BUCHER: Yes.

4 MR. TURNBULL: -- the top, where we've seen
5 the sight line going up to the top of the building,
6 that's the existing top?

7 MR. BUCHER: That's the existing top of the
8 roof, of the existing roof.

9 MR. TURNBULL: And then the other little slope
10 part is what you're adding to make up the difference
11 as to what you're adding on top, then?

12 MR. BUCHER: Correct.

13 MR. TURNBULL: Okay.

14 MS. MAZO: Next, we have provided our -- Mr.
15 Bucher, you have prepared a shadow sun studies that
16 show the existing structure and then the proposed.
17 And can you just very quickly walk the Board -- we
18 have provided them at three separate times of -- I'm
19 sorry, three separate dates.

20 MR. BUCHER: Right.

21 MS. MAZO: June 21st, September 21st, and
22 December 21st.

23 MR. BUCHER: So, we chose the three dates of
24 the year when first when the sun is highest. That's
25 June 21st. And on the left side of the illustration

1 is the shadows cast by the existing building on the
2 right side, is the shadows cast by the proposed
3 building. And in the morning, noon, and afternoon.
4 So, 9:00 in the morning, at noon, and at 3:00 p.m.
5 So, clearly illustrates that there's not a significant
6 difference at this date, and no shadows fall on
7 adjoining roofs.

8 MS. MAZO: Mr. Bucher, I would maybe just
9 point -- if you can speak from your professional
10 experience, the adjacent property at 1319 is a
11 significantly taller in height, it's at 52 feet,
12 approximate nine inches. Just generally how does
13 having a much taller building adjacent to a shorter
14 building impact shadows that are created by the
15 shorter building?

16 MR. BUCHER: Well, depending on the time of
17 day and time of year, there will be shadows from the
18 taller building that will overlap our shadows, so
19 we're not -- we've illustrated as if the shadows from
20 the adjoining buildings didn't exist. But they'll
21 also, at certain times of the year, actually fall on
22 the roof of the Wisteria.

23 MS. MAZO: Okay. And based on the shadow
24 studies that we have presented, in your professional
25 opinion would you say that the light and air of the

1 adjacent properties will not be unduly affected?

2 MR. BUCHER: Light and air will not be unduly
3 affected. And if we can just quickly, we have
4 September 21st up. September 21st is -- and March
5 21st, are the only days of the year that the sun comes
6 up exactly east and sets exactly west. So, you can
7 see the shadows from our building are a little bit
8 bigger. But they're not significantly different.

9 One thing I do --

10 MS. MAZO: Sorry, just to clarify. You
11 indicated that they are bigger, but are they falling
12 on any adjacent properties any more than is existing?

13 MR. BUCHER: Well, not significantly.

14 One thing I do want to point out is the
15 existing building has the three-foot overhang at the
16 rear, which we are proposing to remove. So, the
17 shadows to the north side of the building are smaller
18 than one might expect for adding a story to the
19 building.

20 CHAIRPERSON HILL: Okay. Ms. Mazo, I just
21 wanted to kind of note the time here for a second in
22 terms of if there's certain things you'd like to speak
23 to now, because I'd like to get to the Office of
24 Planning again, and also allow the Board time for
25 questions. And it sounds like there might be some

1 more things that we're going to get to later. So, I
2 do appreciate your presentation and all the slides
3 that you have, and if there is any other things you'd
4 like to further clarify before turning to the Office
5 of Planning?

6 MS. MAZO: I think first we would clarify that
7 the applicant has had significant discussions with
8 many of the neighbors in this particular situation in
9 terms of 1319, there is a bit of a history there. And
10 you know, so they were not directly contacted by the
11 applicant. But we -- when we saw them here today at
12 the hearing, we did specifically ask them to have a
13 conversation. My colleague, Meredith Moldenhauer and
14 I both spoke with them. We offered to have an
15 opportunity to go across the hall to the Office of
16 Zoning's conference room and discuss some of these
17 issues before we got to the hearing today.

18 Unfortunately, we -- that officer was not
19 accepted.

20 CHAIRPERSON HILL: Okay. I got it. We'll see
21 what happens then.

22 MS. MAZO: Right. And then -- but also so the
23 Board is clear, the record includes eight letters of
24 support from adjacent property owners, including one
25 from a property owner at 1309, which is the four-unit

1 apartment house to the right. And then there's also
2 letters of support from current tenants of the
3 building. So, I think we'll hold kind of our closing
4 and our discussion of some of the legal standards to
5 the end. And we'll be happy to answer any questions.

6 CHAIRPERSON HILL: Okay. Great. Does the
7 Board have any questions right now of the applicant
8 before turning to the Office of Planning?

9 MR. TURNBULL: Yeah, I just have -- the
10 current layout of the building, how many units are on
11 each floor?

12 MR. BUCHER: There's four -- this is Ward
13 Bucher speaking.

14 There's four in the basement. There's eight
15 on the first floor. And there's eight on the second
16 floor.

17 MR. TURNBULL: There's four in the basement?

18 MR. BUCHER: Yes.

19 MR. TURNBULL: Eight on the first floor and
20 eight on the second?

21 MR. BUCHER: Correct. Total of 20.

22 MR. TURNBULL: Total of 20. And, what will
23 there be in the future, then?

24 MR. BUCHER: There will be the same numbers,
25 but all of the second-floor units will also have a

1 third floor portion.

2 MR. TURNBULL: Okay. Alright. Thank you.

3 MS. MAZO: Sorry, just to clarify that. In
4 terms of the discussion with the Board, the discussion
5 of the third floor is actually the fourth story that
6 we -- addition that we're adding, and then the second
7 floor is the third floor. So, that --

8 CHAIRPERSON HILL: Okay. Alright. I'm going
9 to go ahead and turn to the Office of Planning now.

10 MS. FOTHERGILL: Good afternoon. For the
11 record, I'm Anne --

12 CHAIRPERSON HILL: And, Mr. Turnbull, you can
13 come on back whenever you'd like there. I don't know
14 if that --

15 MR. TURNBULL: No, that's quite all right. If
16 we have issues the ZA is here, we can always ask him.

17 CHAIRPERSON HILL: Okay. Alright. Okay.
18 Office of Planning, please?

19 MS. FOTHERGILL: Okay. Good afternoon. For
20 the record, I'm Anne Fothergill with the Office of
21 Planning.

22 And as the applicant mentioned, there was some
23 clarification needed about the relief for this
24 project. And that delayed our staff report to you,
25 and so I apologize for that delay, but we did consult

1 with the Office of the Attorney General and the Zoning
2 Administrator to just clarify any changes in ZR-16,
3 since this is an apartment building in the RF-1, and
4 whether or not expansion of the residential use, not
5 the number of units but the expansion of the building
6 and the expansion of the use, what relief was needed.

7 We did get an interpretation from the Zoning
8 Administrator and confirmation from OAG that an
9 existing pre-1958 purpose-built apartment building in
10 the RF-1 is not considered a nonconforming use. And
11 so therefore that helped us determine what relief was
12 needed for this specific vertical addition. They're
13 not expanding number of units and they're not -- it's
14 just, it's a vertical addition and so as the applicant
15 noted, they are -- they do need special exception
16 relief, not variance relief, for the building height
17 and for the four-story lot occupancy and to expand a
18 nonconforming structure.

19 And as the applicant mentioned, the expansion
20 of a nonconforming structure under Subtitle C, Section
21 202.2, does cover yards and courts, which was raised
22 in this application. And so, since it is self-
23 certified, OP did raise that as a possibility, but
24 they have confirmed what relief they are applying for
25 and that is consistent with the Zoning Administrator

1 and previous cases.

2 So, that said, the Office of Planning reviewed
3 this application after getting all of that information
4 and does support the special exception relief pursuant
5 to Subtitle E, Section 5203.1 for the relief for the
6 building height and stories, and 5201.1 for the
7 vertical addition lot occupancy relief, and the
8 expansion of the nonconforming structure.

9 And, we rest on the record in support of the
10 application and are happy to answer any questions, and
11 hope that the exercise of trying to clarify the relief
12 didn't confuse things. But we did need to go through
13 the process as part of our review, and feel
14 comfortable with where we landed. Thanks.

15 CHAIRPERSON HILL: Okay. Thank you. Does the
16 Board have any questions of the Office of Planning?

17 MR. TURNBULL: So, you're satisfied then, with
18 all the issues that you had.

19 MS. FOTHERGILL: We are. The major issue was
20 about the residential -- the apartment building use.
21 And once we had that resolved then the others were
22 special exceptions and those were more clear. So,
23 yes.

24 MR. TURNBULL: Okay.

25 CHAIRPERSON HILL: I did have a question

1 again. DDOT had raised something about an 8-foot
2 fence. Did you talk to that already?

3 MS. MAZO: Thank you. No, we have not spoken
4 about that yet today, but we can.

5 As Mr. Bucher -- I believe that there is need
6 for a clarification from -- or not need for, but DDOT
7 appears to have been misinformed in terms of the area
8 of the property line. Mr. Bucher can explain that at
9 slide 34 we have included a survey, and Mr. Bucher
10 does that, does the survey demonstrate that the fence
11 is inside the property line?

12 MR. BUCHER: It demonstrates, the survey
13 demonstrates that the existing fences face online.
14 It's on the private property, not in public space.

15 MS. MAZO: Alright. Also, Mr. Hernandez, I
16 would just ask you very briefly, we -- did you obtain
17 a building permit for the fence?

18 MR. HERNANDEZ: Yes, we obtained a building
19 permit and made sure we didn't go over the 7-foot
20 maximum height.

21 MS. MAZO: Right. And to be clear, the
22 building permit was for a 7-foot tall fence. Is that
23 correct?

24 MR. HERNANDEZ: Yes, that is correct.

25 MS. MAZO: Can you indicate that based on your

1 own measurements that the fence itself is seven feet?

2 MR. HERNANDEZ: Yes, that's the maximum height
3 and at various points of measurement it was less than
4 that.

5 MS. MAZO: So, accordingly, DDOT -- our
6 understanding is that DDOT was misinformed as to the
7 height of the fence, and to indicate that the fence
8 height was eight feet, actually as documented here the
9 height is seven feet. Also, DDOT was misinformed that
10 the fence was within public space. And also, the
11 record now reflects that the fence has a building
12 permit that was granted to Mr. Hernandez for a 7-foot
13 tall fence. So.

14 CHAIRPERSON HILL: Okay. And, I mean, it
15 would be a public space issue also if it were actually
16 in public space.

17 MS. MAZO: Correct. If it were in public
18 space then it would be a public space issue, but --

19 CHAIRPERSON HILL: It's not.

20 MS. MAZO: The survey shows that it's not in
21 public space.

22 CHAIRPERSON HILL: Alright. Okay. Does the
23 Board have any more questions of the applicant?

24 MR. HART: No, no question, just a little
25 clarification.

1 DDOT actually, their report just said that if
2 any portion of the project has elements in the public
3 space requiring approval, such as the -- they were
4 talking about that fence, so I think that we're clear
5 on that and we understand that so.

6 CHAIRPERSON HILL: Okay. Great. Alright.
7 Well with that then, does the applicant have anything
8 else before I ask about people here in the public?

9 MS. MAZO: Yeah, just one, one minor thing,
10 which is that we did present the proposal to a duly
11 noticed ANC meeting on January 11th, and that as
12 reflected in the record at Exhibit 50, ANC 1A did vote
13 to support the project and the ANC's report is in the
14 record.

15 CHAIRPERSON HILL: And since you did bring up
16 the ANC, and I always am a little curious. So, it
17 wasn't 11 to -- you had one person, you know, voting
18 against?

19 MS. MAZO: Right. And that --

20 CHAIRPERSON HILL: And you had 11 voting with
21 it. But so, what was it that -- why did the person
22 vote against?

23 MS. MAZO: The question was about the
24 increasing in the height from the already
25 nonconforming 35-foot, 10 to you know, 1-foot, 7-inch.

1 And my basic understanding is that that commissioner
2 habitually objects to any sorts of special exceptions
3 for height or any sort of height increase. And then
4 also, that she, this particular commissioner, feels
5 like she has a very strong history with the RF. I
6 mean, the 1411, the changes in the R-4 to limit the
7 height. And so, she just kind of --

8 CHAIRPERSON HILL: Okay. That's fine. I was
9 just curious.

10 MS. MAZO: On principle, I guess is the word.
11 On principle, objected there.

12 CHAIRPERSON HILL: And then the hearing
13 itself, I mean, was there a lot of opposition there at
14 the hearing?

15 MS. MAZO: There was no opposition. Nobody
16 came to the ANC --

17 CHAIRPERSON HILL: Okay.

18 MS. MAZO: -- meeting.

19 CHAIRPERSON HILL: Okay. Alright. Okay. So,
20 do you have anything else?

21 MS. MAZO: I do not.

22 CHAIRPERSON HILL: Okay. Then I'm going to
23 take -- is anyone here from the ANC? No? Okay. Is
24 there anyone here wishing to speak in support? Is
25 there anyone here wishing to speak in opposition? If

1 you could please come forward?

2 MR. TISONE: Good morning.

3 CHAIRPERSON HILL: Good morning. If you could
4 please just -- first of all, were you sworn in?

5 MR. TISONE: Yes.

6 CHAIRPERSON HILL: Okay. And so, have you
7 filled out your witness cards?

8 MR. TISONE: Yes.

9 MS. KONTOS: Yes.

10 CHAIRPERSON HILL: Okay. So, if you just go
11 ahead and give me your name and then your address, and
12 that would be great. And, start from there.

13 MR. TISONE: Daniel Tisone is my name. It's
14 9445 Fairfax Boulevard, Fairfax, Virginia, is my
15 address. I'm representing 1319 Park Road, the
16 building directly adjacent to 1315 Park Road.

17 CHAIRPERSON HILL: Okay. And could you spell
18 your name again for me?

19 MR. TISONE: Tisone, T-I-S-O-N-E.

20 CHAIRPERSON HILL: Okay. And is your
21 microphone on? I guess, it kind of, it sounds like --
22 the green dot will come on. It might have been on.
23 Maybe it just is sounding a little -- okay. Alright.
24 And your name, please?

25 MS. KONTOS: Melina Kontos.

1 CHAIRPERSON HILL: Kontos?

2 MS. KONTOS: Yes.

3 CHAIRPERSON HILL: And where are you, Ms.
4 Kontos?

5 MS. KONTOS: 1294 Mason Mill Court, in
6 Herndon, Virginia.

7 CHAIRPERSON HILL: Okay. Are you also
8 representing or --

9 MS. KONTOS: I'm the daughter of the owner.

10 CHAIRPERSON HILL: Oh, okay. Okay, great.
11 Okay. So, I'm going to give you both three minutes to
12 present. And so, Mr. Tisone?

13 MR. TISONE: Yes.

14 CHAIRPERSON HILL: If you want to go first, go
15 ahead.

16 MR. TISONE: We are opposed to the application
17 for the exception, purely based on the fact that it
18 will invade the privacy of our current tenants,
19 especially with the roof deck. And the proposed
20 increase with the construction with the exception is
21 an additional 5,000 square feet, which is not a small
22 amount to a 20,000-square foot building.

23 And the argument is really based on the fact
24 that they're saying, well, it's already nonconforming
25 so we might as well continue to break the rules. And

1 our major issue with this is that the -- Mr. Hernandez
2 has been in violation of the rules numerous times, and
3 the laws and ordinances with the building. In fact,
4 causing significant damage to our building due to
5 flooding from a matter blocking the drain, which we
6 did bring to DDOT's attention and various other
7 inspectors. And we have a letter from the inspector
8 here that shows that Mr. Hernandez and the property
9 owners of 1315 have not been conforming to the
10 ordinances or regulations, and not even been aware to
11 speak with us regarding finding a method to solve
12 these issues.

13 And this is where the concern draws from for
14 this, this newly renovations that they're proposing
15 because it just, it doesn't incite confidence within
16 us and our building and our tenants that this
17 construction is going to go as planned. This isn't
18 going to affect the privacy, the air space, or
19 anything else regarding our building.

20 Furthermore, I think the architect did say
21 that the light would be not significantly affected,
22 but it will be affected. And for those reasons, we're
23 opposed to the motion and our -- I submit that it
24 should not be granted.

25 MS. KONTOS: Additionally, just to touch on

1 this, because it wasn't mentioned in the presentation,
2 the 5,093-square foot increase is a lot and this is,
3 as you know, a really densely populated commercial
4 area. And parking is already an issue and adding
5 another 5,000 plus square footage of living space and
6 increasing the size of the units, while not increasing
7 the number of units overall, has the same result of
8 increasing the population density in the area, further
9 exacerbating these issues.

10 So, in addition to the privacy issue of
11 tenants looking out their window in a public area roof
12 deck on the neighboring property being at its closest
13 point, 10 feet away, but if it's level with windows
14 the privacy is already eliminated, even if the light
15 is not.

16 So, yeah, just to keep it short, I think
17 that's pretty much everything.

18 CHAIRPERSON HILL: Okay. The, I guess a
19 couple of things. One, so you guys didn't go to the
20 ANC meeting?

21 MR. TISONE: We were not informed, just as
22 counsel did say that we were not contacted or told
23 about this, and we heard about it from an actual, a
24 different neighbor. We're more the adjacent neighbor
25 and we should have been notified regardless of any

1 bygones. I would think that that would be something
2 that should have been done.

3 CHAIRPERSON HILL: Well, you would have been
4 notified through the normal process. I mean, you
5 would have gotten --

6 MR. TISONE: We were notified through the
7 Zoning Board, but we did not get that letter until, I
8 believe, a week ago.

9 CHAIRPERSON HILL: Uh-huh. And you should
10 have been notified about the ANC meeting. So, no one
11 from -- you're the property owner?

12 MS. KONTOS: Yes.

13 CHAIRPERSON HILL: And so, do you normally go
14 to the ANC meetings? Or not necessarily?

15 MS. KONTOS: Not necessarily, no. My father
16 goes to some of those meetings, but I mean, everybody
17 else in the neighborhood was given a courtesy of
18 informing by the applicant of who was doing this
19 renovation.

20 CHAIRPERSON HILL: Okay. So, you're saying
21 that the applicant didn't reach out to the owners?

22 MS. KONTOS: No. To have this conversation as
23 counsel had mentioned, that they were trying to do
24 now, we could have had this conversation at an earlier
25 date. I don't think immediately before the hearing

1 was --

2 CHAIRPERSON HILL: If the presenter wouldn't
3 mind, could you show me which building we're talking
4 about, and through on the slides?

5 MR. BUCHER: Yeah, so we're talking about on
6 this illustration --

7 CHAIRPERSON HILL: Uh-huh.

8 MR. BUCHER: -- the Wisteria, our building, is
9 in the middle.

10 CHAIRPERSON HILL: Right.

11 MR. BUCHER: And their building that they're
12 referring to, 1319, is on the left-hand side.

13 CHAIRPERSON HILL: It's the taller one. Is
14 that correct? Okay. Right adjacent to the property.
15 Okay. Does anyone have some questions for the
16 witness?

17 MR. TURNBULL: I just want to clarify. Are
18 you the white building on the right arrow?

19 MS. KONTOS: No, the brick building.

20 MR. TISONE: On the left, the far 1319.

21 MR. TURNBULL: On the far left. On the left.
22 Oh, okay. And you own the whole building?

23 MS. KONTOS: Yes, sir.

24 MR. TURNBULL: Oh, okay.

25 MS. KONTOS: My father.

1 MR. TURNBULL: Thank you.

2 CHAIRPERSON HILL: So, the issues that you're
3 speaking of in terms of privacy from the roof deck,
4 are there windows or something against that building
5 that you're speaking of?

6 MS. KONTOS: So, yeah. Be able to see into
7 those side windows on those stories, I guess. Yeah,
8 you can't really see it.

9 CHAIRPERSON HILL: Right. I see. No, I'm
10 seeing from one of the --

11 MS. KONTOS: But it would be level,
12 essentially, with the --

13 CHAIRPERSON HILL: I see it from slide 6 on
14 the applicant's presentation. Okay. Alright.

15 So, some of your concerns, I guess, are
16 concerning construction, and that it wouldn't be done
17 in a way that would not damage your building?

18 MR. TISONE: No, no, I mean, that's where some
19 of our concern lies. But primarily it's with the
20 privacy of our tenants. With a roof deck an increase
21 of 5,000 square feet will bring more individuals in
22 the building, and spill over on to a roof deck.

23 We don't see where the burden is, really, to
24 expand the height to add a roof deck. I don't see
25 where that would cause an undue burden to

1 construction. If they're just renovating the inside
2 of the building, they want to increase the height to
3 increase the square footage, that poses a problem to
4 our tenants and their privacy, if people are hanging
5 out on the roof decks and looking in the windows.
6 That's just --

7 CHAIRPERSON HILL: Right. Well, your tenants
8 have a nice view also, right? They're enjoying the
9 view out of their windows.

10 MR. TISONE: Right.

11 CHAIRPERSON HILL: Yeah. Okay. Alright. I
12 don't have any more questions for the witness. Do
13 you?

14 MR. TURNBULL: No. No, we can talk about it.
15 I think as we get into discussing it, I've got some
16 concerns. But I don't think I have any real questions
17 for the --

18 CHAIRPERSON HILL: Are there any concerns or
19 questions that you can give to the applicant?

20 MR. TURNBULL: Well, obviously I think they
21 need a meeting.

22 CHAIRPERSON HILL: Okay.

23 MR. TURNBULL: They need a meeting to address
24 some of these issues and offer some kind of solutions,
25 whether it's privacy screens or something to address

1 the concerns of these people and the issue. So, I
2 think there's room there for further dialog. I think,
3 we're not going to be able to decide anything today.

4 CHAIRPERSON HILL: Okay.

5 MR. TURNBULL: At least, I won't be able to,
6 unless they have some discussions with the neighbors.

7 CHAIRPERSON HILL: Okay. Before we get to
8 that part. So, alright. So, does the applicant have
9 any questions for the witnesses?

10 MS. MAZO: Just one quick. Your building is a
11 24-unit -- I'm sorry, has 24 separate apartments,
12 correct?

13 MS. KONTOS: Uh-huh.

14 MR. TISONE: Yes.

15 CHAIRPERSON HILL: Okay. Sure.

16 MS. MAZO: How many of those 24 units are
17 located on the side that oversees the -- that's, you
18 know, significantly taller, but oversees the Wisteria
19 now?

20 MS. KONTOS: I mean, all the units on that
21 side that are facing it, but I don't think that's --

22 MS. MAZO: How many units is that out of the
23 24?

24 MR. TISONE: Twelve units.

25 CHAIRPERSON HILL: Excuse me, hold on. So,

1 would you like to speak?

2 MR. KONTOS: No, just --

3 MS. KONTOS: Yeah, you have your cards. You
4 can get --

5 CHAIRPERSON HILL: Please, come forward. Did
6 you get sworn in? I'm sorry, did you get sworn in?

7 MS. KONTOS: Yes.

8 MR. KONTOS: Yes.

9 CHAIRPERSON HILL: Okay. And what's your
10 name, if you could state that, please? If you could
11 just push the light there?

12 MR. KONTOS: John Kontos, and I'm the owner.

13 MS. MAZO: Sorry, Mr. Kontos. So, you're
14 stating that there are 12 units on what appear to be
15 your third and fourth stories?

16 MR. KONTOS: Yes. There's 24 units --

17 MS. MAZO: On the --

18 MR. KONTOS: -- and half of the units, it is
19 on northeast side.

20 MR. MAY: Right. But I'm saying in terms of
21 that portion of the third and fourth stories that now
22 overlook the Wisteria, you're saying there are half of
23 the units in your building are located on --

24 CHAIRPERSON HILL: That's okay. And I just, I
25 just -- the question is, again, how many -- the units

1 that are going to be bothered by the roof deck, how
2 many units are going to be bothered by the roof deck?

3 MR. KONTOS: It's six.

4 CHAIRPERSON HILL: Okay. Alright. So again,
5 I don't know what had happened beforehand in terms of
6 like the applicant and the building next door. But
7 again, I appreciate the fact that we can all come
8 together and just kind of figure out what's going on,
9 together, okay? So, again, I just want to clarify
10 that, that I understand that there might be history it
11 sounds like, but we're going to try to work together
12 to come to a resolution. Alright?

13 So, okay, so you got your question answered
14 there, Ms. Mazo, in terms of the number of units,
15 right? There's six. Okay?

16 MS. MAZO: Yes.

17 CHAIRPERSON HILL: Correct? Okay, great. I'm
18 just clarifying.

19 So, let's see. So, Mr. Hart, do you have any
20 comments? I mean, I know what I am about to say now.
21 Or not about to say, I mean, basically what Mr.
22 Turnbull had mentioned -- I mean, I actually was in a
23 little -- well, I guess I have one question for the
24 applicant.

25 So, you didn't directly notify the next-door

1 neighbor?

2 MS. MOLDENHAUER: We, we did not. But just to
3 Mr. Turnbull's comment, when we realized that they
4 were present, since they weren't present at the ANC,
5 we asked them to go outside in the hallway, as has
6 been some of the prior chairs' standard process. But
7 for two hours we said, we can get a conference room,
8 we can sit down, we can talk about these things.

9 And they initially agreed that they would sit
10 down and talk with us this morning. And then they
11 said, no, we don't want to talk. So, we wasted --
12 there was two hours we could have made progress.

13 One option might be that I know that the Board
14 has an extensive appeal that will be going on and we
15 might be able to go and continue this hearing rather
16 than delaying this hearing, since we do have OP's
17 support and we do have ANC support, and at least maybe
18 see if there's a dialog that can be had if there can
19 be one. We would be willing to engage in that time
20 right now, and then come back to the Board later on
21 this morning or later on today.

22 CHAIRPERSON HILL: Okay. Let's see, right.
23 So, you hadn't reached out to the neighbor there.
24 Where I am with -- I mean, again, you guys are the
25 immediate next door neighbor. I'm a little surprised

1 you didn't go to the ANC meeting. Or, I guess you
2 didn't know about the ANC meeting. I'm a little
3 confused as to that, right.

4 You are aware that the ANC has already, you
5 know, voted on this and has approved it, right? The
6 Office of Planning has gone through this and approved
7 this. Your building is the higher building next door.

8 So my, I guess, thought is I'm trying to
9 figure out what it is that you guys are going to be
10 able to come to agreement to. I mean, the only thing
11 that you seem to have mentioned before is that you
12 were concerned about -- I thought you had been
13 concerned about damage. But maybe not. And if that
14 were the case, then maybe the applicant would be
15 willing to add you to their insurance policy, so if
16 there was any, you know, issues with damage, that
17 might be something that the applicant would be willing
18 to do that they have done in the past.

19 You had mentioned something about a drain, you
20 know, that hadn't been cleaned. I mean, I don't know
21 if that's something again that you can work out with
22 the applicant to talk about.

23 MS. KONTOS: We've had a few years of -- sorry
24 to interrupt -- of trying to have dialog over these
25 things. So, it's really not that we haven't tried.

1 CHAIRPERSON HILL: Okay.

2 MS. KONTOS: It's, we have documented in
3 various e-mails, with various authorities, that we
4 have tried incessantly in fact to have -- I can submit
5 this.

6 CHAIRPERSON HILL: Okay. Alright. So, maybe
7 I don't know --

8 MS. KONTOS: I don't know what the resolution
9 is there.

10 CHAIRPERSON HILL: To speak to your point, Ms.
11 Moldenhauer, I don't know if today is going to
12 necessarily be that helpful for you, but perhaps. I
13 mean, are you all willing to talk today about how you
14 could possibly get to a resolution?

15 MR. TISONE: I do have a prior engagement. I
16 was hoping that we'd be able to -- that's why this
17 morning, just being it's sprung on, can you meet right
18 now and let's just hurry up and get this over with,
19 that's just not the way we really --

20 CHAIRPERSON HILL: Okay. Alright.

21 MR. TISONE: -- would like to see the plans.

22 CHAIRPERSON HILL: So, Mr. Turnbull has
23 already indicated that he would like to see some
24 dialog take place. And so, I don't necessarily think
25 that that is such a bad thing. I would like to also,

1 I guess, offer that since you are here now, you know,
2 you can try to find a time to come together and talk.

3 And then I'd like to hear what it is, you know, you
4 all were able to or not able to resolve.

5 Mr. Hart, do you have anything to add?

6 MR. HART: Yeah, I would concur about the need
7 to have a further -- have a conversation about issues
8 that Mr. Turnbull has -- well, and others have raised,
9 regarding the views from the roof deck.

10 I'm assuming that there may be some issues
11 about the balconies on the -- or the decks on either
12 side as well.

13 MR. TISONE: Yes.

14 MR. HART: Or, actually on the, whatever that
15 is, the west side as well, that's overseeing your
16 property.

17 So, I think you know, further kind of
18 conversation would be helpful to at least understand
19 where you all can get to. If you want to do that
20 today, that's up to you. If you want to do that
21 later, then that -- but I think that we probably need
22 to have that before making the final --

23 CHAIRPERSON HILL: That's okay. I think you
24 guys are going to have to come back later.

25 MR. TISONE: Okay.

1 CHAIRPERSON HILL: So, you know, I don't think
2 you're going to -- you know, I mean, what I want to
3 clarify with the people in opposition, I mean again,
4 you know, I mean, it's a bit disappointing that you
5 didn't obviously know about the ANC meeting, you know.

6 MS. KONTOS: Had we known, obviously we would
7 have --

8 CHAIRPERSON HILL: And, so, and I suppose, you
9 know, you still -- you know, you have an SMD that
10 represents your building there, and you know, I would
11 imagine that the SMD would have contacted you or
12 something. I don't know. Right?

13 But, but whether you had gone or not doesn't
14 necessarily mean you might have changed the vote. I
15 mean, the vote was 11 to one, right? So, I guess what
16 I'm kind of speaking to the opposition about is that
17 you kind of have had some of your chances, some of
18 your opportunities to vent some of this and discuss
19 it. I mean, and now we're in a situation where you
20 know, the applicant has come forward, the applicant
21 has gone through their due diligence in terms of the
22 ANC and working with the Office of Planning. And I
23 would hope that if you can get to some resolution or
24 try to get something out of the process, that would be
25 of benefit to you.

1 And, yeah. So, I guess I'm just saying like
2 whether you've been here early enough when I was
3 talking to other people in this regard, and I guess
4 Mr. Hart or Mr. Turnbull please add further
5 commentary, you know, the ANC has approved it. The
6 Office of Planning has approved it. The applicant
7 wants to work with you in some capacity, right? And
8 so, you know, I would definitely suggest you go ahead
9 and sit down, talk with them, see where you might be
10 able to get something out of the discussion. And,
11 yeah, that's what I would make comment to.

12 So, if the applicant were to come back I would
13 -- unless the others on the Board have an issue, I
14 would be more inclined to just, you know, a meeting
15 case when they come back.

16 Okay? So, the -- Mr. Turnbull is back again
17 on the 22nd, apparently. Would the 22nd work for you
18 guys?

19 MS. MAZO: That works for us.

20 CHAIRPERSON HILL: Okay. So, the 22nd. So,
21 that means that you all will have to meet beforehand.
22 And if you were here for some of the previous
23 discussions, you know, whether you all come to a
24 conclusion or not, I just need something.

25 MS. MOLDENHAUER: The 25th of January?

1 CHAIRPERSON HILL: Sorry, 22nd of February.

2 MS. MOLDENHAUER: February. I thought we
3 would get an earlier date.

4 CHAIRPERSON HILL: We're not here on the 25th.
5 Yes.

6 MR. TURNBULL: The zoning commissioners have
7 to rotate on and off. We --

8 MS. MOLDENHAUER: But, a proxy vote?

9 CHAIRPERSON HILL: Well, it's not even that.
10 We just, we're not here on the 25th. I mean, the
11 earliest you could possibly get here after that would
12 be the 8th, and then you know, you might as well --
13 let's see, the 8th. Okay. So, Mr. Moy is nodding his
14 head. Can I fit this in on the 8th?

15 MS. MOLDENHAUER: Doesn't leave us a lot of
16 time to meet.

17 MR. MOY: It's a heavy docket, but you know,
18 what's one more?

19 CHAIRPERSON HILL: Okay. Alright. I'm going
20 to just -- I mean, unless -- and I can ask you guys,
21 unless there's some finance issue, it's two more
22 weeks, you know. And then you get Mr. Turnbull back
23 which is better to have the person here that actually
24 heard the case, and therefore if there's an issue.
25 And you do need all three of us currently, because

1 we're the quorum. So, if the person is here then
2 they'll have an opportunity to speak.

3 So, I'm going to lean toward the 22nd, okay?
4 And we're going to go ahead and put you on the 22nd.
5 That means that, Mr. Moy, I will get a report from the
6 applicant concerning the discussion that took place
7 when?

8 MR. MOY: I think for the benefit of the
9 Board, if the applicant can make their filing on
10 Monday, February the 20th?

11 MS. MAZO: Monday, February the 20th, is a
12 holiday.

13 MR. MOY: Oh, I'm sorry.

14 MS. MAZO: Yeah, the Monday before.

15 MR. MOY: Just a second. Just a second. Yes,
16 the week before, so it would be the 13th.

17 CHAIRPERSON HILL: What holiday is the 20th?

18 MS. MAZO: President's Day.

19 CHAIRPERSON HILL: Oh, okay. All hail the
20 presidents.

21 MS. MAZO: So, to be clear, that's the 13th,
22 you said?

23 MR. MOY: That would be the 13th of February
24 and if the Board -- is the Board wishing a
25 supplemental from Office of Planning?

1 CHAIRPERSON HILL: I don't really think I'm
2 going to get anything from the Office of Planning.
3 I'm fine with the Office of Planning's report.

4 MR. MOY: Okay. Good. So, there's only one
5 post-hearing filing.

6 MS. MAZO: By the applicant.

7 MR. MOY: By the applicant. Thirteenth. Only
8 the applicant.

9 MS. MAZO: And the record is closed except for
10 that filing, correct?

11 MR. MOY: If that's what the Chair said.

12 CHAIRPERSON HILL: Thank you, Ms. Mazo.
13 That's very kind of you. I appreciate you pointing
14 that out to me.

15 So, yeah, the record is closed other than
16 this. Okay? So, if you guys could go ahead -- and I
17 suppose again, today would be nice if you could
18 schedule time for you guys to meet, and I would just
19 have the attorneys talk to each other. Okay? And
20 figure out a time.

21 And then, you know, then meet. And so, yeah,
22 I guess that's it, right?

23 MR. TURNBULL: Yeah, but I would just put a
24 caveat that we're not pressuring anybody to come up
25 with a solution today. I mean, we've left this open

1 for a longer dialog, but if you're lucky enough to do
2 it today, that's fine, but --

3 MR. TISONE: Right.

4 MR. TURNBULL: -- we're not insisting that
5 that happen.

6 CHAIRPERSON HILL: Okay, great. Let's see.
7 So, with that going to close the hearing except for
8 the issues or the report that we're asking for, the
9 filing concerning how the discussion goes with the
10 immediate next door neighbor. And then I know that we
11 have an appeal case next, so I am going to take
12 another five-minute break, if that's cool. I mean,
13 good. And then we'll get started.

14 Okay. Thank you all very much.

15 MR. TISONE: Thank you.

16 [Break from 12:58 p.m. to 1:15 p.m.]

17 CHAIRPERSON HILL: Okay. Let's go ahead and
18 get started again.

19 MR. MOY: Yes. Thank you, Mr. Chairman. The
20 application before the Board is an appeal, Appeal No.
21 19374 of DuPont Circle Citizen's Association, as
22 captioned and advertised for -- it's an appeal of the
23 July 18th, 2016 decision by the Zoning Administrator,
24 Department of Consumer and Regulatory Affairs, to
25 issue Building Permit No. B, B as in bravo, 1603105

1 for the conversion of one family dwelling -- of a one-
2 family dwelling into a four-unit apartment house, R-5-
3 B District, 1514 Q Street Northwest, Square 194, Lot
4 27.

5 CHAIRPERSON HILL: Okay, great. Thank you.
6 If you could please introduce yourselves from my left
7 to right?

8 MR. GELFANN: Brian Gelfann with the DCCA.

9 MR. HAWKINS: Don Hawkins, architect.

10 MR. LeGRANT: Matt LeGrant, DCRA.

11 MR. TONDRO: Maximillian Tondro on behalf of
12 the Zoning Administrator and DCRA.

13 CHAIRPERSON HILL: Okay. Mr. Hawkins, are you
14 going to be presenting, or who will be presenting
15 first?

16 MR. GELFANN: I will.

17 CHAIRPERSON HILL: I'm sorry, was it -- oh,
18 Gelfann?

19 MR. GELFANN: Yes.

20 CHAIRPERSON HILL: Okay. Great. And someone
21 else just walked up?

22 MR. COLLINS: Christopher Collins of Holland
23 and Knight representing the owner of the property.

24 CHAIRPERSON HILL: Okay. So, just to let you
25 guys know what we're going to do is we're going to go

1 ahead and let the applicant go first, and then the
2 Zoning Administrator will have an opportunity to
3 present as well. Then the building owner will go
4 ahead and have an opportunity to speak. You'll have
5 an opportunity to cross-examine what is presented, and
6 the last -- and I forget. The last person that's
7 going to get to go is the building owner, in terms of
8 when we're finally finished.

9 How much time you guys think you might need?

10 MR. GELFANN: Ten, 15 minutes.

11 CHAIRPERSON HILL: Okay. Wow, I really -- I'm
12 going to give you 20 minutes.

13 MR. GELFANN: Twenty.

14 CHAIRPERSON HILL: Okay.

15 MR. TONDRO: Chairman Hill.

16 CHAIRPERSON HILL: Yeah, sure.

17 MR. TONDRO: If I may interrupt. I just have
18 two preliminary motions I'd like to submit if I can,
19 oral. And the reason to explain, there are questions
20 of standing, and also a question of timeliness. I
21 believe both of them are jurisdictional and therefore
22 need to be heard first.

23 And to be clear, this is because the
24 appellant, when they -- in their statement, just had -
25 - the appellant is the DCCA, just simply said that

1 they represented members of the neighborhood without
2 clearly distinguishing who, or why, or how they were
3 particularly harmed by this decision. So, I'd just
4 like to be clear as to what it is that the appellant
5 believes is the harm to them by this decision.

6 And then second of all, is the issue of
7 timeliness because what is being challenged is the
8 determination that the lower level of this particular
9 project is a cellar and not a basement, therefore it
10 does not count towards the gross floor area. That was
11 a decision that was communicated in writing on March
12 the 21st of 2016, to -- it was published on the Zoning
13 Administrator's website. It was also e-mailed to Mr.
14 Gelfann, as well as to the single-member district ANC
15 commissioner, Nichols, on March the 22nd, 2016. And
16 therefore, I believe there's the 60-day period starts
17 from that March 22nd delivery of that publication.

18 CHAIRPERSON HILL: So, I got the timeliness
19 issue. That's one. What was the first one again?

20 MR. TONDRO: I'm sorry. The first one was the
21 standing, which was the issue that they have to allege
22 what harm it was that this particular decision that
23 they're appealing, has to them.

24 As I said, the DCCA, in their appeal they
25 simply stated that they represented somehow, some

1 broad constituent of people who live someplace in the
2 neighborhood. They never clarified what harm was to
3 them by -- was made to them by this decision, as
4 they're supposed to do under Subtitle Y, 302.12F.

5 CHAIRPERSON HILL: Okay. So, have you
6 submitted those two items to the record?

7 MR. TONDRO: I have not, we have just made
8 them orally. Sorry.

9 CHAIRPERSON HILL: Okay. That's all right.
10 So, if you could submit those two items to the record?
11 And then if you could have an opportunity to respond
12 to those two items, we're going to hear everything and
13 hold those two preliminary matters in abeyance because
14 you're just telling me right now.

15 And so, do you understand?

16 MR. TONDRO: Yes. Yes.

17 CHAIRPERSON HILL: Okay. Alright. Okay.
18 Alright. So now please, if you could go --

19 MR. GELFANN: If I may?

20 CHAIRPERSON HILL: Sure.

21 MR. GELFANN: We also have a preliminary
22 matter, which we did include in our submission,
23 Exhibit 27 of the record. It's at pages 2 through 4,
24 and it's simply this, that it's also a timeliness
25 issue.

1 When the appeal was filed in September, if you
2 look at Exhibit 2 of the record --

3 CHAIRPERSON HILL: Could you tell me again
4 which exhibit you're referring to?

5 MR. GELFANN: I'm looking at Exhibit 27, which
6 is our submission at pages 2 through 4, summarizes the
7 position I'm about to tell you.

8 CHAIRPERSON HILL: Concerning the timeliness.

9 MR. GELFANN: The timeliness. And, it is as
10 follows.

11 CHAIRPERSON HILL: So, just before you move
12 on, I'm sorry. So, what is it that you're asking?

13 MR. GELFANN: Well, we're asking that if you
14 determine that the appeal from -- that was filed in
15 September is timely, then what we're asking is that
16 the addition to that appeal that was filed in
17 November, is untimely.

18 Exhibit 2 of the record contains the appeal
19 that was filed in this case. It says essentially
20 this, that the Zoning Regulations define a cellar as
21 nonhabitable space, and the lowest level of the
22 building contains habitable space, so it cannot be a
23 cellar, and instead must be a basement. And because
24 it's a basement it must count in FAR.

25 There was no challenge in September when the

1 appeal was filed, to the measurements of whether the
2 lowest level is a basement or a cellar.

3 Then, in Exhibit 24, which is the appellant's
4 prehearing submission, two months later, they add one
5 additional claim saying that the ceiling height
6 measurement is more than four feet above adjacent
7 grade. So in essence, they're challenging the Zoning
8 Administrator's determination from March.

9 CHAIRPERSON HILL: So, you're -- and I don't
10 know if you're making a motion, dismissal due to
11 timeliness?

12 MR. GELFANN: Yes. Yes, and it's on pages 2
13 through 4 of our prehearing submission at Exhibit 27
14 of the record.

15 CHAIRPERSON HILL: Okay. Mr. Collins, if you
16 could also pull that out and resubmit that later?

17 MR. COLLINS: Just resubmit what's in Exhibit
18 27?

19 MS. GLAZER: Yeah, it's not in the form of a
20 motion per se. It's part of the owner's prehearing
21 statement, Exhibit 27. But I think the substance is
22 there, and as I understand it there's a motion by DCRA
23 and also now a motion by the owner is joining.

24 MR. COLLINS: and it does say on page 2 that
25 the new additional claim in the appeal should be

1 dismissed. So, that's the heading on page 2 of our
2 submission.

3 MS. GLAZER: It wasn't submitted as a formal
4 motion. It's part of the prehearing statement.

5 CHAIRPERSON HILL: Okay. So, if you could --
6 can they submit it now as a formal motion?

7 MS. GLAZER: I guess they can but there would
8 be no reason to. I would think the Board would be
9 more interested in responses.

10 CHAIRPERSON HILL: Okay. So, we'll get back
11 to you.

12 MR. COLLINS: Okay.

13 CHAIRPERSON HILL: Okay?

14 MR. COLLINS: Alright. And I have one more
15 now, given the people sitting at the table.

16 At the time of the filing of the appeal, there
17 are certain requirements of the appellant. The Zoning
18 Commission made changes to the rules of procedure for
19 appeals and applications when they published the new
20 regulations in September of this year. Of last year,
21 I'm sorry.

22 And among those is that at the time of filing
23 the appeal a number of pieces of information must be
24 submitted. Number one, all information, statements,
25 briefs, including reports and statements of experts

1 and other witnesses that the appellant may wish to
2 offer into evidence. Number two, a resume of any
3 expert witness. Number three, a written summary of
4 the testimony of all witnesses.

5 And this is all contained in Subtitle Y,
6 Section 302.12. None of that was submitted. The only
7 statement when the appeal was filed, the only name on
8 there was Robin Diener. So, at most you can identify
9 Robin Diener as the witness for DuPont Circle
10 Citizen's Association.

11 Section 302.14 of Subtitle Y, also says that
12 the appellant may present no witnesses, nor offer any
13 document not previously identified in the filings,
14 required in Section 302, unless the Chair determines
15 that the witness or document was not known or
16 available to the appellant at the time the filings
17 were due.

18 So, that's a burden on the appellant. They
19 know the rules. They invoked the rules to get this
20 case extended from December to today. They know there
21 are rules, and they know the rules. They didn't
22 follow the rules. They had three opportunities to do
23 it. They could have done it when they filed the
24 application, or the appeal, like they should have.
25 They could have done it when they submitted their

1 prehearing submission, and they could have done it
2 when they filed their responses to the Zoning
3 Administrator's presentation, and our presentation.
4 They had three opportunities to do it. They didn't do
5 it.

6 So, the only witness that you could find
7 that's correctly here today, is Robin Diener.

8 CHAIRPERSON HILL: Okay. So again, there are
9 a lot of issues you guys are bringing up to me right
10 now, and so I'm going to go through the hearing, as I
11 was going to go through the hearing, and then we'll
12 come back, circle back around, and see what further
13 information the Board might need in order to address
14 the concerns that you just brought up. Okay?

15 MR. TONDRO: And, Chairman Hood, if I can just
16 add? I'm sorry --

17 UNIDENTIFIED SPEAKER: Chairman Hill.

18 CHAIRPERSON HILL: Yeah, I'm hearing you.

19 MR. TONDRO: Sorry.

20 CHAIRPERSON HILL: It's okay.

21 MR. TONDRO: I just want to emphasize, I think
22 that this is because the rules that were adopted under
23 the new ZR-16 were designed to make sure that it was a
24 fair playing ground. I apologize, belatedly, perhaps
25 for the fact that my initial filing was, I think it

1 was two days late. I consented to the postponement on
2 that basis. That was a matter of fair play as the
3 rules were determined.

4 I'm sorry. The issue, I think, that we're
5 raising is that we're now not being able to be
6 prepared as to who it is, who is representing, who is
7 the actual appellant, and the interest that they had.
8 Had we know that, for example, Mr. Gelfann was
9 representing DCCA, then it would have been much easier
10 for us to go and file a motion for timeliness, because
11 he clearly, there's no question, that he has an e-
12 mail, not only in terms of the determination letter,
13 but also on the habitable room, as of March 22nd,
14 2016. It was never disclosed to us that he was going
15 to represent DCCA.

16 Similar situation with Don Hawkins that I
17 believe that is the intent of the new procedure rules,
18 which is to state that everyone has to declare
19 beforehand, who is going to be presenting. That is
20 the entire point of that section cited by Mr. Collins
21 in terms of what the requirement of an appellant has
22 to do. They have to lay out in their appeal
23 statement, what the issues are and what evidence
24 they're going to be presenting that would justify
25 their appeal.

1 So, I think if -- one option might be for the
2 Board to, I guess, continue the hearing so we can all
3 file motions if that was to be -- if the Board deemed
4 it necessary to see things in writing. But I do
5 believe this is a really important issue that I just
6 want to call your attention to again, at the risk of -
7 - I know it's late. So, pardon me. Thank you.

8 CHAIRPERSON HILL: Okay. The OAG, Ms. Glazer,
9 I'm kind of -- I want to actually this is a lot of
10 information that is being brought to us right now. I
11 am interested in whether or not you know, I can speak,
12 or the Board can speak with you about these issues
13 that have been brought up in a closed meeting just
14 real quick. Or, if you have any thoughts on this.

15 MS. GLAZER: For a closed meeting I think you
16 would have to deem it an emergency to do it now, if
17 it's --

18 CHAIRPERSON HILL: Okay. I don't know what an
19 emergency is, so you know.

20 MS. GLAZER: Otherwise, notice is required
21 beforehand under the Open Meetings law.

22 CHAIRPERSON HILL: Okay. Alright.

23 MS. GLAZER: But if you need guidance, you can
24 request it on that basis, or we can take a short break
25 and you can state that you need to do that.

1 CHAIRPERSON HILL: I'd like to take a short
2 break and just get some guidance. We're just going to
3 take a short break.

4 MR. GELFANN: Can I say something for the
5 record before we break?

6 CHAIRPERSON HILL: Sure, please. Go ahead,
7 before the guidance, please do.

8 MR. GELFANN: DCCA filed the appeal within 60
9 days of the issuance of the permit. DCCA is appealing
10 the permit. I don't think that there's any dispute
11 over that rule that a filing of appeal has to be made
12 within 60 days of a permit.

13 CHAIRPERSON HILL: Okay. Thank you.

14 MR. TONDRO: If I, Chairman Hill, just in
15 quick response, just so that you -- for the guidance.

16 CHAIRPERSON HILL: Sure. Sherry, are you
17 listening?

18 MR. TONDRO: Thank you, Ms. Glazer. I would
19 just point out that -- and this is referenced, I
20 believe, already, by Mr. Collins in his filing,
21 Exhibit 27, but Subtitle Y, 302.5, and I quote, "A
22 zoning appeal may only be taken from the first writing
23 that reflects the administrative decision complained
24 of to which the appellant had notice. No subsequent
25 document, including a building permit or certificate

1 of occupancy may be appealed unless the document
2 modifies or reverses the original decision, or
3 reflects a new decision." Quote. Thank you.

4 CHAIRPERSON HILL: Okay. Thank you. I'm just
5 going to take some advisement, just me.

6 [Recess from 1:30: p.m. to 1:37 p.m.]

7 CHAIRPERSON HILL: Okay. So, we're back.
8 Well, I have some bad news. Or at least bad news for
9 me.

10 What I'd like to see -- it doesn't sound like
11 we're going to be able to hear this now after going
12 over what is now being asked of us. So, and I don't
13 think the appellant is ready to respond to the motions
14 that are being made. And I'd like to see written
15 motions from the Zoning Administrator as well as I
16 know that it was in your prehearing statement, Mr.
17 Collins, but if you could -- if you're making a motion
18 of some kind, to go ahead and pull it out and make the
19 motion.

20 And I'm going to turn to the OAG to help me
21 out in terms of some of the due process here, that I
22 want to make sure we're doing properly. I mean, I
23 would have liked to have gone through the whole case
24 and responded to these issues afterwards, but it
25 doesn't look like it's going to be prudent.

1 So, the written motions from the Zoning
2 Administrator and the building owner, the appellant
3 needs to have the opportunity to respond to those
4 motions. The appellant, I guess, should also clarify
5 which decision is being appealed. It's the July
6 decision that you're, you know, appealing.

7 And again, then go ahead and list whoever in
8 your -- you're going to have to probably do another
9 prehearing statement, I suppose, that lists who your
10 witnesses are going to be. And, then the Zoning
11 Administrator and the building owner will know ahead
12 of time who those people are.

13 Ms. Glazer, am I missing anything?

14 MS. GLAZER: I don't think so. It's just that
15 I think the Board needs to set a timetable that's
16 reasonable for all the filings. And just explain,
17 just for purposes of transparency, since there was no
18 notice of the closed meeting, just to state that
19 everything we are discussing -- that we discussed in
20 the back room is what's being said right now, that one
21 of the reasons for allowing -- for actually insisting
22 on a continuance is that the rules changed in some
23 respects regarding appeals from 1958 and 2016, and we
24 want to make sure that the appellant provides all the
25 information in the prehearing statement that's

1 required. And if we went forward today, in effect
2 there would be oral motions to preclude certain
3 testimony. I'm guessing, certain testimony or
4 evidence.

5 CHAIRPERSON HILL: Okay. So then, Mr. Moy,
6 how would the whole -- and we'll see from the
7 applicant here and the Zoning Administrator and the
8 building owner, how we can work this out.

9 MR. MOY: Well, first of all, Mr. Chair, if
10 Mr. Turnbull wishes to stay with this appeal, then
11 we're looking -- I'm going to work backwards. Then,
12 the Board can continue the hearing to February 22nd.
13 But if he gives this appeal up to a colleague, then we
14 can set any hearing date that would give enough time
15 for each of the parties to respond.

16 CHAIRPERSON HILL: Is there enough -- I mean,
17 is there enough time for the parties to get everything
18 done by the 22nd?

19 No. That's what Ms. Glazer does not think so.

20 MS. GLAZER: Well, I think you need to ask the
21 parties.

22 CHAIRPERSON HILL: Oh, I'm sorry.

23 MS. GLAZER: I'm sure DCRA and the owner can
24 get in their motions rather quickly. The appellant,
25 you need to ask the appellant how long they will need

1 to respond, plus revise their prehearing statement.

2 CHAIRPERSON HILL: Fourteen days after you get
3 the written -- so, Mr. Moy, what does that do for me?

4 MR. MOY: Okay. Okay, let me start with the
5 22nd, then, because it's either going to be the 22nd
6 or later. So, today is the 18th.

7 CHAIRPERSON HILL: I mean, if we can do the
8 22nd it would be great because again, Mr. Turnbull is
9 here and you have already -- you're up -- I mean,
10 there's a lot in the record to review already.

11 MR. MOY: Okay. So, with regards to starting
12 at the top, with regards to having in writing the
13 motions from both the property owner and the appellee,
14 DCRA, if they can make their filing, let's see, let's
15 say next week, Monday the 23rd? That might be a
16 little tight but I think you know where you are.

17 Let's go with that and see what happens.

18 CHAIRPERSON HILL: Will that work for you
19 gentlemen?

20 MR. GELFANN: Could we do Wednesday, since
21 tomorrow and Friday are pretty much --

22 MR. MOY: Oh, that's right.

23 MR. GELFANN: -- security issues and everybody
24 is shut down?

25 MR. MOY: Okay. So, let's make it Wednesday,

1 January 25th.

2 CHAIRPERSON HILL: Let's see what it does to
3 the applicant. So, that's the Wednesday the --

4 MR. MOY: Be Wednesday the 25th.

5 CHAIRPERSON HILL: Okay.

6 MR. MOY: For those filings. And then for
7 responses from the appellant, they said 14 days,
8 correct? So, 14 days from the 25th gives me February
9 the 8th. Is that good, gentlemen?

10 MR. COLLINS: That's okay. Yes.

11 CHAIRPERSON HILL: Okay. Alright. Great.

12 MR. MOY: Okay. That's February the 8th. And
13 then, let's see, February the 8th. See, somewhere in
14 there the appellant should make a filing to clarify --
15 to clarify their appeal, right?

16 MS. GLAZER: No, it's a revised prehearing
17 statement in compliance with the rules.

18 MR. MOY: Okay. Could we make that the same
19 date?

20 MR. GELFANN: Yes.

21 MR. MOY: So, that would be February the 8th
22 as well. That should be it, right, Sherry? Right?

23 And that would give two weeks, actually, for
24 the Board to digest information for the continued
25 hearing on the 22nd.

1 CHAIRPERSON HILL: Okay. Does the applicant
2 have any questions? Does anyone else have any
3 questions?

4 MR. COLLINS: Is the record closed after today
5 except for those things requested?

6 MR. MOY: It's a continued hearing.

7 CHAIRPERSON HILL: It's a continued hearing so
8 that means --

9 MR. COLLINS: Does that mean -- what does that
10 mean?

11 CHAIRPERSON HILL: No.

12 MS. GLAZER: It means that all the parties
13 will present their case on the 22nd. Although the
14 Board can take up preliminary motions and whatever --

15 CHAIRPERSON HILL: I'm going to leave --

16 MS. GLAZER: -- whatever survives.

17 CHAIRPERSON HILL: I'm going to leave the
18 record open. I'm going to leave the record open.
19 There's people that are here and if they want to
20 submit something after seeing everything, then they
21 can do that.

22 MR. GELFANN: There might be members of the
23 public who wanted to testify today who might have an
24 issue with the 22nd.

25 CHAIRPERSON HILL: Okay. I understand what

1 you're saying. Just give me one second.

2 Can I hear testimony from people that are
3 here?

4 MS. GLAZER: It's up to the Board, and you
5 could hold the motions in abeyance, although I'm not
6 sure if the witnesses were listed on the prehearing
7 statement.

8 CHAIRPERSON HILL: Where the witness is listed
9 on the prehearing statement.

10 MR. GELFANN: DCCA didn't have witnesses
11 listed on the prehearing statement.

12 CHAIRPERSON HILL: It's okay, I see your hand.
13 Just give me one second.

14 MS. GLAZER: This is an appeal. Only parties
15 and the affected ANC can participate.

16 CHAIRPERSON HILL: Parties, the affected ANC,
17 and then people that are listed as witnesses, correct?

18 MS. GLAZER: On behalf of parties?

19 CHAIRPERSON HILL: On behalf of the parties.
20 So, then you guys would have had to listed them as
21 witnesses? My question is, would you have listed them
22 as witnesses?

23 MR. GELFANN: If we had known, yes.

24 CHAIRPERSON HILL: Okay.

25 MR. GELFANN: And we can list them on the

1 February 8th filing.

2 CHAIRPERSON HILL: Okay. Okay. So, I'm going
3 to go ahead, whoever -- who's here to speak?

4 Okay. You all are here to speak in opposition
5 -- I'm sorry, in support of the appeal. And, if you
6 could get -- gosh, I'm sorry. Mr. Gelfann.

7 MR. GELFANN: Yes.

8 CHAIRPERSON HILL: Gelfann. I'm trying to be
9 -- do this with, you know, procedurally, due process
10 that I'm supposed to do, and also be fair. This all
11 happened at the last minute for us here. And so, what
12 I'd like to -- I would like to hear from everybody
13 here. It would be better if you could come back, but
14 -- and so if you can come back could you raise your
15 hand?

16 Okay. The people that can't come back, then
17 we'll go ahead and listen to you now. And if you're
18 not sure then you can't come back the next time.
19 Okay? Like just, this is your opportunity to speak.

20 MS. GLAZER: Mr. Chair.

21 CHAIRPERSON HILL: Sure.

22 MS. GLAZER: I think to do that you would need
23 consent from the other parties because ordinarily they
24 would have a right to cross-examine, and if they're
25 objecting to the testimony of these witnesses at that

1 time because they weren't notified, that that's
2 another issue.

3 CHAIRPERSON HILL: There's one person who
4 can't come back, correct?

5 UNIDENTIFIED SPEAKER: I just, I don't know.

6 CHAIRPERSON HILL: You don't know. Alright.
7 If you're not -- procedurally I'm having an issue.
8 And so, if you could submit -- if the appellant will
9 add you as a witness, you can submit your testimony in
10 written form. Okay? And then we'll be able to read
11 through everything on the record at one time. Okay?

12 And I'm sorry that you sat here until this
13 moment.

14 Does anyone else have anything they would like
15 to add from either the building owner, the appellant,
16 or the Zoning Administrator?

17 Are the dates clear? Is everything clear what
18 we're going to do?

19 Okay. I do want to make a comment which is
20 that I do appreciate that everybody stayed here as
21 long as they stayed here. Had I known this was going
22 to happen, I would have done this first. I am unclear
23 as to why this is coming up at this particular moment.
24 And it would have been better had it come up earlier,
25 because then everyone would have had -- they wouldn't

1 have to sit here all day long, obviously. But I guess
2 what I'm just kind of mentioning is that the people
3 that are coming back -- I will remember this. We will
4 listen very carefully. Everyone will have adequate
5 time, and we will move through this in a fashion that
6 is fair to everyone. Okay?

7 Is there anything else that the appellant
8 would like to add?

9 MR. GELFANN: Could we perhaps go first on the
10 22nd?

11 CHAIRPERSON HILL: That's a very good
12 suggestion and I think that that can be done.

13 MS. GLAZER: I think the rules require the
14 appellant to go first. They have the burden of proof.

15 CHAIRPERSON HILL: No, no, meaning the first
16 case of the day.

17 MS. GLAZER: Oh.

18 CHAIRPERSON HILL: Yeah.

19 MS. GLAZER: Okay.

20 CHAIRPERSON HILL: I understand the request.
21 I personally would like to go first every time and
22 then -- so. But nonetheless, we are where we are.
23 So, okay? Alright? Alright. Thank you.

24 Mr. Moy, do we have anything else today?

25 MR. MOY: Nothing in reference for the docket

1 for today, but there is one administrative matter that
2 the Board needs to conduct.

3 CHAIRPERSON HILL: Okay, great. In accordance
4 with Section 405C of the Open Meetings Act, D.C.
5 Official Code Section 2-575C, I move that the Board of
6 Zoning Adjustment hold closed meetings on Monday,
7 January 30th, February 6th, February 13th, and
8 Tuesday, February 21st. These meetings will start at
9 3:00 p.m. and are held for the purposes of obtaining
10 legal advice from our counsel, and deliberating upon
11 but not voting on the cases scheduled to be publicly
12 heard or decided by the Board on the day after each
13 such closed meeting.

14 Those cases are identified on the Board's
15 public meeting and hearing agendas for February 1st,
16 February 8th, February 15th, and February 22nd.

17 A closed meeting for these purposes is
18 permitted by Section 405(b)(4) and (b)(13) of the act.
19 Is there a second?

20 MR. HART: Second.

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

24 [Roll call vote taken.]

25 MR. MOY: When I call a board member's name,

1 if you would kindly reply with a yes or a no?

2 Michael Turnbull?

3 MR. TURNBULL: Yes.

4 MR. MOY: Chairman Hill?

5 CHAIRPERSON HILL: Yes.

6 MR. MOY: Carlton Hart?

7 MR. HART: Yes.

8 MR. MOY: We have two seats vacant, but the
9 motion carries, sir.

10 CHAIRPERSON HILL: Thank you, Mr. Moy. Is
11 there anything else?

12 MR. MOY: Not -- I'm sorry.

13 [Discussion off the record.]

14 MR. MOY: Yeah, that's it from the staff.

15 CHAIRPERSON HILL: Okay, great. Actually, I
16 did have --

17 [Pause.]

18 CHAIRPERSON HILL: Okay. Mr. Moy, I would
19 like to mention something for the record, and for
20 anyone who is listening.

21 We had a meeting scheduled for February 1st.
22 However, due to some circumstances February 1st is
23 going to have -- the cases on February 1st are going
24 to have to be moved. And so, Mr. Moy, if you could
25 please contact those people that are scheduled for the

1 1st and determine what we're going to do with those
2 cases?

3 MR. MOY: Yes. Thank you, Mr. Chairman.
4 Yeah, more specifically, we will not -- the Board will
5 not have a quorum for February the 1st, so that's the
6 reason for rescheduling all those cases to a future
7 date.

8 So, applicants to those cases in particular
9 will be contacted directly by the OZ staff with
10 regards to what their hearing date would be.

11 CHAIRPERSON HILL: Okay. Thank you. And yes,
12 Mr. Moy, we won't have a quorum available to hear
13 those cases on the 1st.

14 Is there anything else you think, Mr. Moy?

15 MR. MOY: I can't think of anything else, sir.

16 CHAIRPERSON HILL: Okay. Well, then that
17 being the case, we are now adjourned until February
18 8th.

19 MR. MOY: Yes.

20 CHAIRPERSON HILL: Okay. Alright. Well, have
21 a happy Chinese New Year, everyone, while we're away.
22 Happy Chinese New Year. And with that, we are
23 adjourned.

24 [Whereupon, at 1:52 p.m., the hearing was
25 adjourned.]