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

PUBLIC HEARING OF THE BOARD OF ZONING ADJUSTMENT

9:43 a.m. to 2:50 p.m.  
Wednesday, April 5, 2017

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

OLENDER REPORTING, INC.  
1100 Connecticut Avenue, NW Suite 810 Washington, D.C. 20036  
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1 Board Members:

2 FREDERICK HILL, Chairperson

3 CARLTON HART, Vice Chairperson

4 LESYLLEE WHITE, Board Member

5 CLIFFORD MOY, BZA Secretary

6

7 Office of Attorney General

8 SHERRY GLAZER, Esq.

9

10 Office of Planning

11 KAREN THOMAS

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

2 CHAIRPERSON HILL: Good morning, everybody.  
3 The hearing will please come to order. We're located  
4 in the Jerrily R. Kress Memorial Hearing Room at 441  
5 4th Street Northwest. This is the April 5th, 2017  
6 public hearing of the Board of Zoning Adjustment of  
7 the District of Columbia.

8 My name is Fred Hill, Chairperson. Joining me  
9 today is Carlton Hart, Vice Chairperson, Lesyllee  
10 White, Board member, and representing the Zoning  
11 Commission is Rob Miller.

12 Copies of today's hearing agenda are available  
13 to you and located in the wall bin near the door.  
14 Please be advised that this proceeding is being  
15 recorded by a court reporter and is also webcast live.

16 Accordingly, we must ask you to refrain from any  
17 disruptive noises or actions on the hearing room.  
18 When presenting information to the Board, please turn  
19 on and speak into the microphone, first stating your  
20 name and home address.

21 When you're finished speaking, please turn off  
22 the microphone so that your microphone is no longer  
23 picking up sound or background noise.

24 All persons planning to testify, either in  
25 favor or in opposition must have raised their hand and

1 been sworn in by the secretary. Also, each witness  
2 must fill out two witness cards. These cards are  
3 located on the table near the door and on the witness  
4 table. Upon coming forward to speak to the Board,  
5 please give both cards to the reporter sitting at the  
6 table to my right.

7           If you wish to file written testimony or  
8 additional supporting documents today, please submit  
9 one original and 12 copies to the secretary for  
10 distribution. If you do not have the requisite number  
11 of copies, you can reproduce copies on an office  
12 printer in the Office of Zoning located across the  
13 hall.

14           The order of procedures for special exceptions  
15 and variances, as well as appeals, are also in the bin  
16 to my left as you walk in the door. The record shall  
17 be closed at the conclusion of each case, except for  
18 any materials specifically requested by the Board.  
19 The Board and the staff will specify at the end of the  
20 hearing exactly what is expected and the date when the  
21 persons must submit the evidence to the Office of  
22 Zoning. After the record is closed, no other  
23 information shall be accepted by the Board.

24           The District of Columbia Administrative  
25 Procedures Act requires that the public hearing on

1 each case be held in the open before the public,  
2 pursuant to Section 405B and 406 of that act. The  
3 Board may, consistent with its rules of procedure, and  
4 the act, enter into a closed meeting on a case for  
5 purposes of seeking legal counsel on a case, pursuant  
6 to D.C. Official Code 2-575(b)(4) and/or deliberating  
7 on a case pursuant to D.C. Official Code Section 2-  
8 575(b)(13), but only after providing the necessary  
9 public notice, and in the case of an emergency closed  
10 meeting after taking a roll call vote.

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

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

1           Mr. Secretary, do we have any preliminary  
2 matters?

3           MR. MOY: Good morning, Mr. Chairman and  
4 members of the Board. I do, briefly. Although, the  
5 docket today is as it stands, other than the  
6 arrangement which I believe you'll cover, Mr.  
7 Chairman. I would like to take the opportunity to  
8 mention a few cases that are scheduled for April the  
9 12th, since I have the microphone, that have been  
10 postponed and rescheduled at the applicant's request,  
11 and approved. They are as follows.

12           Appeal No. 19407 of the Friends of Lowell  
13 Street, L-O-W double E, double L street, has been  
14 rescheduled to May 31st, 2017; Application No. 19459  
15 of Andrew Philips, has been rescheduled to May 31st,  
16 1017 as well; 19469 of Wana, W-A-N-A, Bishop Revocable  
17 Trust, scheduled to April 19th, 2017; and finally,  
18 Application No. 19472 of Behnam Farahpour, F-A-R-A-H-  
19 P-O-U-R, has been rescheduled to May 3rd, 2017. Thank  
20 you, Mr. Chairman.

21           CHAIRPERSON HILL: Okay, great. Thank you,  
22 Mr. Moy. If anyone here is wishing to provide  
23 testimony, either in support or opposition, if you  
24 would please stand and take the oath of office as  
25 administered by the secretary?

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1 [Oath administered to the participants.]

2 CHAIRPERSON HILL: The Vice Chair has just  
3 told me that I said, "oath of office." So, you guys  
4 are now something else. I don't know. I meant the  
5 oath. Thank you.

6 So, as far as the order goes, we are going to  
7 follow the agenda for the most part. Just kind of  
8 wanted to point a couple of things out I suppose. For  
9 the meeting agenda, we're going to talk about  
10 Application 19076A last. We're going to go through  
11 the first two cases first, in terms of the meeting  
12 agenda. In terms of the hearing agenda, we are going  
13 to follow the order that you see, except for the last  
14 three cases are going to get mixed around a little  
15 bit.

16 We're going to go, let's see, after the --  
17 after Case 19334, then we're going to go to 19315A,  
18 followed by 19467, and then we're going to end with  
19 19446. So, that is for everyone's information.

20 And, I think that's it, Mr. Moy, if you want  
21 to call our first meeting case?

22 MR. MOY: Thank you, Mr. Chairman. All right.  
23 This would be Application No. 19450 of D.C.  
24 Department of General Services, as captioned and  
25 advertised for special exception on the parking



1 requirements of Subtitle C, Section 703.1 and the RA  
2 Use requirements, Subtitle U, Section 420.1F, and  
3 variances from the number of primary structure  
4 requirements of Subtitle C, Section 302.2; loading  
5 requirements, Subtitle C, Section 901.1; height and  
6 number of story requirements, Subtitle F, Section  
7 303.1.

8           This would allow the construction of a six-  
9 story short-term family housing facility, RA-1 Zone,  
10 at premises 3320 Idaho Avenue Northwest, Square 1818,  
11 Lost 849.

12           At the Board's last hearing on March 1st,  
13 2017, the Board closed the record and requested  
14 additional information from the parties. I can go  
15 through those, Mr. Chair, if you'd like, but otherwise  
16 all these exhibits are in your case folders.

17           CHAIRPERSON HILL: That's okay, Mr. Moy, I  
18 think we all have reviewed the information that got  
19 submitted.

20           Is the Board ready to deliberate? Okay. So,  
21 I'll go ahead and start. This has received a  
22 tremendous amount of community interest. We heard  
23 many hours of testimony from the applicant as well as  
24 neighbors for responsive government. Just kind of  
25 reviewing some of the things. The Office of Planning

1 was in approval of this application. The ANC was in  
2 approval of a number of the primary structures and  
3 loading, but was in denial of the relief for height  
4 and temporary parking. And that vote was also  
5 relatively close. It looks like again, five to four.

6 DDOT didn't have any objection to the  
7 application. I thought that, you know, again we -- I  
8 think it was like six hours of testimony that we heard  
9 for this, and there was letters in support from, I  
10 won't list everyone, but Adas Israel Congregation,  
11 there is e-mail in support from homeowners from  
12 McLean, or a homeowner from McLean Gardens, and there  
13 was about 105 letters of support and a petition in  
14 support.

15 Then there was also letters in opposition, 30  
16 letters in opposition from residents and various  
17 comments and oppositions from neighbors. I appreciate  
18 all the work that has gone into the case from the  
19 concerned citizens on both sides to work by the  
20 applicant, as well as the party status attorney.

21 It's a little disappointing, I guess. This  
22 site could have been designed in a way which did not  
23 cause opposition. We've had other emergency shelters  
24 which have come before us which the neighborhood did  
25 not have opposition to.

1 I'd like to further kind of add, at no time  
2 during the testimony do I think that the opposition  
3 was against the project due to the mission of the  
4 project. There was some testimony taken concerning  
5 traffic where those issues might not be addressed at  
6 this site. But for the most part I was focusing my  
7 analysis based upon the Office of Planning's report,  
8 and also the height and -- the height issues, as well  
9 as that was brought up by the opposition.

10 I went back and reviewed all the testimony  
11 from the applicant, the opposition including different  
12 reports. In addition to how this application, I  
13 think, meets the standards for the regulation for  
14 granting relief, I again was most focused on the  
15 height issue from the testimony that was provided.

16 What I was again most focused on was, the  
17 Office of Planning's report, and their analysis to how  
18 the relief was -- how the relief was meeting the  
19 standards to grant the application.

20 I was also looking at the testimony from  
21 Director Gillis, Chairman Mendelson, and then kind of  
22 was looking at the programmatic needs in terms of the  
23 floorplate and what they -- the emergency shelter  
24 needed to have done for the program to work as to why  
25 the height was there and to why that was the way that

1 the building needed to be designed in order to meet  
2 the programmatic goals of the shelter.

3 I did think that again, this -- you know, the  
4 opposition had made arguments that this wasn't an  
5 emergency shelter. I disagreed with their arguments  
6 and did think that it was an emergency shelter. As  
7 again, looking at the reports from the Office of  
8 Planning, I was looking to the two primary buildings  
9 on a single lot, and their analysis in terms of why it  
10 was meeting the requirements that this makes the  
11 property unique and the situation for its  
12 legislatively identified development with the family  
13 shelter exceptional.

14 The legislative identified side has already  
15 improved with the Metropolitan Police Department  
16 facility that is not being moved, therefore, there is  
17 a practical difficulty in meeting the zoning  
18 regulations required for one principle building per  
19 lot.

20 And then, turned down to the height and  
21 loading. And again, that was swayed by the discussion  
22 that the Office of Planning had made concerning that  
23 the council adopted the legislation that requires the  
24 new emergency shelter in Ward 3 to be on this specific  
25 site.

1 Further, it contains 50 general family shelter  
2 replacement units, which also, again, led to kind of  
3 the practical difficulty concerning the programmatic  
4 needs of the shelter, the emergency shelter.

5 The testimony from the other -- the other  
6 argument that the opposition was coming up with was --  
7 or not coming up with, but again had testified towards  
8 was that the selection process was not one that had  
9 been, I guess I would say, they thought a more  
10 thorough selection process should have been  
11 undertaken. I was referring back to the testimony  
12 from Director Gillis where they did go through an  
13 extensive selection process, and then she also  
14 testified as the Director of DGS, "I can state that no  
15 other reasonable alternative is practical to meet the  
16 needs of the District for that particular site."

17 Then again, at one point Chairman Mendelson  
18 came down and you know, they again were speaking. I  
19 was looking at the selection process and how extensive  
20 the council had looked at the different sites. And  
21 from his testimony and was again regarding Ward 3, the  
22 council considered a number of suggested locations.  
23 These included the mayor's proposed site at 2619  
24 Wisconsin, a former diplomatic residence, at 3101  
25 Albemarle, a vacant church at 4100 River Road, Fort

1 Reno, and 3320 Idaho Avenue.

2           The Idaho Avenue site was considered the best  
3 for a variety of reasons, and I won't go reading  
4 through all of those, but again, that was how I was  
5 going through the argument that the selection process  
6 was not as efficient as I think the opposition would  
7 have liked.

8           Then the testimony from Director Zeilinger in  
9 terms of the programmatic needs of the shelter as to  
10 why it had to have the floorplate that it needed, and  
11 the shelter scale was something that she testified to  
12 again, where 46 to 50 families offered the right  
13 balance between effective and efficient services,  
14 delivering and creating a quite environment, familial  
15 setting where families can thrive. That's again, just  
16 kind of taken from her testimony in terms of how the  
17 shelter scale was necessary.

18           Then the programmatic needs are driven by,  
19 they were looking at 10 units or less per floor. And  
20 then her testimony again quoted, research showing the  
21 limited number of families per floor, 10 or fewer,  
22 allows families to have more privacy, less noise, less  
23 turbulence, in the hallways. And again, I was looking  
24 at the analysis as to why those floorplates had to be  
25 the way those floorplates were, so that the

1 programmatic needs of the emergency shelter could be  
2 achieved.

3           And there was some discussion about possibly  
4 putting the basements, or putting some administrative  
5 services into the basement. But then again, testimony  
6 was how that would also not serve the needs of the  
7 shelter. And I also agreed with that argument.

8           Director Zeilinger went on to speak of the  
9 different items in her testimony concerning the safety  
10 from straight hallways, the different limited access,  
11 secure bathrooms and the 24-hour desk that would be  
12 provided with sightlines for serving the needs of the  
13 emergency shelter.

14           Those were my initial thoughts as to how I was  
15 able to get behind the argument that the applicant has  
16 met the criteria with which I could get behind this  
17 application. The struggle that I suppose I had was  
18 just kind of making the -- following through with the  
19 reports by the Office of Planning, and understanding  
20 why the programmatic needs of the emergency shelter  
21 had to be built the way it was, and getting to feeling  
22 comfortable about how the selection process went, and  
23 why this is the place that needs -- that this shelter  
24 needs to be in, in order to serve the needs of the  
25 city.

1           So, that is you know, and I'll turn it over to  
2 other members of the Board, but I would be in support  
3 of this application for those reasons.

4           MR. HART: Thanks, Mr. Chairman. Yeah, I --  
5 in reviewing this case I think that the points that  
6 you raised are very -- were ones that I also connected  
7 with, or at least understood, and actually agree with.

8           I do find that the applicant has gone through  
9 the process of explaining the rationale for the relief  
10 requested. The Office of Planning report also details  
11 why it could actually support the relief requested as  
12 well. And, I do acknowledge that there are -- there  
13 was, in many ways, a difference of opinion between the  
14 -- excuse me, between the -- within the neighborhood  
15 itself. There were some folks that were in support of  
16 it, and there were some folks that were opposed to it.

17           And unfortunately, that does occur on some  
18 cases and you know, our job is to look at the zoning  
19 regulations and understand how this case and other  
20 cases are in either agreement with the -- we agree  
21 that they are meeting the criteria that are within the  
22 zoning regs, or they are not meeting them. And for  
23 the reasons that you have outlined, I also would be  
24 able to support this case. And you know, with regard  
25 to the site selection criteria, the application noted



1 in the testimony that the District Government went  
2 through a site selection process. I think that the  
3 opposition has some questions as to -- not I think. I  
4 know they have some questions as to that process. But  
5 there was a process that was undertaken.

6 And the council actually heard this case in  
7 March of last year, and voted to approve this  
8 particular site in May of last year. And the site  
9 that they chose is this site which is on Idaho Avenue.

10 I will also note, in addition to what you've  
11 stated, that the building that is being proposed is  
12 actually a number of feet, about 60 to 70 feet away  
13 from the adjoining -- from the adjacent house, and  
14 which is about the same height as the building. There  
15 are trees that the applicant has now said that they're  
16 going to be planting, or at least have in the site to  
17 give a buffer between the next door neighbor. And I  
18 think that that's partly because they're able to move  
19 the playground to a different location, which is in  
20 the rear of the facility.

21 Yeah, and the site itself has a number of  
22 concerns. Especially the existing police station.  
23 The next door community gardens, if the building were  
24 to be placed to the north some, then it would start to  
25 block some of the sunlight for the community gardens,

1 and I think that the applicant is looking to try to  
2 place this in a location that would -- that was one,  
3 available to them, and also to not you know, block  
4 some of the additional sunlight from next door  
5 neighbors. The neighbors to the south would not be  
6 affected by the sun, per se, but they would be able to  
7 have views, reciprocal views, I guess, to and from the  
8 next door neighbor, to the facility and from the  
9 facility back.

10 But we do live in a -- you know, this is a,  
11 it's a city. And you do have neighbors that are close  
12 to one another and, you know, such is city life.

13 I don't really have much else other than that.  
14 But as I said, I think that the applicant has  
15 provided the information that is necessary for showing  
16 how it meets the criteria for the requested relief,  
17 and that's it.

18 MS. WHITE: I also want to just add, you know,  
19 some comments. This was a very long hearing. It was  
20 very interesting, but -- and I know there are a lot of  
21 strong feelings about the case. But, you know, my  
22 job, even though I haven't been a board member a very  
23 long time, is to look at the strict criteria. So, I  
24 try to rely on my legal background, and also real  
25 estate background to be able to look at everything

1 fairly.

2 I echo the comments that my fellow board  
3 members just shared with you, and I too believe that  
4 the criteria for the requested relief was met. Just  
5 some comments that I have on top of that.

6 I think the site selection, obviously, it's  
7 not going to make everybody happy, but I did believe  
8 that it was a very extensive process. I think the  
9 topography in terms of where the building is going to  
10 be located, is sort of a sloping site, will, even  
11 though it's going to be six stories, I think it, for  
12 the neighbors that are going to be living close by, it  
13 won't -- I believe that it won't give that feeling of  
14 a building towering over you.

15 I think part of the goal was to come up with a  
16 site that was family-friendly, that definitely did not  
17 look like a D.C. General. And I think, after  
18 listening to the testimony of Director Zeilinger, who  
19 is was very impressive as an expert in terms of  
20 creating a format that would be family-friendly,  
21 children-friendly, so that people aren't living on top  
22 of each other, but at the same time they would have  
23 services on the lower level, to be able to move  
24 forward with their lives at some point.

25 I did give the Office of Planning's report

1 great weight. I did look at the vote of the ANC and  
2 also the testimony, both opposition and supportive of  
3 this particular project. Chairman Mendelson's  
4 comments were also very helpful in terms of getting  
5 some background on the selection process of the site.

6           The traffic issue, I don't think it's going to  
7 be extremely burdensome to the neighbors. I think  
8 that the location is in the city, obviously. There is  
9 a police station there. There is 24-hour security,  
10 and also a police station in that district. So, from  
11 my vantage point, Mr. Chairman, I believe that they  
12 met the criteria for the standards under the special  
13 exception and variance.

14           MR. MILLER: Thank you, Mr. Chairman, and I  
15 appreciate your thorough review of the case, and the  
16 testimony in the record, and the criteria for meeting  
17 the standards for the variances and exceptions in this  
18 case, and my colleagues have covered a lot of ground.

19       But I'll just, I guess, reiterate a couple points.

20           This is a very important city-wide initiative  
21 by the mayor, approved by the council to close D.C.  
22 General and establish these smaller, family friendly,  
23 as my colleague said, with wraparound services,  
24 shelters, emergency shelters throughout the city. I  
25 too thought that Director Zeilinger's testimony on the

1 programmatic needs of each of the facilities  
2 throughout the city, but this one as well, was very  
3 compelling. I questioned her about some of those  
4 program needs, but I found her responses very  
5 compelling.

6           And the programmatic requirements is one of  
7 the criteria. The programmatic requirements is one of  
8 the criteria that makes this an exceptional situation,  
9 along with the location of the existing structures on  
10 the site, the community gardens that nobody wanted to  
11 disrupt, and the lack of a viable alternative site.  
12 And we had a lot of testimony about that.

13           It is a legislative designated site. We had  
14 testimony from DGA, Director Gillis, and Chairman  
15 Mendelson, as to why there were no -- why this site,  
16 it was the best reasonable alternative when it was  
17 selected. So, I am in support of the area variances  
18 for the height and the number of stories, the loading,  
19 and the number of primary structures on the one lot.

20           I think Board Member Hart's pointing out the  
21 setback from the property to the south, the 70-foot  
22 setback is an important -- was an important  
23 mitigation. And even on Idaho Avenue I think it's 25,  
24 more than 25 feet from the -- setback from the  
25 sidewalk, and it's across the street, I believe, from

1 the loading dock for the Cathedral Commons project,  
2 which is also set back.

3           So, I think the objectionable conditions that  
4 might -- that were raised, have been mitigated in most  
5 cases. The one area, the one item that I have some  
6 concern about, is the special exception for the  
7 temporary relocation of the accessory parking, which  
8 we also discussed at the hearing. And Director Gillis  
9 talked about the various options of on-street parking  
10 that they are looking at and was hopeful that in  
11 working with the community they could come up with a  
12 plan that doesn't require the temporary use of the  
13 tennis courts during the construction.

14           I mean, it's a lot of spaces that we're  
15 talking about, and I think there are 57 or something  
16 around that, that will be on site during -- able to be  
17 on site during construction, but that leaves 100 and -  
18 - over 100 that have to be found elsewhere.

19           And the ANC was split on that point. They may  
20 be meeting again, but all we have so far is their five  
21 to four decision, which included one of the opposition  
22 points was the temporary use of the tennis courts  
23 because of the adverse impacts caused by having to  
24 widen the asphalt path, or place the asphalt  
25 pedestrian path that currently is there from Newark

1 Street, with a road, a temporary road that could  
2 accommodate the personal vehicles of MPD officers and  
3 employees.

4 I'm familiar with this neighborhood. You're  
5 not supposed to bring in other things outside the  
6 record, but I think it's in the record as well. In  
7 addition to the tennis courts, then the community  
8 gardens on one side. There is the playground on the  
9 other side, and it's hard for me to see how it won't  
10 be objectionable for having 72 vehicles come in and  
11 out of there on a very heavily used Newark Street  
12 Park, and creating a whole new area that's going --  
13 the Newark Street side that will be affected by this  
14 construction, which wouldn't otherwise, I think, be  
15 affected that much.

16 Nonetheless, I think they proposed, I think  
17 the DGS proposed the tennis court because they thought  
18 that the community initially was more concerned about  
19 on-street, the loss of on-street parking spaces. But  
20 then they come out -- it's obviously a split in the  
21 community. And I think there's a split in my mind.

22 So, I will leave it as an option for the DGS  
23 and the applicant, city, to work out with the  
24 neighbors and maybe they'll be -- I know there are  
25 going to be further meetings and I am concerned,

1    though, about the road to the tennis courts.  Also,  
2    having to light the tennis court, I mean, for the  
3    parking.  The cost of, all the cost of doing all that  
4    and then having to replace the tennis courts in the  
5    end.  It just seems we could find some alternative for  
6    all that cost.  I know there are 30 spaces in  
7    Cathedral Commons Garage, which are identified.  Also,  
8    again, I know there are a lot of spaces in that garage  
9    that are available.

10            Anyway, I think I wanted to separate out that  
11    one so that I can -- I don't know if I can vote for --  
12    I don't know if I can honestly say that there are no  
13    objectionable conditions by allowing that special  
14    exception for the temporary accessory parking.  So, I  
15    might want to separate it out, but I'll think about  
16    that further, Mr. Chairman.

17            CHAIRPERSON HILL:  Okay.  Well, thank you,  
18    Commissioner, for making my job a little more  
19    complicated.

20            I was going to bring up the temporary parking,  
21    and I was in approval of the temporary parking, only  
22    because I couldn't also figure out how, you know, they  
23    were talking about an eight-month window it seemed  
24    like, you know?  And so, I know that -- I mean, the  
25    community doesn't want this here anyway, you know.



1 And so, my thought with the temporary parking, and I  
2 would have wanted DGS to continue to work with the  
3 community in order to get them whatever makes them  
4 most comfortable in terms of the parking, you know.  
5 But leaving it as an option for them, I suppose, in  
6 terms of -- and again, I don't know how tennis courts  
7 work, but I assume they get brand new tennis courts  
8 after, then, the parking is done. You know. And so,  
9 but I would be on board with the parking for that  
10 reason.

11 I do understand what you're speaking of in  
12 terms of your concern with the community. But again,  
13 it was like kind of the, as you said before again, the  
14 off-street parking. Then, all those cars are going to  
15 be parked on the street, you know. And so, for eight  
16 months if you have a possibility, but I would again  
17 want DGS to work with the community in order to --  
18 they still have their, I forget what the program is  
19 called that have the community members involved in it,  
20 and so that program is still going on and they can  
21 still use that as a tool with which to work with the  
22 community to alleviate some of their concerns.

23 Does anyone else have a thought on the  
24 parking?

25 MS. WHITE: I mean, I would agree that it

1 would be nice for the city and the community to work  
2 together with respect to trying to figure out the  
3 solution on the parking. That's not going to change  
4 my vote for the facility, but I'm a huge tennis fan,  
5 so I would hate to see that go away. But if it's done  
6 on a temporary basis, perhaps the city could make  
7 arrangements to resurface that tennis court after  
8 construction is completed.

9 MR. HART: Yeah, I mean, it is -- I kind of  
10 saw it as a -- because it was a temporary use, that  
11 really would be -- would not remain after the building  
12 was constructed. I was in support of that. But I  
13 understand that Commissioner Miller, your hesitancy  
14 for that. But I guess I was, again, weighing that it  
15 was not a permanent facility that was going to be, you  
16 know, removed tennis courts. It was a limited period  
17 of time to be able to do that.

18 And also, Chairman Hill's, the weighing the  
19 concern of, do you have more cars parking on the  
20 streets. You know, the officer's vehicles on the  
21 streets, than not they're taking up spaces that, you  
22 know, that may be problematic as well. So, I was --  
23 that's it.

24 CHAIRPERSON HILL: Okay.

25 MR. MILLER: Mr. Chairman.

1 CHAIRPERSON HILL: Sure, of course. Go ahead.

2 MR. MILLER: Not only to not making my life  
3 more complicated, but --

4 CHAIRPERSON HILL: That's all right.

5 MR. MILLER: -- you know, I can go forward  
6 with that special exception because I think the city  
7 is committed to working with the ANC and the advisory  
8 team on coming up with the best solution, even for  
9 this temporary parking problem.

10 And as I said, my hesitancy really wasn't as  
11 much about the loss of tennis courts. It was really  
12 with the impact of the road, widening the road on the  
13 playground to the one side, the community gardens. I  
14 think some of that community garden will have to be  
15 infringed upon, which everybody, the neighborhood was  
16 concerned about, on both sides.

17 So, but I have faith in the best intentions of  
18 the city working together with the ANC and the  
19 advisory, Ward 3 Advisory Team, on this matter. So,  
20 I'm ready to go forward on that point, as well as the  
21 more fundamental variances and special exceptions for  
22 this program.

23 CHAIRPERSON HILL: Okay, great. All right.  
24 Then, with that I'm going to go ahead and make a  
25 motion to approve Application No. 19450 as announced

1 by the secretary, including the temporary parking.

2 Motion has been made and seconded.

3 [Vote taken.]

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

5 MR. MOY: Staff would record the vote as four,  
6 to zero, to one. This is on the motion of Chairman  
7 Hill to approve the application for the relief.  
8 Seconded the motion, Ms. White. Also in support, Vice  
9 Chair Hart and Mr. Miller. We have a board seat  
10 vacant. And this is granting the relief for special  
11 exceptions under the parking requirements of the  
12 accessory parking, Subtitle U, Section 203.1(j); RA  
13 Use requirements, Subtitle U, Section 420.1(f);  
14 variances from the number of primary structure  
15 requirements, Subtitle C, Section 302.2; loading  
16 requirements, Subtitle C, Section 901.1; height and  
17 number of story requirements, Subtitle F, Section  
18 303.1. And the motion carries, Mr. Chairman.

19 CHAIRPERSON HILL: That's a full order, Mr.  
20 Moy. Thank you.

21 MR. MOY: The next case application for  
22 decision is Application No. 19452 of D.C. Department  
23 of General Services.

24 Mr. Chairman, this is a request for special  
25 exceptions under the MU Use requirements, Subtitle U,

1 Section 513.1(b)(1); parking requirements, this is the  
2 parking reduction requirements under Subtitle C,  
3 Section 703.2; open court requirements, Subtitle G,  
4 Section 202.1; lot occupancy requirements, Subtitle G,  
5 Section 404.1; and rear yard requirements, Subtitle G,  
6 Section 405.2; variances from the loading  
7 requirements, Subtitle C, Section 901.1; floor area  
8 ratio requirements, Subtitle G, Section 402.1; height  
9 requirements, Subtitle G, Section 403.1.

10 This would allow the addition to an existing  
11 building to operate a short-term family housing  
12 facility, MU-4 Zone, 1700 Rhode Island Avenue  
13 Northeast, Square 4134, Lot 800.

14 Again, this was last heard by the Board at its  
15 hearing on March 1st, 2017.

16 CHAIRPERSON HILL: Is the Board ready to  
17 deliberate? Okay.

18 The first thing I guess we have to do is there  
19 was a submittal from actually the opposition. There  
20 was a list of witnesses that are the witnesses that we  
21 had heard, and I guess they had tried to submit it and  
22 for some reason it wasn't included into the record.  
23 And so, I'm going to go ahead and allow this into the  
24 record unless the Board has any objection.

25 [No audible response.]

1           CHAIRPERSON HILL: Okay. All right. So,  
2 again, the deliberation that we went through in terms  
3 of the testimony, was extremely lengthy. And there  
4 was, again, a tremendous amount of community interest  
5 on both support and opposition. There was many  
6 letters in support and opposition from residents in  
7 Ward 5. I was actually quite appreciative of all of  
8 the people that came to come speak before us. I mean,  
9 I think Ward 5 is a very -- somebody made some comment  
10 about how they're the stepchild, or something, of what  
11 their neighborhood or that area was, and they're very  
12 proud of that. And so, I just was glad that a lot of  
13 people came down to testify with us for that period of  
14 time.

15           It again is unfortunate that there was  
16 opposition -- you know, opposition to something that  
17 that I think the neighborhood themselves and the  
18 neighbors were actually in support of in terms of the  
19 mission and the idea of the emergency shelter. I  
20 didn't hear anything in terms of the testimony that,  
21 you know, the opposition again was opposed to it due  
22 to the mission. It was kind of again for, it goes  
23 back to the last one again, where it was more the  
24 height or the massing, and the selection process as to  
25 how we came, or they came to this particular site.

1 I went back and reviewed all the testimony  
2 from the applicant and the opposition, including the  
3 different reports. I again was primarily focused with  
4 the Office of Planning's report, and the criteria that  
5 they spelled out in terms of how the relief should be  
6 granted.

7 There was some items there in the Office of  
8 Planning's report that again I just kind of wanted to  
9 highlight. One was about there was discussion about  
10 noise facility not having adverse impact on the  
11 neighborhood because traffic noise operations, or a  
12 number of similar facilities in the area. The Office  
13 of Planning was commenting on the three parking spaces  
14 and approximate six van trips per day would not  
15 generate a volume of traffic that would signature  
16 affect traffic movement in the area. And then they  
17 continued to speak to that issue.

18 As with that issue, and all of the other ones,  
19 I did side with the Office of Planning in terms of  
20 their analysis for the project. Again, what was  
21 another part of the -- my own analysis was, again, the  
22 programmatic needs of the facility. So, the same  
23 issues that were with the previous case in terms of  
24 the floorplate, and what that -- what the applicant  
25 needed in order to -- and why the Office of Planning

1 went through the criteria as such, to get to where I  
2 could get to where I was going to be behind the -- you  
3 know, in approval of the application. The Office of  
4 Planning again spoke to the programmatic needs, and  
5 some of those that the number of persons housed in  
6 each facility is an important program goal to achieve  
7 efficiency, which cannot be achieved with a smaller  
8 facility. Again, going to the programmatic aspects.

9           The selection process was again something that  
10 I looked back on in terms of in the same regard.  
11 Like, the counsel had sat down and there was like, I  
12 think, 12 hours of testimony during their hearing.  
13 Ours had an additional seven hours of testimony.  
14 Their testimony during the counsel's portion is again  
15 how it speaks to the selection process, and that the  
16 city had adopted legislation that requires the new  
17 emergency shelter in Ward 5 beyond this counsel-  
18 approved site. So again, the programmatic needs are  
19 what was driving this particular site.

20           The director of DGS again, came and testified  
21 how the selection process was achieved, and she again  
22 stated for the record that as the director of DGS I  
23 can state that no other reasonable alternative is  
24 practical to meet the needs of the District.

25           In her testimony she went on to -- in Ward 5



1 they received two proposals with only one site, 2266  
2 25th Place Northeast, to be of adequate size and  
3 within close proximity to public transportation, and  
4 having the capacity to satisfy the programmatic  
5 requirements.

6 And then again, within her testimony, it went  
7 even further in terms of detailing the proposal's  
8 received and how the selection process was achieved.

9 She spoke of the design meetings and working  
10 with the architect again in how this building needed  
11 to be designed so that to serve the emergency shelter  
12 needs.

13 The chairman of the council, Chairman  
14 Mendelson, came down again and further testified in  
15 terms of how this selection process, how the council  
16 went through this selection process and became -- and  
17 this became the site for Ward 5.

18 And I was convinced from his testimony, and  
19 that of Director Gillis, in terms of, again, how the  
20 selection process was done, achieved, and how thorough  
21 it was.

22 Then again, so I turned back again to why the  
23 building needed to be built in that way in order to  
24 achieve the programmatic goals. And again, turning to  
25 Director Zeilinger's testimony, about the shelter

1 scale, where again in the previous case when we were,  
2 you know, deliberating, in order to accomplish the  
3 city's goals for providing quality emergency shelter  
4 programs, the proposed smaller scale is a critical  
5 factor so that services and supports can be delivered  
6 more effectively, and with each unique family and  
7 family member, the scale of the proposed sites,  
8 between 46 to 50 families, offers the right balance  
9 between effective and efficient services.

10           Again then, turning to the 10 units or less  
11 per floor, and her testimony concerning the research  
12 has shown that limiting the number of families per  
13 floor to 10 or fewer, allows families to have more  
14 privacy, less noise, less turbulence in the hallways,  
15 a more predictable environment, and appropriate  
16 community feel.

17           She again then spoke of the safety in terms of  
18 the site lines for the floors, and further made me  
19 feel comfortable with why the programmatic needs were  
20 the way they were for the design of the building.

21           Again, in terms of the criteria, I think that  
22 the Office of Planning outlined in their report, very  
23 clearly how each criteria was met in order for the  
24 application to be approved. There was some testimony  
25 about no emergency shelter is going to be located in a

1 square within 500 feet of the property, and I think  
2 that one of the witnesses testified that there were  
3 other similar shelters and I was not -- I did not  
4 think those were emergency shelters. And so, I was  
5 not moved by that testimony.

6           So, I'm going to turn it over to my colleagues  
7 here a little bit in terms of how I'm getting to where  
8 I'm getting, in the same way that I got to the last  
9 case, where going to -- relying on the analysis of the  
10 Office of Planning, listening to all the testimony and  
11 reading through all the exhibits that everyone has  
12 supplied, and you know, again, I thought that the  
13 opposition and the applicant both did provide us with  
14 a tremendous amount of information with which to make  
15 this analysis, but I'm again now on the opinion that  
16 I'm comfortable moving forward with this in terms of  
17 approving the application based upon the items I  
18 stipulated.

19           Does anybody have any thoughts?

20           MR. HART: Thank you, Mr. Chairman, again.  
21 Yeah, I think that this case and the previous case had  
22 a tremendous amount of community interest, and  
23 appreciate -- I think the Board appreciates the amount  
24 of effort that everyone had to go through to provide  
25 the information because it is -- and you're taking

1 time out of your day to kind of do this for the  
2 community folks. And the city staff, as well as  
3 consultants that are working for them, again,  
4 appreciate all the time and effort in making the  
5 record full for the case. And, I would agree with the  
6 chairman in that the city has provided the information  
7 necessary to -- for me to be able to support the case.

8 I think that the Office of Planning report is also  
9 helpful in understanding the case. And the points  
10 that the Chairman raised, I also would be in support  
11 of as well.

12 And I think that the case does hinge on the  
13 site selection, and Chairman Mendelson gave the  
14 information or testimony regarding that site selection  
15 process. Again, it may not have been something that  
16 everybody agreed with, but there was a discussion.  
17 The Council held their 12-hour public hearing for that  
18 on March of last year, and then voted on this  
19 particular site in May of last year.

20 And, there were some exceptional pieces to  
21 this in that there was an existing building on the  
22 site that needed to be retained, that there were some  
23 other site constraints that made this site a difficult  
24 one, I think, in some ways because of those existing  
25 facilities.

1           Excuse me. And, I do think that there is  
2 enough information and enough rationale for being able  
3 to accept or being able to approve the application and  
4 I don't want to reiterate everything that the chairman  
5 said, so I'll leave it at that. And, one piece that  
6 was discussed was around the need or the desire to  
7 possibly have the buildings -- a different  
8 configuration, or having smaller buildings.

9           And while I understood the desire for that,  
10 what in effect that would do is to duplicate this  
11 facility in other places in the community. While it  
12 would be making it lower, it would be adding a  
13 considerable cost to the District as well. And  
14 understanding that this may be -- if that were to take  
15 place, this would also happen in all of the wards,  
16 which again would raise the cost. And I think that  
17 that's what the District has described to us in terms  
18 of the kind of efficiency of how they got to the  
19 program as it is. And that building type, it seems as  
20 though that building type has been replicated. The  
21 program had been replicated in each of the wards with  
22 a set number of family units per floor, and the set  
23 number of floors to provide housing for a very -- a  
24 population that needs help.

25           And so, with all of that I think that I again

1 could support the application as it was presented to  
2 us by the applicant. Thank you.

3 MS. WHITE: I'll echo my fellow board members.  
4 I think the important point is that I believe that  
5 the criteria was met for both the variance and the  
6 special exception in order to support these emergency  
7 housing units.

8 But I also think it's important to emphasize  
9 that the structure or the format of these buildings,  
10 it's not a D.C. General. I was struck by the  
11 testimony of Ms. Zeilinger, in terms of the family  
12 friendly nature of it, especially for children, for it  
13 to be self-contained and not spread out like D.C.  
14 General, where people are basically left to their own  
15 devices.

16 But I think this format is something that will  
17 not adversely affect the community but will in fact  
18 help the community in that it will provide services  
19 for people to be able to move forward with their  
20 lives.

21 So, some of the same issues apply. I was  
22 struck by the support and the opposition, you know,  
23 because everybody loves their wards and they have  
24 strong feelings in terms of making sure that they can  
25 continue to live comfortably in their ward, and that

1 nothing will come in to disrupt, you know, their lives  
2 in a very adverse way.

3           But I believe that based upon the site  
4 selection, the format of this particular emergency  
5 shelter, especially for the children, will be set up  
6 in such a way that it will not be a negative impact to  
7 the community in an adverse way.

8           MR. MILLER: Thank you, Mr. Chairman. I  
9 concur with all the comments of you, Chairman Hill,  
10 and Board Members White and Hart. And I would just  
11 repeat, since this is a different case, can't just  
12 incorporate -- I don't know if you can incorporate  
13 what you said in the last case. But the importance of  
14 the program of this city-wide initiative to close D.C.  
15 General and create smaller dignified shelters with  
16 wrap-around services for these families who have  
17 suffered for too long, and hopefully this will be one  
18 way that -- a model for future shelters too, because  
19 we have a lot of other homeless beyond the D.C.  
20 General population that we have to take care of and  
21 find a solution for.

22           So, I too would repeat that the programmatic  
23 needs of the project and the lack of a viable  
24 alternative site than then one designated in  
25 legislation, along with some of the conditions that

1 have been mentioned on the site, the need to retain  
2 that building which meant that the floorplates had to  
3 be lined up with each other and made it difficult to  
4 cut down the number of stories. And the antenna  
5 that's there, and the antenna control facility, the  
6 fact that you couldn't build above the retain -- the  
7 portion of that building to be retained. And the  
8 applicant did work with the -- even though it's not a  
9 historically designated building, they did work with  
10 the, I think the H -- I think we had testimony that  
11 they worked with the Historic Preservation staff to  
12 retain the view sheds, which is what -- and the  
13 configuration is what dictated the configuration of  
14 the building.

15           So, I believe all those confluence of factors  
16 did create an exceptional situation leading to a --  
17 resulting in a practical difficulty of meeting the  
18 otherwise height and density and other standards that  
19 they're seeking variances from.

20           The only thing I would note that we -- I don't  
21 think we've noted yet in this case, maybe I missed it  
22 in your very thorough review, Mr. Chairman, is I think  
23 we got an ANC letter late, or a few weeks -- a couple  
24 weeks ago, 5B. I think it's -- had it right here and  
25 now I've lost it. Oh no, here it is. It's Exhibit



1 No. 208.

2           And again, like 3C, it was a split vote, three  
3 to two, five to four in the other case. Most of the  
4 concern, like the other case, was with the site  
5 selection process and the unhappiness with how that  
6 happened.

7           But I think the applicant has done a number of  
8 things to mitigate objectionable impacts from the  
9 variances and special exceptions being sought in this  
10 case. I think that the city creating these ward  
11 advisory teams that they're working with to create  
12 good neighbor agreements, will foster the dialog and  
13 the continuing dialog and perhaps other changes that  
14 may need to be made operationally, as these shelters  
15 come online.

16           So, I am comfortable with going forward, Mr.  
17 Chairman, with this project, to fulfil a very  
18 important city-wide initiative.

19           CHAIRPERSON HILL: Thank you, Commissioner  
20 Miller.

21           I guess another point is that there was an  
22 argument that this was not an emergency shelter. I  
23 mean, I again, I disagreed with the opposition in that  
24 the testimony that I believe did clarify that this is  
25 an emergency shelter.

1           There was also further, and I just wanted to  
2 comment some photographs that were taken by a  
3 neighbor. And unfortunately, it's funny, that  
4 actually made me feel a little bit more comfortable  
5 about the site, because there was another project  
6 there that seemed to already cast some shadows on the  
7 property.

8           I did want to mention, and I did want to  
9 empathize with Mr. Khan about, I don't know if you  
10 know, his project which was nearby and that the  
11 effects of his project. I do think, however, that he  
12 also had, when designing the property had -- and this  
13 again came from the photographs that were submitted.  
14 But when designing the property again there was a  
15 courtyard that was installed there for the possibility  
16 of a building coming up next to him because there was  
17 by-right windows that had -- there were windows that  
18 weren't on the building because they would have been  
19 windows that would have been blocked.

20           And so, I was then, again, further comfortable  
21 with the project. I did want to again mention that  
22 Director Gillis had requested some flexibility to  
23 refine the exterior designs and the nonprogrammatic  
24 elements, in response to community comments. So, I'd  
25 also like to allow that flexibility so that DGS can

1 work with the community to do whatever they can to  
2 make them feel better about the project. And again, I  
3 assume that that community task force, I forget what  
4 it's called again, that that is something that they  
5 would work through.

6 So, unless anyone has any other comments, I'm  
7 going to go ahead and make a motion to approve  
8 Application No. 19452 as read by the secretary.

9 MR. MILLER: Second.

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

12 [Vote taken.]

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

14 MR. MOY: Staff would record the vote as four,  
15 to zero, to one. This is on the motion of Chairman  
16 Hill to approve the application for the relief  
17 requested, or as I read into the record. Seconded the  
18 motion, Mr. Miller. Also in support, Vice Chairperson  
19 Hart, Ms. White, we have a board seat vacant. Motion  
20 carries, sir.

21 CHAIRPERSON HILL: Thank you, Mr. Moy. It's a  
22 full order.

23 MR. MOY: Yes, sir.

24 CHAIRPERSON HILL: Yeah, you all don't have to  
25 get up at once. You can like, you know, just trickle

1 out.

2 [Pause.]

3 CHAIRPERSON HILL: Okay. We have one more  
4 meeting case, and then actually we're going to take a  
5 quick break by the way, just so everybody knows.

6 MR. MOY: All right. Thank you, Mr. Chairman.  
7 That would be Case Application No. 19076A of Kelly  
8 Gorsuch. This is a request for a modification of  
9 consequence of BZA Order No. 19706. This is a  
10 request, Mr. Chairman, for a change in the conditions  
11 related to the hours of operation, valet parking  
12 service, signage, and outdoor seating for a restaurant  
13 in the RFA -- rather, RF-1 District, 1544 9th Street  
14 Northwest, Square 365, Lot 813.

15 CHAIRPERSON HILL: Okay, great. Thank you.  
16 Is the Board ready to deliberate on this issue? All  
17 right.

18 As I recall, this right is now a modification  
19 of consequence, and so we would have needed to  
20 establish a time frame for the parties as per Section  
21 Y-703, for the parties in the original proceedings to  
22 file responses to the request. However, in this case,  
23 the only parties in the original proceeding were the  
24 applicant and the ANC 6E, and the and 6E has filed a  
25 report submitting their request. So therefore, I

1 think that we can consider this request now.

2           There are some changes that were made to the  
3 original conditions that the ANC and the applicant has  
4 agreed to, and we've adopted them as part of the  
5 order. So, I don't have any particular questions with  
6 this. Does the Board have any comments?

7           [No audible response.]

8           CHAIRPERSON HILL: Okay. Then I'm going to go  
9 ahead and make a motion to approve Application No.  
10 19076A as read by the secretary.

11           MR. HART: Seconded.

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

14           [Vote taken.]

15           CHAIRPERSON HILL: All those opposed. Motion  
16 passes, Mr. Moy.

17           MR. MOY: Staff would record the vote as four,  
18 to zero, to one. This is on your motion, Mr.  
19 Chairman, to approve the application per the relief  
20 requested. Seconding the motion, Vice Chairperson  
21 Hart. Also in support, Mr. Miller, Ms. White, board  
22 seat vacant. The motion carries.

23           CHAIRPERSON HILL: Okay, great. We're going  
24 to take a quick three-minute break. Okay? Thank you.  
25 And then we'll come back with our hearing cases.

1 Oh, Mr. Moy, can I get a summary order on  
2 that?

3 MR. MOY: Yes, sir.

4 CHAIRPERSON HILL: Thank you.

5 [Off the record from 10:52 a.m. to 11:04 a.m.]

6 MR. MOY: All right. Thank you, Mr. Chairman.  
7 Hearing is back in session.

8 So, the first item, case before the Board and  
9 it's a hearing session, is Appeal No. 19410 of ANC 6C,  
10 and it's captioned and advertised. This is an appeal  
11 from the September 7th, 2016 decision by the Zoning  
12 Administrator, Department of Consumer and regulatory  
13 affairs, to issue building permit number, B, B as in  
14 Bravo, 1307755. This would permit an 18-unit  
15 apartment building in the RA District. This is at  
16 premises 1511 A Street Northeast, Square 1070, or  
17 1070, Lot 94.

18 There are a number of preliminary matters on  
19 this appeal, Mr. Chairman. Also want to add that my  
20 understanding is the representatives to DCRA are on  
21 the way, according to my staff note, or a note from my  
22 staff. So, this is where we are.

23 MR. BROWN: Mr. Chair, I got a similar e-mail  
24 from counsel for DCRA, that he's on his way.

25 CHAIRPERSON HILL: Okay. Okay. All right.

1 Let's see what we can get through before DCRA gets  
2 here. So, we can at least introduce ourselves.

3 So, let's go ahead and if you could just from  
4 right to left, introduce yourselves, please? And you  
5 can just push the mic or the button there.

6 MR. WILLIAMS: Sorry about that.

7 CHAIRPERSON HILL: That's all right.

8 MR. WILLIAMS: I'm John Williams, I've filed a  
9 request for intervener status in this case.

10 CHAIRPERSON HILL: Okay.

11 MR. ECKENWILER: Mark Eckenwiler, ANC 6C-04,  
12 Commissioner here on behalf of appellant ANC 6C.

13 CHAIRPERSON HILL: Okay, great.

14 MR. BROWN: Patrick Brown from Greenstein,  
15 DeLorme, & Luchs on behalf of the intervener, the  
16 property owner, both in this appeal and the parallel  
17 appeal, 19412 of ANC 6A.

18 While we have a moment, and one of the things  
19 I've raised is that these -- putting aside all the  
20 other procedural issues, these appeals, I don't think  
21 I'd get any dispute, are very much similar. Certainly  
22 the subject matter is the same and I think for  
23 purposes of --

24 CHAIRPERSON HILL: No, okay. I got you. I  
25 saw your motion, efficiency of time and trying to

1 bring everybody together. And I don't necessarily  
2 disagree, I'm just trying to think about how to go  
3 about doing this.

4           So, before we do that, I want to talk about  
5 Mr. Williams and his intervener status. I guess, we  
6 can go ahead and do that first, maybe, because Mr.  
7 Williams, you're just trying to intervene on ANC 6C's  
8 appeal, correct?

9           MR. WILLIAMS: That's correct.

10           CHAIRPERSON HILL: If it's okay, and I've made  
11 this announcement before and I've already had a little  
12 bit of a long morning, let's try to like remain calm  
13 as we go through this and just listen to everybody,  
14 and we're going to be very civil because we're all  
15 D.C. city residents, okay? At least these people are.

16           So, okay. If you would, Mr. Williams, just  
17 give me three minutes, or Mr. Moy, if you could put  
18 three minutes on the clock, and I don't know how much  
19 time you might need, but just to kind of explain your  
20 application for intervener status. Then I'm going to  
21 let Mr. Brown have an opportunity because he is in  
22 opposition to that intervener status. And then also  
23 let Commissioner Eckenwiler speak to that as well.  
24 Okay?

25           MR. WILLIAMS: Sure.



1 CHAIRPERSON HILL: So, go ahead.

2 MR. WILLIAMS: So, I am filing -- I have filed  
3 a request for intervener status. I filed the form 141  
4 and then responded to a couple of things that came  
5 across from the other side in opposition to it. But  
6 to kind of briefly sum it up, I am a neighbor of the  
7 property. I am about, I believe it was I think I did  
8 the math about 131 feet from the property on the other  
9 side of the street. So, anything that happens on this  
10 property site would directly affect me as a homeowner  
11 in a way that I think is somewhat unique to the issues  
12 that are raised by ANC 6A and Mr. Alcorn, who are in  
13 the other case. And in that -- which led to me being  
14 interested in intervening here. Sorry. Intervening  
15 here so that I could make sure that my interests are  
16 fully represented here.

17 And so, I'm joining ANC 6C just to be a party  
18 in that -- in this appeal to make sure that my  
19 interests are represented.

20 CHAIRPERSON HILL: Okay. And I appreciate you  
21 coming down and filling out the application, and for  
22 intervener status.

23 And now, I guess, does the Board have  
24 questions for Mr. Williams?

25 [No audible response.]

1           CHAIRPERSON HILL: I have a question. So, Mr.  
2 Williams, how is your concerns different from the  
3 ANC's?

4           MR. WILLIAMS: I think it's -- I think there's  
5 some overlap with our concerns, although I would argue  
6 that depending on where this appeal goes, and what  
7 directions things go, the concerns could -- there  
8 could be somewhat different concerns because there's  
9 more direct impact to me having to do with potential  
10 construction, potential height of the property that  
11 the vast majority of ANC 6A and including Mr. Alcorn  
12 would not be as affected by.

13           CHAIRPERSON HILL: Okay. How so? Can you  
14 specify just a little bit more for me?

15           MR. WILLIAMS: Sure. My house is located  
16 across the street, slightly to the southwest of the  
17 property. You know, taller building affects sight  
18 lines, affect light coming to my property, more so  
19 than, you know, I guess there's probably four or five  
20 neighbors who would be similarly situated to me, none  
21 of whom are directly -- you know, are individually  
22 represented, whereas, 6A, of course, covers a much  
23 larger group of individuals, and therefore may not be  
24 as motivated or interested in those particular issues  
25 and that also includes Mr. Alcorn who is representing

1 -- you know, who is here on behalf, and I think  
2 individually as well as with ANC 6A.

3           Additionally, you know, large scale  
4 construction beyond just a single-family row home.  
5 The types of things that go along with that,  
6 everything from, you know, the pulling up and  
7 replacing of utilities, to larger construction and  
8 things like that would more affect me directly than it  
9 would most other residents in ANC 6A. I think Mr.  
10 Alcorn would probably say he'd be somewhat equally  
11 affected, but being right across the street I think  
12 there's more of an impact on my property.

13           CHAIRPERSON HILL: But you're trying to join  
14 6A's appeal?

15           MR. WILLIAMS: I'm joining 6C.

16           CHAIRPERSON HILL: I'm sorry. 6C's appeal and  
17 not 6A?

18           MR. WILLIAMS: That's right.

19           CHAIRPERSON HILL: But you mentioned 6A a few  
20 times now. I don't --

21           MR. WILLIAMS: That's because -- I mean, well,  
22 this is in ANC -- the property is located in ANC 6A,  
23 but I felt that coming in as a individual, joining on  
24 6C on the legal issues that 6C is raising, I felt like  
25 that was the most appropriate way to come in

1 individually as an intervener.

2 CHAIRPERSON HILL: Okay. All right. Mr.  
3 Brown?

4 MR. BROWN: One, and Mr. Chairman, you noted  
5 the kind of the anomaly that he's trying to enter,  
6 6C's appeal. He lives in 6A. Mr. Alcorn is a  
7 neighbor of his, I don't think there's any dispute  
8 about that, and is the appellant in the companion  
9 case.

10 We need to look at this not from the  
11 perspective of where you typically are in a BZA  
12 application for a special exception or a variance, but  
13 in the context of an appeal case. And the standard is  
14 different, and in this case, it's governed by the  
15 regulations, but also the administrative procedure  
16 act. And the standard for intervention is that the  
17 potential intervener's legal interests cannot be  
18 adequately protected by the existing parties.

19 I think in this case, Mr. Alcorn, his  
20 neighbor, ANC 6A, and also ANC 6A represented by  
21 competent counsel, have more than the ability to  
22 represent his legal interest in an appeal case.

23 The questions about the height of this  
24 building, the impact on the neighborhood, are quite  
25 frankly totally irrelevant to an appeal case. Again,

1 this is not a special exception or variance case, this  
2 is an appeal case where we're focused in on the  
3 question of law about whether this permit was  
4 correctly issued, not the impact of the building on  
5 the neighbors.

6           So, I think one, his interests are more than  
7 adequately protected, it's duplicative, and I quite  
8 frankly don't understand why he's joining 6C, whose --  
9 I have some well-documented objections to their  
10 participation, but he certainly doesn't meet the  
11 standard for intervention in an appeal case. And I  
12 think certainly if you would like to testify as part  
13 of ANC 6A, I wouldn't object to that. But to get  
14 random party status with all that entails, is  
15 unnecessary and quite frankly will slow down these  
16 proceedings.

17           CHAIRPERSON HILL: Okay. Does the Board have  
18 any questions for Mr. Brown?

19           Okay. Go on, sure.

20           MS. WHITE: Just one question. Why aren't you  
21 joining the other case, 6A?

22           MR. WILLIAMS: 6A?

23           MS. WHITE: Yeah.

24           MR. WILLIAMS: I think the best way I can  
25 describe it is that if I were to join -- it's the

1 legal standard that Mr. Brown actually just discussed  
2 is that, you know, feeling that your legal interests  
3 are properly represented and you know, I certain am  
4 not taking away from ANC 6A's representation and Mr.  
5 Alcorn's as well, however I feel like I have a unique  
6 perspective in this and particularly unique impacts,  
7 you know, if the permit is granted there are unique  
8 impacts to me and my property that I want to make sure  
9 I'm properly representing and you know, I guess  
10 defending in front of the Board. And I felt that  
11 joining as intervener on the 6C case since I wanted to  
12 make sure it was clear that I was separate and apart  
13 from 6A in this matter, was the best approach for  
14 doing that.

15 CHAIRPERSON HILL: Okay. Commissioner  
16 Eckenwiler, do you have any thoughts?

17 MR. ECKENWILER: Thank you, Mr. Chairman. I  
18 just wanted to respond briefly to a couple of points.  
19 One, Mr. Brown says that the impacts on you know, Mr.  
20 Williams are irrelevant here. In fact, that's exactly  
21 what's at issue, whether or not this permit was  
22 properly issued for the type of structure, for the  
23 building envelope that's proposed. That in fact is  
24 why one would object to such a permit, not just on  
25 sort of, you know, theoretical you know, legal

1 grounds, you know, about the purity of the zoning  
2 regulations.

3 So, I would suggest to the Board that that's  
4 not really an appropriate distinction to draw here.

5 CHAIRPERSON HILL: Okay. But in terms of  
6 whether or not this gentleman is intervener status, do  
7 you have any thoughts?

8 MR. ECKENWILER: Well, right now the cases  
9 haven't been consolidated. You only have before you  
10 Case 19410.

11 CHAIRPERSON HILL: Right.

12 MR. ECKENWILER: And so, this is the vehicle  
13 that Mr. Williams has chosen --

14 CHAIRPERSON HILL: Okay.

15 MR. ECKENWILER: -- to hitch his wagon to.

16 CHAIRPERSON HILL: Okay. Okay. All right.  
17 Okay. All right. So, my thoughts, and I welcome any  
18 input from the Board that they have, and I do  
19 appreciate that Mr. Williams has come down here, but  
20 I'm not convinced that it's necessary for you to be  
21 granted intervener status. I mean, I think that, you  
22 know, that there is you know -- you are very welcome  
23 to come testify during the time of opposition. And  
24 so, I just didn't see a strong enough reason that, you  
25 know, you're not right next door. You're across the

1 street, 135 feet away. But I do understand why you're  
2 concerned. But I think that the application that the  
3 ANC 6C has in front of it, will meet your concerns.

4 Does the Board have any other questions or  
5 thoughts?

6 MR. HART: Yeah, I would actually agree with  
7 that, Mr. Chairman. I think that if you were adjacent  
8 to the property, that might you know, give me more  
9 comfort with this. But it seems as though there are -  
10 - anyone in this -- any of your neighbors, next door  
11 neighbors, could actually make the same case that  
12 you're making.

13 But again, it's the adjacency, I think, is the  
14 point that's hard for me to get to. So, anyhow,  
15 that's it.

16 CHAIRPERSON HILL: Okay. Any other thoughts,  
17 comments?

18 MR. WILLIAMS: May I respond --

19 CHAIRPERSON HILL: Sure.

20 MR. WILLIAMS: -- very briefly?

21 CHAIRPERSON HILL: Sure.

22 MR. WILLIAMS: I apologize.

23 CHAIRPERSON HILL: It's all right.

24 MR. WILLIAMS: Just to the -- I mean, if  
25 adjacency is the main issue, I'll just point out that



1 the requirement is specifically within 200 feet, and  
2 I'm within the 200 feet requirement for intervening  
3 so.

4 CHAIRPERSON HILL: I don't think it was  
5 necessary the adjacency factor. I think that that was  
6 just something that we were talking about that might  
7 have swayed us more as to why to include you as to  
8 intervener status.

9 So, I would go ahead and make a motion to deny  
10 the motion to include John Williams as an intervener  
11 in this. Do I have to second -- motion has been made?  
12 Do I not -- I don't have to --

13 MR. MOY: Well, the Board can either vote on  
14 your motion, or by consensus. The Board has been  
15 known to go either direction.

16 CHAIRPERSON HILL: All right. I've made a  
17 motion.

18 MR. MOY: You did.

19 CHAIRPERSON HILL: Can somebody second my  
20 motion?

21 MR. HART: Seconded.

22 CHAIRPERSON HILL: Motion has been made and  
23 seconded.

24 [Vote taken.]

25 CHAIRPERSON HILL: Okay. Thank you. Sorry,

1 Mr. Williams.

2 MR. WILLIAMS: Thank you for your time.

3 CHAIRPERSON HILL: All right. So, that's one  
4 down of a list. So, is 6A here?

5 MS. GLAZER: Mr. Chair.

6 CHAIRPERSON HILL: Yes. Oh, I'm sorry.

7 MS. GLAZER: Could you have the secretary call  
8 the vote, please?

9 CHAIRPERSON HILL: Sure. Please.

10 MR. MOY: Okay. That would be four, to zero,  
11 to one. This is on the motion of Chairman Hill to  
12 deny the request for intervener status on this appeal  
13 application. Seconded the motion, Vice Chair Hart.  
14 Also in support, Mr. Miller and Ms. White, board seat  
15 vacant.

16 CHAIRPERSON HILL: Thank you. Thank you, Ms.  
17 Glazer. Always glad that the attorneys can like pop  
18 in and just, you know, make sure that it's done  
19 correctly. You know, I appreciate that.

20 So, is 6A here?

21 MR. BROWN: Yes, Mr. Chairman. They're  
22 present.

23 CHAIRPERSON HILL: Okay. Sorry. Okay. Could  
24 6A come to the table also? Let's just all sit as one  
25 big group. And we're still hoping that DCRA shows up.

1           Good morning. Thanks for coming down today.  
2 If you wouldn't mind just introducing yourselves from  
3 right to left there for me?

4           MS. FERSTER: Sure. Good morning. My name is  
5 Andrea Ferster. I'm counsel for the appellants in  
6 this appeal.

7           CHAIRPERSON HILL: You need to push the  
8 button.

9           MR. ALCORN: Good morning, I'm Brian Alcorn.  
10 I am the appellant for -- on behalf of myself, as well  
11 as ANC 6A.

12           CHAIRPERSON HILL: Okay, great. Thank you.  
13 So, I don't know if the Board has any thoughts. I  
14 mean, in terms of again, efficiency, and it seems like  
15 the same -- it makes sense to me to combine the cases.  
16 And, does the Board have any objection to that?

17           MR. BROWN: Mr. Chair, can I interject?

18           CHAIRPERSON HILL: Sorry. Sure, go ahead, Mr.  
19 Brown.

20           MR. BROWN: As a preliminary to that step,  
21 I've put forward an objection to the standing of ANC  
22 6C.

23           CHAIRPERSON HILL: Oh, yeah, that's right.

24           MR. BROWN: To filing the appeal. Once I  
25 think if we dealt with that issue, depending on the

1 outcome, then we go to the consolidation as a  
2 secondary --

3 CHAIRPERSON HILL: Okay. No, I appreciate  
4 that, Mr. Brown. Although --

5 MR. ECKENWILER: Mr. Chair, if I may?

6 CHAIRPERSON HILL: Sure. Go ahead,  
7 Commissioner Eckenwiler.

8 MR. ECKENWILER: We also have a motion from  
9 DCRA to dismiss both of the appeals on grounds of --

10 CHAIRPERSON HILL: Oh, yeah, they're a whole  
11 thing. There is like --

12 MR. ECKENWILER: So, so --

13 CHAIRPERSON HILL: Yeah. Yeah.

14 MR. ECKENWILER: -- in the interest of  
15 efficiency, I think that might go a little more  
16 quickly. I don't, you know --

17 CHAIRPERSON HILL: We need DCRA.

18 MR. ECKENWILER: -- I don't mean to prejudge.

19 CHAIRPERSON HILL: No, that's okay. I need  
20 DCRA.

21 MR. ECKENWILER: I understand.

22 CHAIRPERSON HILL: That's what I'm waiting  
23 for, so I'm going through these other ones. But I  
24 appreciate the input.

25 So, to your motion, Mr. Brown, and again, the

1 Board can tell me what they think, I would not be  
2 inclined to dismiss ANC 6C from participating. And  
3 so, I don't -- I would dismiss your motion. I  
4 wouldn't dismiss your motion. I would be opposed to  
5 your motion.

6 Does the Board have any comment on, you know,  
7 I don't see how we're going to keep -- I don't want to  
8 keep 6C out of this. I suppose Mr. Alcorn --  
9 actually, if you could tell me again, now the where --  
10 I know that what was in the filings was that it is in  
11 ANC 6A, and so where is the property in relationship  
12 to -- it's right next door, I guess, in 6C.

13 I'm just trying to get an idea as to where  
14 everything is.

15 MR. ALCORN: Sure, Mr. Chairman. Are you  
16 asking to explain the properties proximity to 6C, or  
17 where?

18 CHAIRPERSON HILL: Yes.

19 MR. ALCORN: Where I live?

20 CHAIRPERSON HILL: Yes.

21 MR. ALCORN: I would describe the property's  
22 proximity to 6C as located in ANC 6A, which neighbors  
23 ANC 6C.

24 CHAIRPERSON HILL: Okay. All right. So,  
25 again, I would not be in favor of the Mr. Brown's

1 motion to keep 6C. The numbers are getting -- 6A, off  
2 the table, or out of this case. So, I'm going to make  
3 a motion to deny the motion to exclude 6A's  
4 participation.

5 MR. BROWN: 6C.

6 CHAIRPERSON HILL: 6C. Sorry. Thank you.  
7 Sorry. 6C's participation. The motion has been made.

8 MS. WHITE: Second.

9 CHAIRPERSON HILL: And seconded. The motion  
10 has been made and seconded.

11 [Vote taken.]

12 CHAIRPERSON HILL: Mr. Moy, the motion passes  
13 and I'm going to learn this, I'm going to learn the  
14 new way next time.

15 MR. MOY: No, that's fine. I think you've  
16 been doing really well.

17 CHAIRPERSON HILL: Thank you.

18 MR. MOY: Staff would record the vote as four,  
19 to zero, to one. This is on your motion, Mr.  
20 Chairman, to deny the motion. That's opposed to ANC  
21 6C's standing. Seconding the motion, Ms. White. Also  
22 in support, Mr. Miller and Vice Chair Hart. Board  
23 seat vacant. Motion carries.

24 CHAIRPERSON HILL: Okay. Thank you. All  
25 right. So, Mr. Brown, we are now back to your motion,

1 which is to consolidate the two cases, or to appeals.  
2 And, I am also in favor of granting this motion. I  
3 think that it behooves the Board to hear these  
4 together and they can participate together. I assume  
5 that that's all right with you because it's your  
6 motion, correct, Mr. Brown?

7 MR. BROWN: That's correct.

8 THE COURT: All right. Commissioner  
9 Eckenwiler, or Mr. Alcorn, do you have any opposition  
10 to this?

11 MR. ECKENWILER: I'll let ANC 6A go first.

12 CHAIRPERSON HILL: Okay.

13 MR. ECKENWILER: We have no opposition.

14 CHAIRPERSON HILL: Okay.

15 MR. ECKENWILER: No opposition, Mr. Chairman.

16 CHAIRPERSON HILL: Okay, great. Thank you.

17 So, then does the Board have any thoughts? No? Okay.

18 Then, I'm just going to pass this by consensus,  
19 right? I can just -- so we've done this. Okay.  
20 There we go.

21 All right. I'm still waiting for DCRA.

22 MS. FERSTER: Mr. Chairman.

23 CHAIRPERSON HILL: Yes.

24 MS. FERSTER: While we are waiting for DCRA,  
25 there is a third -- there is another motion on the

1 table that perhaps could be addressed before DCRA  
2 comes, and that is the appellant's cross-motion to  
3 dismiss the intervener's cross-appeal.

4 MS. GLAZER: I don't know that the Board has  
5 seen that motion, and I haven't seen it.

6 MR. ECKENWILER: I think I can clarify, or I'm  
7 happy to have Ms. Ferster do so. This case was  
8 scheduled to be heard last month, and shortly before  
9 that hearing date, I believe it was on February 28th,  
10 DCRA filed their -- we mentioned earlier the motion to  
11 dismiss is moot because they served a notice to revoke  
12 on Mr. Brown and his client.

13 Mr. Brown then filed what he styled as a  
14 cross-appeal, and so Ms. Ferster filed a response to  
15 that, I think within the last week if I recall  
16 correctly.

17 MS. FERSTER: Yes, that's correct.

18 MR. ECKENWILER: Moving to dismiss.

19 MS. FERSTER: We did file it via IZIS. It's  
20 not because the cases were not consolidated. We filed  
21 it in 19412, but it should be there. And it was filed  
22 on Friday, I believe, March 31st.

23 MR. ALCORN: I believe it's Exhibit 34.

24 [Pause.]

25 CHAIRPERSON HILL: Ms. Ferster, I guess, I'm



1 hesitant. I'm kind of waiting for DCRA to get through  
2 what their motion is before I speak about the cross-  
3 appeal. And so, I'm kind of at a loss, I suppose. I  
4 think what we're going to do -- you know, I'm, we're  
5 all working here together. So, either there's  
6 something wrong with the Redline, I just like to blame  
7 the Redline, or I don't know. So, we'll just, we'll  
8 take five minutes and hopefully DCRA will get here in  
9 those five minutes. Okay? Thank you. Sorry. Sure.

10 MS. FERSTER: I will just say that --

11 CHAIRPERSON HILL: Go ahead, Ms. Ferster.

12 MS. FERSTER: -- DCRA didn't file a response  
13 to my cross-appeal motion, so I'm not sure what their  
14 position is, but we would like that taken up at some  
15 point.

16 CHAIRPERSON HILL: Sure, I understand. Okay.  
17 Thank you. So, we'll take a quick five minutes.  
18 Thanks.

19 [Off the record from 11:27 a.m. to 11:37 a.m.]

20 CHAIRPERSON HILL: Okay. Let's get started  
21 again. Thank you. Do they need to be sworn in?  
22 Yeah.

23 So, I guess, if you guys haven't been sworn in  
24 yet or if you could just please stand and take the  
25 oath. Take the oath.

1 MR. MOY: If there's anybody else --

2 CHAIRPERSON HILL: Oh, yeah, if I'm missing  
3 anybody, if you haven't been sworn in, please, stand  
4 and do so.

5 [Oath administered to the participants.]

6 MR. MOY: Thank you, gentlemen.

7 CHAIRPERSON HILL: I still just find it  
8 fascinating that the attorneys don't have to get sworn  
9 in. You know? I mean like, it's just like it's  
10 forever. Huh? Is that how it works?

11 MR. BROWN: Lower expectations, I think.

12 CHAIRPERSON HILL: I don't know. Maybe. I  
13 don't know. All right. So, all right, okay. So, if  
14 you -- well first of all, welcome. And if you could  
15 please introduce yourselves?

16 MR. TONDRO: Sure. Maximilian Tondro on  
17 behalf of DCRA again. I apologize for being late.

18 MR. LeGRANT: Matthew LeGrant, the Zoning  
19 Administrator, DCRA.

20 CHAIRPERSON HILL: Okay, great. So, we've  
21 worked through a variety of preliminary matters. The  
22 one that is of most consequence that is going to be, I  
23 think of most interest to everyone here, is DCRA's  
24 motion to dismiss. And so, if I could, Mr. Tondro,  
25 just give you a little bit of time to go over the

1 motion, and then I was going to allow both the  
2 building owner time to respond, as well as ANC  
3 Commissioner and for 6A, and then 6C as well, to do  
4 so.

5 So, I'm just going to throw three minutes up  
6 there just so I have my own track of time, Mr. Moy.  
7 And so, please, whenever you would like to explain the  
8 motion that would be great. Thank you.

9 MR. TONDRO: Yes. Good morning, Mr. Chair and  
10 members of the Board.

11 CHAIRPERSON HILL: Yeah, I was just pointed  
12 out, thank you, just to let you know, we've combined  
13 now the two appeals.

14 MR. TONDRO: Yes. Thank you.

15 Good morning, again, Mr. Chair, members of the  
16 Board. Yeah, the motion to dismiss as moot was based  
17 on the determination made by the Zoning Administrator  
18 upon legal counsel, advice of legal counsel, that the  
19 permit had been issued in error. And as a result, for  
20 the reasons that were laid out in the revocation  
21 notice itself. Therefore, as a result DCRA believes  
22 that the appeal should be dismissed as moot, because  
23 the appeal was challenging the validity of the permit.  
24 DCRA has recognized that it made an error and  
25 therefore has revoked the permit.

1           It's up to the Board. The Board also of  
2 course has the authority to revoke the permit by  
3 itself, but our motion to dismiss here was just simply  
4 that we have taken the action that was requested of by  
5 the appellants, and as a result we therefore believe  
6 that this appeal should be moot. Thank you.

7           CHAIRPERSON HILL: Okay. Does the Board have  
8 any questions for DCRA on this particular matter?

9           Oh, please ask questions. Go right ahead.

10          MR. HART: So, the -- I'm sorry. So, this is  
11 going to be the appeal -- the permit is going to be  
12 revoked?

13          MR. TONDRO: Yes. So, in the attachment --

14          MR. HART: As of when?

15          MR. TONDRO: Sixty days from the notice, as of  
16 May 9th, would be the actual date. So, that was  
17 attached in the motion to dismiss and that revocation  
18 clearly laid out the reasons for the revocation, why  
19 it was that the DCRA had realized that they had made  
20 an error.

21          MR. HART: And so right now they still have a  
22 -- they've got a permit that is actually active now.  
23 It will be -- it will take effect on May 9th is what  
24 you're saying.

25          MR. TONDRO: Right. It is a -- any revocation

1 is, other than a summary cancellation, which is not  
2 this case, but a revocation is a proposed action that  
3 requires the appeal window to be closed.

4 In this particular case the owner has actually  
5 already filed -- well, they filed a cross-appeal, and  
6 that I imagine we'll get to later on. But that -- if  
7 and when they file an appeal, then that would also  
8 stay the revocation. The revocation would continue to  
9 be a proposed action until the Board hears and decides  
10 the appeal.

11 MR. HART: Okay. Thank you. Just --

12 CHAIRPERSON HILL: Okay. Let's see. Oh,  
13 there was again, a motion to allow a late filing for  
14 DCRA to file the -- file a motion to dismiss as moot.  
15 There was a motion for late filing. Unless the Board  
16 has any issue, I'm going to grant the late filing due  
17 to the -- due to what actually is very important to  
18 us, and you know, which is in terms of the dismissal  
19 as moot.

20 Does the Board have any objection to that?

21 [No audible response.]

22 CHAIRPERSON HILL: Okay, then I'm going to do  
23 that with consensus again. Okay. All right. Okay.  
24 Thank you. I like consensus too. I'm going to start  
25 using that at home.

1 MR. ECKENWILER: Good luck.

2 CHAIRPERSON HILL: Yeah. Thanks. All right.  
3 Let's see.

4 So, I know, Mr. Brown, you're going to have an  
5 issue with this so I'm going to go ahead and turn it  
6 to you to give your thoughts on DCRA's motion to  
7 dismiss as moot.

8 MR. BROWN: Well, and I think -- and, Mr. Hart  
9 hit upon it. This is a notice to revoke a permit.  
10 It's not effective. The permit still is valid. So, a  
11 motion to dismiss for mootness is premature on that  
12 basis.

13 But also we need to look at -- and I think  
14 I've filed a valid cross-appeal. But when we come  
15 down to the end of the day, whether it's on their  
16 appeal or my cross-appeal, the central question, and  
17 the only question is the validity of this building  
18 permit.

19 And so that that question is far from moot.  
20 If, for instance, and I'm not suggesting this, but if  
21 you were to dismiss the two pending appeals, 19410 and  
22 19412, as moot, I have the right and have filed an  
23 appeal of the notice to revoke, and we'll be right  
24 back here with the same parties. Again, I made the  
25 point, we might be sitting in different seats as far

1 as who is the appellant and who is the intervener, but  
2 all the facts, all the issues are going to be the  
3 same, and to dismiss as moot, I think is one factually  
4 wrong, and a waste of the Board's time because we're  
5 going to be back here to have the exact same  
6 discussion, and we ought to have that discussion as  
7 quickly as possible so that the parties know where  
8 they stand.

9 I think Ms. Ferster has filed a motion to  
10 dismiss my cross-appeal. One, I disagree with that.  
11 I think the Board has the ability to accept the cross-  
12 appeal. The disadvantage we had is that that was  
13 filed and then we never had the hearing the next day.

14 But I think one of the things we need to do  
15 procedurally, as you recall, Mr. Chairman, members of  
16 the Board, the notice to revoke was filed on February  
17 28th, the day before we were supposed to have a March  
18 1 hearing. The March 1 hearing, as you all remember,  
19 was taken up by the shelter cases. So, we were put  
20 off, so that the time to deal with the cross-appeal  
21 properly would have been March 1.

22 All -- and Ms. Ferster raises the point, well  
23 the ANC doesn't have notice and well -- all the ANCs  
24 are parties to this proceeding and they've had notice  
25 since I filed the cross-appeal. So, I think one,

1 nothing is moot. We all have our positions and we  
2 ought to, one, if you need to docket my cross-appeals  
3 as separate number, that's fine. But we've got one  
4 case involving one central issue and there's nothing  
5 moot about it. And it would be fair to everybody,  
6 regardless of where you sit in the table, to have a --  
7 to resolve that issue completely.

8 CHAIRPERSON HILL: Okay, I understand. I  
9 appreciate that. And we are going to get to the  
10 discussion of the cross-appeal. So, again, I heard  
11 your comments about the motion to dismiss as moot.  
12 Does the Board have any questions for Mr. Brown?

13 Okay. I'm going to go with Commissioner  
14 Eckenwiler. I'm sorry. I just wanted to make sure I  
15 was pronouncing it correctly.

16 MR. ECKENWILER: Close counts, Mr. Chairman,  
17 but that's correct.

18 CHAIRPERSON HILL: Thank you.

19 MR. ECKENWILER: On the motion to dismiss, in  
20 general ANC 6C does not have an objection, but there  
21 is a big of a procedural wrinkle here that, one I'd  
22 like to flag for the Board, and then actually if we  
23 could get an answer on the record from the Board, I  
24 think it would be helpful. And that is this; Mr.  
25 Brown -- let me back up one half step. As you know,



1 there was also an OAH proceeding relating to this  
2 permit. Mr. Brown and his client have now filed --  
3 they've basically gone back to OAH, and I believe he  
4 can speak for himself, obviously, but I believe they  
5 have a status conference or something in the nature of  
6 a conference with the hearing officer on April 10th.

7           So, let me posit for you the following  
8 scenario. You dismiss these appeals as moot. OAH  
9 comes back subsequently and says, well, actually no,  
10 that notice to revoke was invalid for some set of  
11 reasons that has nothing to do with Title 11. That's  
12 all, you know, Title 12A, and therefore not your  
13 problem. But OAH makes some determination that no, in  
14 fact that permit was properly issued.

15           It would be useful to know whether or not we  
16 could come back and revive those appeals because  
17 suddenly it's no longer moot, you know, that's now a  
18 live permit again. I hope that makes sense, and if it  
19 doesn't I have to clarify it.

20           CHAIRPERSON HILL: That's okay. I'm just  
21 looking at counsel at some point, but it's okay.  
22 We're going to keep working through this. So, that is  
23 all you have to say about the mootness issue?

24           MR. ECKENWILER: Yes.

25           CHAIRPERSON HILL: Okay. Great. Thank you.

1 Ms. Fister, Ferster, or --

2 MS. FERSTER: Ferster.

3 CHAIRPERSON HILL: Ferster. Or Mr. Alcorn.

4 MS. FERSTER: Yes, I do represent both of  
5 them.

6 CHAIRPERSON HILL: Sorry. I'm having a bad  
7 day with names also.

8 MS. FERSTER: You know, our position is that  
9 we don't believe that our appeal is technically moot  
10 until the permit revocation is final. That said, we  
11 very strenuously believe that it would be inefficient  
12 and wasteful for this Board to proceed with a hearing  
13 on our appeal, given the fact that the owner, while we  
14 don't believe that they have filed a valid cross-  
15 appeal yet, or that that their cross-appeal if validly  
16 filed, could be heard today, may well eventually file  
17 a cross-appeal, and proper notice would be given of a  
18 new hearing date. And in that context, I think, any  
19 new appeal if timely filed, would be the appropriate  
20 vehicle to hear the issues in this case.

21 And it's very -- and it's significant when we  
22 don't think that you can just sort of rearrange the  
23 seats on the table and go forward today because notice  
24 is a significant issue. If in fact the owner's appeal  
25 is the appeal that is going to be heard, and it is the

1 owners that have the burden of proof. And, the public  
2 is entitled to notice of that appeal and opportunity  
3 to submit timely intervention requests, et cetera.

4 CHAIRPERSON HILL: Okay. Does the Board have  
5 any questions for Ms. Ferster?

6 [No audible response.]

7 CHAIRPERSON HILL: Okay.

8 MS. FERSTER: I would just say one other thing  
9 that --

10 CHAIRPERSON HILL: All right. Sure.

11 MS. FERSTER: -- we would think that the  
12 appropriate action to take would be to put our appeal,  
13 hold it, either defer it -- defer the hearing on it or  
14 hold the appeal in abeyance until such time as there  
15 is a cross-appeal that is properly before -- or an  
16 appeal that is properly before the Board.

17 CHAIRPERSON HILL: Okay.

18 MR. MILLER: I agree with that, Mr. Chairman.

19 CHAIRPERSON HILL: Okay. Well, thanks,  
20 Commissioner Miller. You just cut me right there to  
21 that -- we can just cut right to the chase. I  
22 appreciate that. You know, that's great. I'm trying  
23 to get out of here too.

24 So, again, where I am and again, Mr. Brown,  
25 you're not going to agree with this, but I would also

1 think that we should hold this -- well, the motion in  
2 abeyance until after the revocation time was supposed  
3 to happen until like the 19th. Or what was it, May  
4 9th. May 9th.

5           And, the issue -- this is also kind of coming  
6 from consulting with the Office of the Attorney  
7 General who is welcome to chime in on this issue  
8 concerning the cross-appeal, which was that there is  
9 no regulation that expressly authorizes cross-appeals.  
10 There's also no regulation prohibiting them.  
11 However, there are procedures for the appeal. And so,  
12 you know, 32 -- 302.7, each appeal shall meet the  
13 requirements of the section before it will be accepted  
14 by the office for processing.

15           And then 302.8, and 302.9. And then again,  
16 the forms that need to be properly filled. I mean,  
17 I'm just, I'm thinking what is going to be the  
18 cleanest for you in terms of the building owner, and  
19 the cleanest for us in order to hear the appeal of the  
20 revocation of the permit.

21           I don't know who that OAH thing, you know,  
22 muddies the water or changes things for the property  
23 owner, but that is what I would be thinking of in  
24 terms of how to move forward, if there was a way that  
25 we could get this as quickly as possible for the

1 building owner in terms of I don't know how long it  
2 takes Mr. Moy for things to kind of move through the  
3 process or through the works, given that there was an  
4 extensive hearing that happened during the emergency  
5 shelter hearing, which bumped them back, where we  
6 would have had the conversation about the cross-  
7 appeal, which would have been the same conversation.

8           But then it also would have pushed you still  
9 until May 7th or May 9th. May 9th, regardless,  
10 because that's when the permit will be properly  
11 revoked. So, before I turn to any thoughts you might  
12 have, Mr. Brown, that's kind of what I think of that  
13 the Board should do moving forward. Does the Board  
14 have any other thoughts. And I know, Commissioner  
15 Miller, you just seem to be in concurrence with this.

16           MR. MILLER: Yes, I am in concurrence with  
17 this and I think we should hear the case as soon as  
18 possible after May 9th, depending on when the hearing  
19 on an appeal filed on the revocation permit issue and  
20 it may be that the appellants would withdraw their  
21 motion or their case and file, you know, file in their  
22 new status opposition to that -- the owner's appeal.

23           But yeah, we should get to that efficient  
24 clean hearing on the issues.

25           CHAIRPERSON HILL: All right. Mr. Brown.

1           MR. BROWN: Why don't I suggest this. With  
2 everybody reserving their rights, I will immediately,  
3 if not sooner, file you know, an appeal in the normal  
4 course, with the understanding that that is not going  
5 to be handled separately from the others. You know,  
6 we can do that quickly and get that process going  
7 procedurally from your standpoint, because you need to  
8 process it and give notice and whatnot. But take Mr.  
9 Miller's suggestion and do this quickly as possible.

10           All the motions to dismiss and other things,  
11 are held in abeyance until we have the cross-appeal  
12 before the Board.

13           CHAIRPERSON HILL: Okay. And that's where I'm  
14 a little lost here. Ms. Glazer, you can help me, that  
15 it wouldn't be a cross-appeal, it would be an appeal.

16           And so, we would now be doing -- we can do the same  
17 day. We can do, you know, because I want to do this -  
18 - I do realize that you guys did get bumped back. I  
19 also realize that it looks like this has been around  
20 here for like four years.

21           So, I'm you know, I'm not terribly concerned  
22 about your speed with which you're trying to do  
23 things, but I am cognizant of the fact that we bumped  
24 you. And so, but am I wrong, Ms. Glazer, that this  
25 would be a separate appeal now, correct?

1 MS. GLAZER: Well, it would be styled as a  
2 separate appeal, and the only thing the Board would  
3 need to be mindful of are two time periods. One is  
4 the May 9th final revocation date, and the other is  
5 the 40-day notice period under 504.1. So, Mr. Brown  
6 might be able to suggest to the Board when he might be  
7 able to accomplish the filing of the appeal, and the  
8 Board could probably determine a reasonable time  
9 period based on that.

10 MR. BROWN: The appeal will be filed before  
11 the end of this week.

12 CHAIRPERSON HILL: Okay.

13 MR. BROWN: If not tomorrow.

14 Two things, I would ask so as not to add  
15 further injury to my client, that he be -- we request  
16 a waiver of the \$1,000 filing fee for the appeal,  
17 which I think is within the Board's jurisdiction to  
18 waive. Let me -- none of the appellants, rightfully  
19 so, given their status, were required to file an  
20 appeal fee. It seems to put my client just --

21 THE COURT: You might as well ask. Go ahead  
22 and ask. I'm looking to see whether we can do this or  
23 what the precedent is, or whether we're setting  
24 precedent. This is the first time I've ever weighed  
25 it, so --

1           MR. MOY: Mr. Chairman, unless the ZR-16  
2 regulations have changed, typically that decision is  
3 decided -- the judgement of the Director of the Office  
4 of Zoning. This has happened very rarely in the past,  
5 but when it has come up the Board could weigh in with  
6 that request to the director. But my understanding  
7 the director makes the ultimate decision on the waiver  
8 of that filing fee.

9           MR. BROWN: We'll leave it to the director's  
10 discretion. My job is to file an appeal quickly.

11           CHAIRPERSON HILL: Okay.

12           MR. BROWN: The other thing I think it's  
13 important to understand, or at least for me to  
14 understand, is that there are two appeals pending that  
15 are not moot as of this point, and will go forward.  
16 And then I will file an appeal on behalf of my client.

17           Now, the two appeals that are pending, they  
18 have the burden in their appeals of proof. I, on the  
19 other hand have the burden of proof in my appeal, so  
20 that we need to keep the obligations and duties of  
21 each party clearly separate and identified.

22           CHAIRPERSON HILL: No, I agree, and that's  
23 helpful. That's why we're trying to keep it as clean  
24 as possible. And for whatever it's worth, again, I  
25 think that if the director is listening and if it's



1 something that is able to be granted, I mean, I do  
2 think that the fact that you were bumped back, if  
3 there is some way to waive the filing fee, you know,  
4 and that does not prejudice anyone, then I would not  
5 necessarily have an issue with that, unless the Board  
6 has any comment.

7           Also, I mean, again, you know I'm being  
8 respectful of the different motions that have been  
9 made today, and also the fact that you were bumped.  
10 So, that being the case, then, we're back to -- sorry,  
11 of course.

12           MS. GLAZER: Mr. Chair.

13           MR. HART: Yeah, just --

14           MS. GLAZER: Oh, I'm sorry to interject one  
15 thing. We were just looking at the new regulation in  
16 ZR-16 regarding fees, and indeed the director does  
17 make the determination. That determination can be  
18 appealed to the Board.

19           MR. BROWN: Would it be acceptable if I filed  
20 the appeal with the request for a waiver, and if -- if  
21 my request is denied and the appeal to the Board is  
22 unsuccessful, Greenstein, DeLorme, and Luchs would be  
23 happy to pay the filing fee?

24           Mr. Chairman, on a more important note, and  
25 money is important, but the notice provisions, the 40-

1 day notice provisions, we ought to at least discuss  
2 the fact that with the exception of the -- well, with  
3 no exception, everybody who was entitled to get notice  
4 in the underlying case has gotten notice. Everybody  
5 who is a party to the original appeals, which are two  
6 ANCs, Mr. Alcorn, would obviously have notices of  
7 appeal so that if -- and whether there's ability to  
8 shorten the 40-day period so that we get this thing --  
9 keep this thing on track.

10 CHAIRPERSON HILL: No, Mr. Brown, and I  
11 appreciate it, and I see where you're going. It's  
12 just, that particular thing might make it more muddy  
13 for me. And so, you know, there might be some -- and  
14 it seems as though OAG might be a little concerned  
15 with that. But so, the way it is anyway, the May 9th  
16 is already, you know, you're already at 30 days there.  
17 You know?

18 And so, if you're going to file tomorrow, you  
19 know, or today or whatever, it's still -- I'm just  
20 saying, I don't think it necessarily buys you much  
21 time. I can't be here any earlier than May 9th. So,  
22 I would not be entertaining that suggestion.

23 MR. BROWN: And the May 9th date, other than  
24 it being a BZA hearing date, as Mr. Tondro said, once  
25 I file an appeal the revocation is put on hold so that

1 there won't be any prejudice and the issue will be  
2 ripe for your consideration at some date shortly  
3 thereafter. Am I correct, Max?

4 MR. TONDRO: Yes, under the construction  
5 codes, which I know are not within your jurisdiction,  
6 but the construction codes which govern as 105.6,  
7 revocations, they establish that it will become final  
8 upon the appeal period if no appeal has been filed.  
9 Therefore, once an appeal is filed and it's timely  
10 filed within the 60-day appeal period, then that  
11 revocation is still up in the air, it's still  
12 proposed, and only when the Board makes its decision  
13 will the revocation take affect if the Board upholds  
14 the revocation. Is that -- I can walk that through.

15 CHAIRPERSON HILL: No, that's okay.

16 MR. TONDRO: All right.

17 CHAIRPERSON HILL: So, then I don't understand  
18 what this is buying us. Like, if we -- we are going  
19 to hold the decision in abeyance for the motion to  
20 dismiss until after May 9th. That's the suggestion,  
21 correct? And I thought that was so that the permit,  
22 the revocation process would happen, and then the  
23 permit would be revoked.

24 What you're saying, Mr. Tondro, is that once  
25 the appeal is filed it no longer will be revoked until

1 after the appeal is heard, correct?

2 MR. BROWN: Yes.

3 CHAIRPERSON HILL: Okay.

4 MR. BROWN: So, in other words, when we issue  
5 a revocation --

6 CHAIRPERSON HILL: Okay.

7 MR. BROWN: -- it's a proposed action that  
8 allows them to appeal it.

9 CHAIRPERSON HILL: So, I'm back to hearing the  
10 appeal first. Okay. All right. Okay.

11 So, we're trying to get you here as quickly as  
12 possible.

13 MR. BROWN: Yes.

14 CHAIRPERSON HILL: So, Mr. Moy, when could we,  
15 if the appeal were filed tomorrow, get the property  
16 owner back here for his hearing? Is that --

17 MR. MOY: In typical course, with a 40 days,  
18 and I need some processing time too, but this would  
19 take me up to middle of May. And we could have teed  
20 it up maybe the third week of May, but we don't have a  
21 quorum. So, the earliest would be May 31st, Mr.  
22 Chairman. That's assuming no waivers of such.

23 MR. BROWN: No waivers. Oh.

24 MR. MOY: Notice requirements.

25 [Discussion off the record.]

1 MR. BROWN: That doesn't work for me.

2 [Discussion off the record.]

3 CHAIRPERSON HILL: Okay. We're all here. So,  
4 no, it's okay. We'll try to -- I mean, you guys are  
5 all working to -- that's great. Glad we all speak  
6 English together.

7 So, May 31st. Is that, Mr. Moy, does that  
8 work for everybody?

9 MR. TONDRO: I have an OAH appeal, but I can  
10 see if I can have that continued or moved.

11 CHAIRPERSON HILL: Okay. Or we can try to  
12 accommodate your schedule in terms -- I'm just kind of  
13 making a joke, but we can do it earlier or later. We  
14 can make it earlier or later if it works. I don't  
15 know where OAH is. Is it far away? Is it in this  
16 building?

17 MR. TONDRO: It's on the 4th floor --

18 CHAIRPERSON HILL: Yeah.

19 MR. TONDRO: -- on the north side.

20 CHAIRPERSON HILL: Okay.

21 MS. FERSTER: The 31st is not good for me,  
22 though.

23 CHAIRPERSON HILL: Oh, okay.

24 MR. ECKENWILER: Mr. Chairman, you know that  
25 New Yorker cartoon, you know, how is never? Does

1 never work for you?

2 CHAIRPERSON HILL: Yeah, that would work for  
3 me. The next week is what, then?

4 MR. ECKENWILER: June 7th.

5 CHAIRPERSON HILL: June 7th. Ms. Ferster?

6 MS. FERSTER: I am available June 12th, June  
7 13th, June 14th. Sorry, is that the week you're  
8 talking about?

9 CHAIRPERSON HILL: Well, the 7th is what was -  
10 -

11 MS. FERSTER: The 7th --

12 CHAIRPERSON HILL: -- currently on the table.

13 MR. ECKENWILER: It's always a Wednesday.

14 CHAIRPERSON HILL: Yes.

15 MS. FERSTER: Wednesday. Okay. 7th is fine.

16 CHAIRPERSON HILL: Okay, great. Wonderful.  
17 7th. June 7th. All right.

18 MR. ECKENWILER: Mr. Chairman, with one  
19 caveat, and that is that I have a standing obligation  
20 on the evening of the 7th. So, if we could try to put  
21 things earlier in the day consistent with everyone  
22 else's obligations? That would be fine.

23 CHAIRPERSON HILL: Okay. Okay. And  
24 Commissioner Eckenwiler, I'm saying, for the -- I  
25 shouldn't say for the record, even though this is the

1 record, I moved this one around for you. You know,  
2 and so, and I'm happy to do it again the next time  
3 because I don't like -- I like the appeals at the end  
4 of the day because they're just draining. Okay?

5 So, but so okay. But we will do it at the  
6 beginning of the day on June 7th.

7 So, on June 7th, we're going to hear the  
8 appeal of supposedly the filing, right of -- now, this  
9 is where I'm a little lost, Mr. Moy or Ms. Glazer, you  
10 can help me. So then, we will also hear the two  
11 appeals that are still on the table of 6A, 6E, in  
12 terms of the mootness issue.

13 MS. GLAZER: Those two appeals will still be  
14 on the calendar and the Board can take up the mootness  
15 question again.

16 CHAIRPERSON HILL: Right.

17 MS. GLAZER: And if there's a new appeal  
18 filed, take that up as well.

19 CHAIRPERSON HILL: So, we could do the  
20 mootness first, and then the appeal?

21 MS. GLAZER: Well, we can discuss that closer  
22 to the date.

23 CHAIRPERSON HILL: Okay. All right. Okay.

24 MR. ECKENWILER: You're also likely to have  
25 one or two motions to intervene as well, on the

1 appeal.

2 CHAIRPERSON HILL: On the appeal.

3 MR. ECKENWILER: Right.

4 CHAIRPERSON HILL: Right. That's okay. As  
5 long as I finish the motions for today I can deal with  
6 new motions on the next time around.

7 MS. FERSTER: We actually have one more  
8 request, and that would be if the ANC and Mr. Alcorn's  
9 status as intervener could be approved today by  
10 consent, that would obviate the necessity of us having  
11 to formally intervene in the owner's appeal.

12 CHAIRPERSON HILL: Okay. I guess the -- well,  
13 my Vice Chair was just playing like, we don't have a  
14 case yet to necessarily make a decision upon whether  
15 or not to allow you to be an intervener or not.

16 So, I can't --

17 MS. GLAZER: The parties are free to file  
18 something in between now and the time, the new date  
19 saying that they consent to that.

20 CHAIRPERSON HILL: Okay. All right. So,  
21 you'll have to file that, I guess. All right. So, do  
22 we all know what's happening? Does anybody have any  
23 questions?

24 Okay. So, we're pushing this off until June  
25 7th.



1 MR. MOY: June 7th, and the first on the  
2 docket.

3 CHAIRPERSON HILL: Okay. Okay. And now, do  
4 we keep -- what I'm trying to figure out so, the  
5 record is open in 6A and 6C now, or do we -- because  
6 I'd close the record now. There's nothing we need new  
7 for the appeal. No?

8 MS. GLAZER: It's a pending case. It hasn't  
9 been heard, so --

10 CHAIRPERSON HILL: Okay. All right.

11 MS. GLAZER: -- the record is not closed.

12 CHAIRPERSON HILL: Okay. Just trying to cross  
13 my T, dot my Is.

14 All right. Thank you all very much.

15 MR. BROWN: June 7th?

16 CHAIRPERSON HILL: June 7th.

17 MR. BROWN: Thank you, Mr. Hill. Thank you.

18 MR. TONDRO: Thank you.

19 CHAIRPERSON HILL: We are going to take a  
20 three-minute break.

21 [Off the record from 12:12 p.m. to 12:22 p.m.]

22 CHAIRPERSON HILL: We're going to call our  
23 next case. I don't know if they're stepped outside or  
24 not.

25 MR. MOY: All right. I'll go ahead and call

1 the case. I believe the next case application is  
2 19385 of Shahid Q. Qureshi. This is captioned and  
3 advertised for a special exception relief under the R  
4 Use requirements, Subtitle U, Section 203.1(j), to  
5 operate a parking lot in the R-1-B Zone at premises  
6 2200 -- or rather, 2200 Channing Street Northeast,  
7 Square 4255, Lot 28.

8 CHAIRPERSON HILL: Actually, no, you can just  
9 -- if you want to -- just give me one second if you  
10 have papers so you can give it to the secretary in one  
11 moment.

12 Why don't you go ahead and just introduce  
13 yourselves first? You have to push the button the  
14 microphone there.

15 MR. RACHAL: Good afternoon, Mr. Chairman and  
16 members of the Board. Anthony Rachal on behalf of the  
17 applicant, Mr. Shahid Qureshi.

18 CHAIRPERSON HILL: Okay. Rachal, is that  
19 correct?

20 MR. RACHAL: Rachal, yes.

21 CHAIRPERSON HILL: Okay.

22 MR. QURESHI: Good afternoon. My name is  
23 Shahid Qureshi with All Star Towing.

24 CHAIRPERSON HILL: Okay, Mr. Rachal, you had  
25 something you were trying to give to the secretary?

1 MR. RACHAL: Yes, I did, Mr. Chairman. It was  
2 a hearing statement I wanted to provide.

3 CHAIRPERSON HILL: Okay.

4 MR. RACHAL: With some exhibits.

5 CHAIRPERSON HILL: Was it in the record  
6 already?

7 MR. RACHAL: Some parts of the exhibits were,  
8 Your Honor. These are for purposes of the testimony  
9 today.

10 CHAIRPERSON HILL: Okay. Okay. You have the  
11 requisite number of copies?

12 MR. RACHAL: I believe so.

13 CHAIRPERSON HILL: Okay. Did you get sworn  
14 in? Did you both get sworn in?

15 MR. RACHAL: Early on.

16 MR. QURESHI: Yes.

17 CHAIRPERSON HILL: Okay. All right. Okay.  
18 Great. You can go ahead and give that to the  
19 secretary.

20 MR. RACHAL: Mr. Chairman --

21 CHAIRPERSON HILL: Just give me one second.  
22 Okay?

23 [Pause.]

24 CHAIRPERSON HILL: Go ahead, Mr. Rachal. What  
25 were you going to say?

1 MR. RACHAL: Mr. Chairman, there was a  
2 companion case, an appeal that was consolidated, I  
3 guess, with the application. I'm just not sure as to  
4 how the Board wants to proceed with which goes first.

5 CHAIRPERSON HILL: Okay. It didn't get  
6 consolidated. There's still two separate cases. And  
7 we're going to do the application first, because  
8 there's a lot of things that are still a little  
9 unclear.

10 MR. RACHAL: Yes.

11 CHAIRPERSON HILL: And so, you know, we're  
12 hopeful that you can clarify some of those things and  
13 we were going to do the application first, to see  
14 where you were with that.

15 And, Mr. Rachal, to be quite honest, like, you  
16 really don't have anything for us right now in terms  
17 of a completed application. I mean, the Office of  
18 Planning had a lot of information that they needed,  
19 right, in terms of in order to be able to provide  
20 their analysis. You are aware that they are currently  
21 in denial of the application. The ANC is in denial of  
22 the application. As far as I understand it, you don't  
23 have a self-certification form, or a ZA memo on file.  
24 You don't have a letter of authorization, although  
25 that might have changed, I don't know. And then you

1 don't have affidavits of posting.

2 MR. RACHAL: Mr. Chairman, we did have the  
3 certification from the Zoning Administrator's office,  
4 relative to the appeal --

5 CHAIRPERSON HILL: No, not the appeal. The  
6 application that you have right now for the special  
7 exception.

8 MS. GLAZER: Mr. Chair.

9 CHAIRPERSON HILL: Sure.

10 MS. GLAZER: I'm sorry to interrupt, but I  
11 just want to point out, you may not have had time to  
12 review. This filing really seems to pertain to the  
13 appeal, not the application.

14 CHAIRPERSON HILL: This, that just was given  
15 to us?

16 MS. GLAZER: Yes.

17 CHAIRPERSON HILL: Okay. So, we're talking  
18 right now, Mr. Rachal, about your application for  
19 special exception under the R Use requirements to  
20 operate a parking lot in the R-1-B Zone. So, are you  
21 aware of that application?

22 MR. RACHAL: Yes, I am, Your Honor --

23 CHAIRPERSON HILL: That's okay.

24 MR. RACHAL: Mr. Chairman. Yes, and we  
25 requested, as part of one of the postponements, an

1 opportunity to meet with the ANC in order to present  
2 the proposal with regard to the conditions required  
3 for that application, i.e., the fencing that was being  
4 proposed, and the landscape treatments that were being  
5 proposed.

6 CHAIRPERSON HILL: Okay, because as -- and  
7 this is, I mean, I wasn't necessarily sure if you guys  
8 were going to show up today, to be quite honest. I  
9 mean, it's that convoluted right now, in terms of, you  
10 know, you haven't presented to the ANC, or you have.

11 MR. RACHAL: We have.

12 CHAIRPERSON HILL: You have?

13 MR. RACHAL: We have.

14 CHAIRPERSON HILL: And you did get the vote of  
15 seven to zero in opposition.

16 MR. RACHAL: We had, that was -- that vote was  
17 taken before we met with the ANC. They had already  
18 taken a vote without hearing from us. We met  
19 subsequently with them to provide them with the  
20 fencing requirement, which was to upgrade the fencing  
21 and line of the new regulations to provide for a wood  
22 fence as opposed to a chain linked fence, which is  
23 currently on the property.

24 CHAIRPERSON HILL: Okay. And what did they  
25 say? What was their vote?

1 MR. RACHAL: They did not change the vote.

2 CHAIRPERSON HILL: They didn't change the  
3 vote? So, it's still seven zero in denial?

4 MR. RACHAL: That's correct.

5 CHAIRPERSON HILL: Okay. And --

6 MR. HART: And, Mr. Chair.

7 CHAIRPERSON HILL: Sure.

8 MR. HART: When was that meeting? When was  
9 the, not the vote, but when did you actually meet with  
10 the ANC?

11 MR. RACHAL: We met with them last month, I  
12 believe it was March the -- I'm not sure what day it  
13 was. It was on March the 18th, I believe.

14 MR. HART: And at that point they did not --  
15 they didn't vote at all that day, they just --

16 MR. RACHAL: That's correct.

17 MR. HART: They just, they've only submitted  
18 the letter in opposition and that's all that you have  
19 for this.

20 MR. RACHAL: Right. Correct.

21 MR. HART: Thank you. Thank you.

22 CHAIRPERSON HILL: Because, Mr. Rachal, I  
23 mean, I'm looking at again 600.3, where the Board may  
24 dismiss an application or appeal for failure of the  
25 applicant or appellant to comply with the procedural

1 requirements of the subtitle. And, there are  
2 significant holes that you have in terms of this  
3 application.

4 I'm going to turn to the Office of Planning so  
5 they can help you understand what the holes are, and  
6 then give you, I guess an opportunity to see if you  
7 can fill those holes, and then come back to us in a  
8 way that we could then review the application. I'm  
9 not talking about the appeal now. I'm just talking  
10 about the application for the permit. I'm sorry, for  
11 the special exception.

12 So, unless the Board has any other questions  
13 right now in this particular case, I'm going to turn  
14 to the Office of Planning to see what they need from  
15 you.

16 MS. THOMAS: Good afternoon, Mr. Chair and  
17 members of the Board. Karen Thomas with the Office of  
18 Planning. I'd just like to echo that this application  
19 needs a lot of work. We need the applicant to address  
20 the correct sections of the current regulations,  
21 because I don't think that's what was in their  
22 application.

23 We would like the applicant to address Section  
24 U, 203(j), as I wrote in my report of February 17,  
25 recommending denial of the application. I don't know



1 how we're going to get to that point if -- any kind of  
2 point of being able to review this application if the  
3 correct sections are not addressed as part of their  
4 request. And first, we have to get to that for them  
5 to recognize that the correct section in the zoning  
6 regulations should be addressed.

7 CHAIRPERSON HILL: Okay. So, Ms. Thomas, I'm  
8 smiling because I'm sorry to do this to you. Can you  
9 help the applicant with understanding what you need.  
10 Not right now. I'm saying, they can meet with you and  
11 you can clarify what it is you need.

12 We have made several attempts to contact this  
13 application --

14 CHAIRPERSON HILL: Okay.

15 MS. THOMAS: -- and I've cc'd even the  
16 Secretary of the BZA of the Board on this matter.  
17 Several attempts have been, and several e-mails have  
18 been sent with --

19 CHAIRPERSON HILL: Okay. Okay.

20 MS. THOMAS: -- the Zoning Administrator as  
21 well.

22 CHAIRPERSON HILL: So, thank you for being  
23 here. Mr. Rachal, this is your last chance, okay, to  
24 go ahead and work with the Office of Planning to try  
25 and get an application that we can actually review.

1 Okay? So, I would suggest again after this, you try  
2 to set up a time with the Office of Planning, and then  
3 we can reschedule this with an appropriate time for  
4 you to have the -- a complete application. And I'm  
5 looking at Mr. Moy because he was going to help me  
6 with something.

7 MR. MOY: Yes, sir. Mr. Chairman, since I  
8 have this opportunity I'd like to segue with Ms. Karen  
9 Thomas, so the record is clear, because the  
10 application needs the following, at least to include  
11 the following, which would be not only the correct  
12 relief that's being requested, a filing of a self-  
13 certification, or a ZA memorandum. Okay, we covered  
14 the burden of proof. There are no plans in the  
15 record. There are no photographs of the site. And  
16 there's no listing of addresses of the property owners  
17 within 200 feet of the subject site. So, that's a  
18 start.

19 But I'm available to consult with you as well.

20 MR. RACHAL: All right.

21 MS. GLAZER: Mr. Chair, if I'm not mistaken,  
22 OP's report also stated that the applicant needs to  
23 comply with Sections 714 regarding screening, and 715  
24 regarding landscaping requirements.

25 So, I would recommend that if the Board agrees

1 with that to make that part of the documents and  
2 filings that are required.

3 CHAIRPERSON HILL: Okay. I agree with that.

4 All right. So, this is going to take a little  
5 while for you to get this stuff together, Mr. Rachal.

6 I mean, I guess I'm a little -- I understand like, if  
7 you want to go back and research a little bit more  
8 about what you need to do to get this in front of us.

9 I mean, to be here and for the ANC to be in denial,  
10 and the Office of Planning to be in denial, there is  
11 nothing to -- I mean, it's very difficult for me to  
12 think that I am going to now just listen to your  
13 expert witness testimony and approve your special  
14 exception. Right?

15 So, and that you don't have a complete  
16 application. So, I would again go ahead and work with  
17 the Office of Planning, and Mr. Moy, the secretary has  
18 been very generous in offering up his help to get this  
19 application to a point where at least you can get it  
20 properly reviewed. Okay?

21 So, I suggest then, Mr. Moy, when do we  
22 reschedule this?

23 MR. MOY: No earlier than a month, I would  
24 think, Mr. Chairman, unless you disagree.

25 CHAIRPERSON HILL: No, I think even later than

1 that. I mean, if this comes back again, the way this  
2 is, it will just get dismissed.

3 So, how much time do you think you need or  
4 want in order to get all your ducks in a row?

5 MR. RACHAL: Two months, Your Honor.

6 CHAIRPERSON HILL: Yeah, it's okay. I know  
7 you keep calling me Your Honor and the only reason why  
8 I laugh is my wife says, I am definitely not a judge.  
9 So, but as I've told her, this is the closest I'm  
10 ever going to be.

11 So, you know, I mean, two months is when now,  
12 Mr. Moy? That's --

13 MR. MOY: That would be the month of June.

14 CHAIRPERSON HILL: So, that's June --

15 MR. MOY: So, it could be June 7th. Well,  
16 today is the 5th.

17 CHAIRPERSON HILL: Okay. I'll put down June  
18 7th. If you need to postpone, I guess you can  
19 postpone.

20 MR. MOY: If you need more time.

21 MR. RACHAL: Yeah, I was saying that, in  
22 agreement with you, that that was only a month and a  
23 half that's --

24 CHAIRPERSON HILL: Right. So, that might not  
25 be enough time, so let's push him back even farther.

1 MR. MOY: All right. So let's --

2 CHAIRPERSON HILL: Let's go into early July.  
3 Or, I don't know, whatever you say, Mr. Moy. Whatever  
4 you're scheduling now. I don't think -- that might be  
5 even too far for your schedule, correct?

6 MR. MOY: Well, actually, there are a lot of  
7 openings so let's -- we're off during that first week  
8 of July because of Independence Day. So, I could  
9 propose either the last hearing in June would be June  
10 28th, or July 12th.

11 CHAIRPERSON HILL: Ms. Thomas has a scheduling  
12 conflict, Ms. Thomas?

13 MS. THOMAS: Yeah, the week of July 4th, I  
14 will not be in the office.

15 CHAIRPERSON HILL: Okay. So, that following  
16 week, what was that, Mr. Moy?

17 MR. MOY: July 12th.

18 CHAIRPERSON HILL: July 12th?

19 MR. MOY: Yes. And I'd just like to mention  
20 too that we would need the applicant to go before the  
21 ANC again.

22 MR. RACHAL: That's fine.

23 CHAIRPERSON HILL: Yeah. No, no, yeah. Just  
24 work with the Office of Planning and figure out  
25 everything you need to do. Okay?

1 MR. RACHAL: All right.

2 CHAIRPERSON HILL: All right. So, now we're  
3 back here on June 12th.

4 MR. MOY: No, July 12th.

5 CHAIRPERSON HILL: I'm sorry. Sorry. July  
6 12th. Thank you. July 12th to hear this application  
7 as it will have been completed properly. Okay? And  
8 now we can move on to the appeal. Okay? Give me one  
9 second.

10 MR. MOY: All right. Thank you, Mr. Chairman.  
11 So, the parties are at the table, of course. This is  
12 Appeal No. 19334. 19334 of Shahid Q. Qureshi as  
13 advertised and captioned. This is an appeal from the  
14 April 19th, 2016 decision by the Zoning Administrator,  
15 Department of Consumer and Regulatory Affairs to  
16 revoke Certificate of Occupancy Number CO-0901692,  
17 which granted to permit a parking lot in the R-1-B  
18 District, at premises 2200 Channing Street Northeast,  
19 Square 4255, Lot 28.

20 CHAIRPERSON HILL: Okay, great. For the  
21 record, if we could introduce ourselves again, from my  
22 right to left?

23 MR. TONDRO: Maximilian Tondro on behalf of  
24 DCRA.

25 MR. LeGRANT: Matthew LeGrant, Zoning

1 Administrator, DCRA.

2 MR. RACHAL: Anthony Rachal on behalf of the  
3 appellant.

4 MR. QURESHI: Shahid Qureshi, All Star Towing.

5 CHAIRPERSON HILL: Mr. Qureshi, I know, you're  
6 just kind of sitting there, right? You're just  
7 waiting to see how this is going to go, right?

8 So, Mr. Rachal, you realize you have to put on  
9 a case now, right, as to why this appeal should be  
10 granted, right? So, we've reviewed all of the record,  
11 and I'm going to give you time now to go ahead and  
12 present your appeal. Then, Mr. Tondro will have an  
13 opportunity to cross-examine your presentation. Mr.  
14 Tondro will then have an opportunity to present DCRA's  
15 case, you'll cross-examine him, you will have an  
16 opportunity to then rebut, and then provide closing.  
17 Okay?

18 MR. RACHAL: Yes. Mr. Chairman, as originally  
19 set up, the appeal was tied to the application in that  
20 the two were being moved concurrently. At this  
21 juncture I think we would ask for a continuance in  
22 line with the July 12th extension.

23 CHAIRPERSON HILL: Okay, Mr. Tondro?

24 MR. TONDRO: Yes. Thank you. Yes. I had  
25 suggested when we first issued the revocation, we

1 reached out to Mr. Qureshi and then Mr. Rachal. And  
2 they had indicated that they had wanted to make  
3 attempts, if possible, to come into compliance. And  
4 as a result I had suggested that if they wanted to do  
5 so that they should seek a special exception and that  
6 we could hold the appeal in abeyance pending their  
7 getting the application, because if they got the  
8 special exception relief, then the appeal would no  
9 longer would be effectively moot and could be  
10 dismissed.

11           So, there is always that connection in  
12 between. As I think we all are, where DCRA is  
13 concerned that this has been going on, I think since  
14 last April. So, we want to be sure this time, we've  
15 given our consent to the continuances until now, tried  
16 to make sure that they, as a condition of that  
17 consent, that they go before the ANC. I'm very  
18 concerned that if -- on the one hand, I'm fine with  
19 the idea of continuing it so that they're held  
20 parallel. My only concern is to make sure we don't  
21 end up, once again, on July, having kicked the can  
22 down the road, with a situation where there's no more  
23 submissions to the Office of Planning so that the  
24 Board can make a determination on the merits of the  
25 special exception relief.



1           But I guess, that's where I'd leave it. Thank  
2 you.

3           CHAIRPERSON HILL: Okay. I am also now in --  
4 I didn't know this was going to be an option, so I  
5 hadn't really thought it through, I suppose, that we  
6 can -- if DCRA is also willing to, as you said, kick  
7 the can down the road a little bit farther now, to the  
8 July 12th, because we just got a filing that is  
9 actually pretty extensive, and I can't really take a  
10 look at it, even as quickly as I think I am, I don't  
11 think I'm going to be able to look at it.

12           So, I would then also agree and we would  
13 continue the appeal, also to the 12th of July. And,  
14 again, I would point out to the application that I  
15 don't know what happened with whether -- I mean, your  
16 arguments have been very weak in my opinion. Okay?  
17 And so, I really think you need to get your -- working  
18 with the Office of Planning, working with your ANC,  
19 getting whatever you need to get in order for this  
20 special exception to be approved. Otherwise, I think  
21 you're just wasting everybody's time. Okay?

22           And so, so, I don't know what happened until  
23 now. Like I don't know why you guys haven't worked  
24 with the Office of Planning yet, I don't know why --  
25 and it doesn't matter because now we're going to make

1 sure you guys get your -- because if you can get the  
2 special exception as Mr. Tondro has just mentioned,  
3 then this would be -- the appeal would be moot.

4 So, Mr. Moy, we're going to move, unless the  
5 Board has any other questions or thoughts, I was just  
6 going to move it then to April -- I'm sorry, July  
7 12th.

8 MR. HART: Yeah, and I think just one comment  
9 is that while these are -- while there is a connection  
10 between these cases, they are not linked. It's not  
11 one case. You know, it is, there's still two separate  
12 cases that are before, and they will continue to be  
13 two separate cases before the Board. So, I'm just  
14 making sure that you're fully aware of it.

15 CHAIRPERSON HILL: Yes, since Mr. Tondro is  
16 here. For my clarification, why is it moot again if  
17 they get the special exception?

18 MR. TONDRO: Because the revocation was based  
19 on the fact that DCRA had issued it in error because  
20 it's not an allowed use. However, if they were able -  
21 - if they were granted the special exception relief  
22 then the use would be allowed under the conditions  
23 imposed by the special exception. And this came up  
24 because the permit holder, the certificate or  
25 occupancy holder had said, we're willing to come into

1 compliance with the screening requirements of the  
2 Langdon Overlay, and the problem is that the Zoning  
3 Administrator doesn't have the authority to grant  
4 that. The only way they can do that is to come to the  
5 Board with the support of the community and ask for a  
6 special exception and see if the Board wants to impose  
7 conditions.

8 CHAIRPERSON HILL: Okay. Okay. All right,  
9 great. All right, Mr. Rachal, do you have any  
10 questions?

11 MR. RACHAL: No, I don't.

12 CHAIRPERSON HILL: Okay. I mean, I think you  
13 have a lot of work to do, so I wish you luck, and  
14 hopefully you'll come back and a nice little tidy  
15 little bow on July 12th. Mr. Moy, is that correct,  
16 July 12th?

17 MR. MOY: Yes, sir.

18 CHAIRPERSON HILL: Okay. All right. Thank  
19 you all very much.

20 [Pause.]

21 MR. MOY: Okay. Thank you, Mr. Chairman. The  
22 next case application before the Board is, this is a  
23 Application No. 19315A of Associated Catholic  
24 Charities. This is pursuant to Subtitle Y, Section  
25 704. A request for modification of significance of

1 BZA order No. 19315, requesting variance relief from  
2 the size of parking space requirements under 2115.1,  
3 to construct three flats in the R-4 District. This is  
4 at premises, the rear of 611, through 617 Rhode Island  
5 Avenue Northwest, Square 442, Lots 449 through 50.

6 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.  
7 And just for everyone here in attendance. Just, the  
8 order again got a little mixed up here, so we're going  
9 to go with, again, this current case, which is 19315A,  
10 and then we're going to be doing 19467 and be  
11 concluding with 19446. So, just to let everyone know  
12 here, who is in attendance. All right.

13 So, if we could just introduce or have  
14 introductions from my right to left, please?

15 MR. SCHNECK: My name is Ron Schneck. I'm  
16 Principal of Square 1 34 Architects, and we're the  
17 architect for the project.

18 MS. MAZO: Samantha Mazo, the law firm of  
19 Griffin, Murphy, Moldenhauer, and Wiggins, and we're  
20 the land use and zoning counsel for the applicant.

21 MR. CONWAY: My name is Patrick Conway. I'm a  
22 Principal of Lock 7 Development and a representative  
23 for Shaw Flats, and we purchased the property from  
24 Catholic Charities.

25 CHAIRPERSON HILL: Okay. All right. Ms.

1 Mazo, I don't really have a lot in terms of this  
2 particular application that I need to hear from.  
3 There are, I guess if you could kind of like go over  
4 the application a little bit at more of a high level,  
5 and the relief that you're requesting and how you've  
6 met the standard. And then, unless the Board has any  
7 other specific questions at this time, we'll just ask  
8 them as we go along.

9 MS. MAZO: Thank you.

10 CHAIRPERSON HILL: And I'm going to throw 10  
11 minutes up on the clock just so I have an idea as to  
12 where I am.

13 MS. MAZO: All right. Thank you very much,  
14 Chair Hill.

15 First of all, just very quickly, Mr. Moy, can  
16 you please swear these witnesses in? They were not  
17 here earlier today, please.

18 [Oath administered to the participants.]

19 MS. MAZO: Also, sorry, to the Board, we found  
20 out that our signs had fallen down. And so, they have  
21 been replaced. They were just -- they had fallen  
22 down, they'd been placed on the property and then  
23 they'd been replaced. But I just wanted to have some  
24 sort of -- sorry, I would just request a certain  
25 waiver from the Board of the notice requirement that

1 the signs be posted because in the intervening time  
2 they had been; they had fallen down but they have been  
3 reposted.

4 CHAIRPERSON HILL: Ms. Glazer, do I have to --  
5 is that something that the Board can grant?

6 MS. GLAZER: Well, I think the Board can grant  
7 it, but the Board needs to look at the section  
8 regarding deficiencies and notice, and consider the  
9 criteria. If you hold on a minute, I'll try to pull  
10 that up.

11 CHAIRPERSON HILL: Okay. Why don't, Ms.  
12 Glazer, she can pull that up, and let's see how we  
13 move through the case and see what we have here in the  
14 audience as well.

15 MS. MAZO: Okay.

16 CHAIRPERSON HILL: Okay.

17 MS. MAZO: Just very quickly. So, we are here  
18 today for a modification of significance for an  
19 application, Application 19315 that was approved back  
20 in September, that approved three separate flats on  
21 these properties. It also approved lot width relief  
22 as well as access from the alley.

23 As part of that application, there were plans  
24 that were submitted with that application that  
25 actually showed substandard sized parking spaces, but

1 that specific relief was not requested in that  
2 application. And so, accordingly we are back before  
3 the Board seeking a modification of that -- of the  
4 prior approval to seek the specific variance relief  
5 for the parking space size. And to be clear, we are  
6 seeking variance relief for the parking space size on  
7 two of the three lots.

8           On Lot A, which at the top, is the top lot, we  
9 are seeking size relief for a parking space size of  
10 eight by 16. And so, that's a reduction of one foot  
11 in width and two feet in length. And then on Lot B,  
12 we seek no relief that parking space size is a  
13 compliant nine by 18. And then on Lot C, which is the  
14 bottom lot that you see on the screen, in that  
15 instance we are seeking only width relief, and there  
16 we're seeking one foot -- one foot of width relief.

17           And so, with that, I will just very briefly  
18 have the architect, Mr. Ron Schneck, just walk through  
19 generally the property and the project, and also speak  
20 to the practical difficulties that exist in providing  
21 the compliant parking space sizes.

22           MR. SCHNECK: Good afternoon, sorry. Ron  
23 Schneck again, Square 134 Architects.

24           Slide 2 here, basically what we're showing  
25 here is the existing, what were the existing three

1 lots. And as you can see we have, there's a rhombus  
2 shape that creates some sort of difficulty in sort of  
3 laying out the individual flats, which is why we came  
4 in originally.

5           The base map here, slide 3, just basically  
6 shows that, you know, at one time in 1903, there were  
7 alley dwellings along this alley. Here's just a  
8 vicinity map basically showing where it is adjacent to  
9 Rhode Island Avenue.

10           Slide 5 is just a context sort of image slide.  
11 And basically, what we're showing here is that it's a  
12 pretty active alley as it is now, and there are a lot  
13 of -- you know, a lot of -- there's a lot of  
14 circulation through it, and this sort of is, you know,  
15 we are providing parking. We're not going to be  
16 parking on the alley. We'll be providing parking  
17 within our own property.

18           This is just sort of a summary of the original  
19 case, which is what we came for originally.

20           CHAIRPERSON HILL: Mr. Schneck.

21           MR. SCHNECK: Yeah.

22           CHAIRPERSON HILL: I'm sorry, OAG just had  
23 something that they wanted to ask or mention, I  
24 suppose.

25           MS. GLAZER: Mr. Chair, getting back to the



1 sign posting requirement, I'm just going to suggest  
2 that the Board evaluate the defect under Section  
3 402.11 where if the Board finds a defect or failure of  
4 notice in some way, the Board can decide whether to  
5 postpone, continue, or hold the public hearing based  
6 on certain considerations. And perhaps the thing to  
7 do would be to ask Ms. Mazo how she thinks -- why she  
8 thinks the Board should continue the public hearing,  
9 based on those considerations. Before we go further  
10 with the public hearing.

11 CHAIRPERSON HILL: Okay. Ms. Mazo, do you  
12 know the regulations that are being cited to and can  
13 you help expand that?

14 MS. MAZO: I do, and it has the -- the  
15 question is whether proper notice has been given. And  
16 in this instance, proper notice has been given. The  
17 sign was posted appropriately, and we did notice when  
18 we went by to do our affidavit of maintenance that the  
19 signs had been taken down. And so, they had been  
20 placed on the street in front of the fence where they  
21 had been located, and upon noticing that our paralegal  
22 went and reposted that.

23 Photos of the signs, both having being taken  
24 down and been reposted are with the affidavit of  
25 maintenance which is at Exhibit 29. Accordingly, we

1 would argue that there has been no defect in notice  
2 pertaining to the sign posting. And I mean, in  
3 addition, notices were appropriately sent out to --  
4 sorry, by the Office of Zoning to the properties  
5 within 200 feet.

6 CHAIRPERSON HILL: Does the Board have any  
7 comments?

8 MR. MILLER: Yeah, Mr. Chairman, I just wanted  
9 to comment that I also see in the applicant's  
10 PowerPoint, I guess, if there was a presentation to  
11 the ANC and the ANC unanimously, 6E unanimously voted  
12 to support the relief requested and that there's also  
13 some related alley naming process and that you've had  
14 a hearing before the council.

15 Was there any neighborhood opposition at the  
16 council?

17 MS. MAZO: My understanding is that there were  
18 individuals who were there at the council hearing, and  
19 my colleague, Meredith Moldenhauer, was at the alley  
20 naming. But, I don't believe that they are here  
21 today. But I think Meredith can speak a little bit  
22 more.

23 MR. MILLER: But even if there -- my actual  
24 point was that neighbors know about this project. I  
25 remember the project when the first variances, back in

1 September, I guess, or whenever we -- and so, I do --  
2 the neighborhood has known about this project and I  
3 think even the plans I think showed the incorrectly  
4 sized parking spaces back then, it's just that you  
5 didn't do this sort of -- you didn't file the  
6 application for that particular variance.

7 So, I don't have an objection to it.

8 CHAIRPERSON HILL: Okay. Okay.

9 MR. MILLER: Because I think there's been a  
10 lot of neighborhood outreach.

11 CHAIRPERSON HILL: Okay, I agree with you,  
12 Commissioner Miller. So, is the Board comfortable  
13 moving forward?

14 [No audible response.]

15 CHAIRPERSON HILL: Okay. All right. So, Ms.  
16 Mazo, we're going to go ahead and let you continue.

17 MS. MAZO: I appreciate that. We were at the  
18 point where Mr. Schneck was just very briefly  
19 providing an overview of the project that was approved  
20 in September of 19315.

21 MR. SCHNECK: If you can go to slide 8? What  
22 slide 8 show is basically what the parking was when it  
23 was approved. And as you can see, we had three,  
24 basically eight by 16 parking spaces, one on Lot A,  
25 one on Lot B, and one on Lot C. And since we realized

1 that we needed to come back in relief, we did sort of  
2 look a little further to see if we could modify some  
3 of those parking spaces. So, if you go to slide 20,  
4 if you don't mind? Oh, I'm sorry, the first slide,  
5 yeah.

6 So, starting at the top of the page is Lot A,  
7 and we had previously shown eight by 16, and we are  
8 due to the rhombus shape of the lot, we are unable to  
9 make that any larger, so that is the one that we are  
10 asking relief for, in addition to Lot C.

11 Lot B, we were able to make it a compliant  
12 nine by 18 parking space. And then Lot C, as you can  
13 see, we were able to make the length 18 feet. The  
14 problem is, Lot C is significantly more narrow than  
15 Lot B, and due to the corridor widths that are  
16 required by code we are unable to make that one  
17 compliant nine by 18.

18 MS. MAZO: And just very briefly, I will wrap  
19 up, just on the legal requirements here. The relief  
20 we're requesting is variance relief from Subtitle C,  
21 Section 712.5, which has a minimum dimension of lot  
22 width for nine by 18 as stated. The Lot A parking is  
23 eight by 16, and the Lot C parking space is eight by  
24 18. They established variance three-prong test.  
25 There is the established exceptional condition

1 standards as this Board is aware that the phrase,  
2 exceptional condition, applies not to the land but  
3 also to the project's history and it may arise from a  
4 confluence of factors. Past zoning history, including  
5 prior approvals can constitute an exceptional  
6 condition, and therefore the prior approval is an  
7 exceptional condition to be reviewed as part of the  
8 confluence of factors.

9           In terms of the exceptional conditions on Lot  
10 A, Ron mentioned the rhombus shape. We also have a  
11 very small lot that was approved as part of 19315, and  
12 a small width. The other thing to take into account  
13 is that as part of the approval of 19315, it was  
14 required that the bottom unit of Lot -- on Lot A be an  
15 affordable unit. And so, if this parking space were  
16 to be increased in size, then the size of the  
17 affordable unit would be reduced, and that's not  
18 necessarily something that we would like to see  
19 happen.

20           Also again, the angle of the property line  
21 inhibits meeting the parking space width and length  
22 without reducing the unit size.

23           As to Lot C, we have again, we still have the  
24 rhombus shape lot due to the angle of the alley. And  
25 this one is even -- Lot C is even narrower in width at

1 16.5 feet, and so that's why we get into -- in that  
2 instance we're able to provide the appropriate parking  
3 space length, but where you have practical difficulty  
4 in providing the width due to the fact that we need  
5 the three feet of hallway, plus the three feet of  
6 stairway to satisfy the building code.

7           There's no detriment to the public good or the  
8 zone plan. There's more -- it's a modification of  
9 significance that we're here for, and so the project  
10 is vested and then also there is you know, clear  
11 discussion in -- there's clear direction in the regs  
12 as to the scope of a hearing on a modification of  
13 significance, and it's really just limited to the  
14 question before the Board on a modification of  
15 significance. It's not an opportunity for the Board  
16 to revisit its original decision.

17           There was community outreach. We went to the  
18 ANC on February 7th. The ANC voted unanimously to  
19 support the relief. There had been meeting with the  
20 neighbors in terms of the alley naming, and there was  
21 participation in that process. We also have a letter  
22 in support. And that's about it.

23           CHAIRPERSON HILL: Okay. Ms. Mazo, so you  
24 don't want to revisit the whole thing again? I  
25 remember this very well and it was a very exciting

1 case as I recall and --

2 MS. MAZO: Well, we'll leave that excitement  
3 in the past.

4 CHAIRPERSON HILL: Thanks. Appreciate that  
5 clarification.

6 Does the Board have any questions for the  
7 applicant?

8 [No audible response.]

9 CHAIRPERSON HILL: Okay. I'm going to turn to  
10 the Office of Planning.

11 MS. THOMAS: Good afternoon, Mr. Chair,  
12 members of the Board. Sitting in for Maxine Brown-  
13 Roberts today.

14 We concur that the property's rear, the line,  
15 the angled rear line of the property in combination  
16 with the building code requirements would create a  
17 practical difficulty, exceptional situation leading to  
18 a practical difficulty, to provide the required  
19 dimension spaces for the parking at the rear.

20 We do not see a substantial detriment to the  
21 public good as they are providing parking on the lot,  
22 as required by the regulations. And we'll stand on  
23 the record of our report. Thank you.

24 CHAIRPERSON HILL: Okay, great. Thank you.  
25 Does the Board have any questions for the Office of

1 Planning?

2 No? Okay. Does the applicant have any  
3 questions for the Office of Planning?

4 MS. MAZO: No.

5 CHAIRPERSON HILL: Okay. I'm going to turn  
6 and see, is there anybody here from the ANC wishing to  
7 speak? Is there anyone here wishing to speak in  
8 support of the application? Is there anyone here  
9 wishing to speak in opposition to the application?  
10 No? Okay.

11 I'm going to turn back to the applicant. Is  
12 there anything further you'd like to add?

13 MS. MAZO: No, thank you. We just would --  
14 no. No, thank you.

15 CHAIRPERSON HILL: I had a question. Mr.  
16 Conway, how long ago did you buy this property?

17 MR. CONWAY: Good question. When did we  
18 settle on this. Yeah, possibly October.

19 CHAIRPERSON HILL: Okay. So, not that long,  
20 because I can't remember -- I remember -- right it was  
21 Catholic Charities that owned it before, right? And  
22 there was the whole like -- you know, right. So, one  
23 of the units is going to be an affordable unit,  
24 housing unit. What's the AMI on that unit? Do you  
25 know? Or how do they --



1 MR. CONWAY: I think it's -- is it 80?

2 CHAIRPERSON HILL: I couldn't remember what we  
3 did.

4 MS. MAZO: Sorry. To answer that question,  
5 the condition number 1 on 315 says, an AMI of no more  
6 than 60 percent.

7 CHAIRPERSON HILL: Okay, right. Okay. All  
8 right. Great. Just curious. Thank you. I mean, I  
9 remember this one so, again, the Board doesn't have  
10 any more questions?

11 All right, going to go ahead and close the  
12 hearing. Is the Board ready to deliberate?

13 [No audible response.]

14 CHAIRPERSON HILL: Okay. I do remember the  
15 original application and I'm just so tickled that I've  
16 been here long enough that I can remember a previous  
17 application.

18 But, I don't have any issues with it. I think  
19 that the Office of Planning has done their due  
20 diligence and has provided good analysis as to how or  
21 why this should be approved.

22 Does the Board have any other comments?

23 [No audible response.]

24 CHAIRPERSON HILL: Okay. I'm going to go  
25 ahead and make it a motion -- go ahead and make a

1 motion to approve Application No. 19315A as read by  
2 the secretary.

3 MR. HART: Second.

4 CHAIRPERSON HILL: Motion has been made and  
5 seconded.

6 [Vote taken.]

7 CHAIRPERSON HILL: Motion passes, Mr. Moy.

8 MR. MOY: Staff would record the vote as four,  
9 to zero, to one. This is on the motion of Chairman  
10 Hill to approve the application for the relief  
11 requested. Seconding the motion, Vice Chairperson  
12 Hart. Also in support, Mr. Miller, Ms. White. Board  
13 seat vacant.

14 CHAIRPERSON HILL: Thank you. A summary  
15 order, Mr. Moy.

16 MR. MOY: Thank you, sir.

17 CHAIRPERSON HILL: Thank you. And really do  
18 thank the applicant for pointing out, yeah, I didn't  
19 want to go back into the -- but if it had come up with  
20 others it is helpful to remember that I don't have to  
21 do that anymore. Okay.

22 Mr. Moy. Thank you all very much.

23 MR. MOY: The next application is No. 19467 of  
24 Lori Steenhoek. If I've pronounced that correctly.  
25 As amended, I believe, for variance from the lot

1 occupancy requirements, Subtitle E, Section 304.1.  
2 This would construct a three -- or rather, a third-  
3 story addition to an existing two-story, one-family  
4 dwelling, RF-1 Zone, 638 Orleans Place Northeast,  
5 Square 855, Lot 260.

6 CHAIRPERSON HILL: All right. Good afternoon.  
7 If you just please introduce yourself from my right  
8 to left?

9 MR. STEENHOEK: Matthew Steenhoek, homeowner,  
10 638 Orleans Place Northeast.

11 MS. BRITTINGHAM: Lacy Brittingham,  
12 Brittingham Architects, architect for the project.

13 CHAIRPERSON HILL: Okay, great. All right,  
14 Ms. Brittingham, I guess you're going to explain or  
15 present to us, or ask any questions you might have of  
16 the property owner. I don't have any specific  
17 questions for you. I've read the record and I feel  
18 it's complete and I understand what is being proposed.

19 I suppose if you can kind of give us a high level  
20 presentation as to what it is you're trying to  
21 accomplish and again the reasons why you meet the  
22 criteria for the variance.

23 I was a little unclear, I guess. You are  
24 going down, it looks like, in percentage from 73 to 70  
25 percent, I thought. But I wasn't sure. That was only

1 one part that you could clarify.

2 MS. BRITTINGHAM: Sorry. Sure, yeah, yeah --

3 CHAIRPERSON HILL: That you can clarify --

4 MS. BRITTINGHAM: -- we have actually reduced  
5 the relief requested --

6 CHAIRPERSON HILL: Right. That's okay. Just  
7 let me finish --

8 MS. BRITTINGHAM: Sure.

9 CHAIRPERSON HILL: -- and then you can go  
10 ahead and start. And then, that's the only thing that  
11 I'm kind of interested in, in you presentation, as  
12 well as you know, the work that you've done with the  
13 ANC and the Office of Planning.

14 Does the Board have any other things they'd  
15 like the applicant to focus on?

16 MR. HART: Just making sure that -- we did get  
17 an ANC report on the case, but I'm a little bit not  
18 sure when they reviewed it with respect to when your  
19 drawings are. So, if you could just kind of describe  
20 that a little bit to --

21 MS. BRITTINGHAM: Okay.

22 CHAIRPERSON HILL: Okay. And I'm just going  
23 to put 10 minutes on the clock, Mr. Moy, just so I  
24 know where we are. Thank you.

25 MS. BRITTINGHAM: So, we originally applied

1 for relief as a variance, but we have -- we went to  
2 the ANC and we actually had a number of sections that  
3 we were requesting relief from. We worked with the  
4 ANC. They were originally -- the Zoning Committee was  
5 not in favor of support of the project, so we worked  
6 with them, we made modifications to the design, also  
7 reduced the relief requested, when sort of did a full  
8 presentation again at the full ANC and got their  
9 support for that project.

10 At that time it was still a variance request  
11 in lot coverage only. And then subsequent to that we  
12 were working with the Office of Planning and in order  
13 to gain the Office of Planning's support we reduced it  
14 to a special exception lot coverage. So, we now are  
15 before you with just the request for a special  
16 exception for lot coverage.

17 MR. HART: And you have -- because you've  
18 reduced the relief requested, you did not go back to  
19 the ANC to just kind of make sure that they were okay  
20 with it.

21 MS. BRITTINGHAM: We did not because we  
22 reduced the relief requested. They were in favor of  
23 it as a variance in lot coverage respect, they were in  
24 favor of the variance so we assumed they would still  
25 be in favor with the reduced lot coverage.

1 MR. HART: Yeah, I just wanted to make sure  
2 that -- I wanted to understand whether or not you had  
3 actually circled back with them. That was the  
4 question.

5 MS. BRITTINGHAM: I have been in conversation  
6 with Mr. Eckenwiler of 6E, but he recognized that we  
7 did not go back before him and still submitted the  
8 letter of support.

9 MR. HART: Thank you.

10 MS. BRITTINGHAM: My PDF is not showing up.  
11 Oh, there, I'm not sure.

12 MR. MILLER: Mr. Chairman, there was an ANC  
13 report from 6E dated April 4th that -- Exhibit No. 50  
14 that indicates that they are in support of the revised  
15 --

16 CHAIRPERSON HILL: No, thank you, Commissioner  
17 Miller.

18 MR. MILLER: Well, I don't know if they are.  
19 I don't actually -- I'm not sure if this is referring  
20 to the -- it says they were supporting the first  
21 revised. I guess you said -- I guess this was a  
22 second revision, and so this letter, I don't know if  
23 it is actually commenting on the subsequent revision,  
24 but it -- I'm appreciative that you worked with the  
25 ANC and with the Office of Planning to make the

1 revisions that have garnered community support.

2 CHAIRPERSON HILL: And also, Commissioner  
3 Eckenwiler was here today, and so you had an  
4 opportunity to clarify.

5 MS. BRITTINGHAM: Yeah, and he said he was  
6 planning to stay, but then it took so long this  
7 morning he decided not to stay. So, I think he  
8 assumed that his letter of support was still valid.

9 CHAIRPERSON HILL: Okay. All right. All  
10 right. Does the Board have any -- oh, sorry, go  
11 ahead. If you could just tell us a little bit more  
12 about the project.

13 MS. BRITTINGHAM: Sure. Okay. So, a site  
14 plan is up on the board. The existing home is at 75.3  
15 percent lot coverage. We are proposing a new third-  
16 story. The original proposal was to cover the entire  
17 footprint of the existing home with the new third  
18 floor. At the 75.3 percent, we would qualify under  
19 the variance for lot coverage. And then we reduced  
20 it. You can see it in the top right corner of the  
21 property. There's the darker rectangle, which is the  
22 portion of lot coverage that we removed out of the  
23 third-floor floorplan in order to bring it within the  
24 special exception lot coverage requirement.

25 This is just showing the block plan, and the

1 center of the block is mostly open. Only two  
2 properties have a accessory structure in the back.  
3 So, the middle of the block has light and air  
4 available to the rear yards of most homes.

5 Just a quick existing first floor, has no work  
6 proposed.

7 Second floor, what we are removing is a wall  
8 and door for what is currently an office, and in order  
9 to construct the stair going up to the new third  
10 floor. There's the proposed second-floor plan. And  
11 the new third-floor has two bedrooms, a small playroom  
12 and family room, and a screen porch on the back of the  
13 property.

14 Roof plan. The section shows they have the --  
15 going from front of the property to the back, the  
16 bedroom, two bedrooms with a small attic. The  
17 bathroom is in the center. There is a storage space  
18 on top of the bathroom, and then open -- which is open  
19 to the family room playroom at the back.

20 Proposed street elevation, we worked very hard  
21 with ANC to gain their support of our proposed design.

22 We started with something that had some different  
23 materials, a bit different proportions in the shed  
24 dormer that was proposed and the window pattern, so we  
25 have come -- moved forward with a design that we think



1 very much fits the character and scale and pattern of  
2 the street and the neighborhood.

3 Proposed street elevation just shows the  
4 screened in porch on the back, and then the  
5 rectangular section cut out in order to meet that --  
6 the 70 percent lot coverage requirement.

7 Some existing photos of the front and back of  
8 the house. And there's renderings of the proposed new  
9 front. And that's it.

10 CHAIRPERSON HILL: Okay, great. Thank you.  
11 Does the Board have any questions for the applicant?

12 MR. HART: Yes, Mr. Chairman. Could you talk  
13 a little bit about the, on the third floor, I don't  
14 know what slide it is but on the third-floor plan,  
15 proposed third-floor plan, there is a screened in  
16 porch and then there is a, something else. I don't  
17 know what that other thing is. There's a door going  
18 to it. The part that you cut out. What is that going  
19 to be?

20 MS. BRITTINGHAM: It's just open air. I guess  
21 you could step outside. It's sort of a little  
22 balcony.

23 MR. HART: Okay. And there's no -- is there a  
24 railing around that?

25 MS. BRITTINGHAM: There will be, yes.

1 MR. HART: Okay. It's just not showing on the  
2 rear elevation.

3 MS. BRITTINGHAM: Oh, I got you.

4 MR. HART: And so, I was just trying to figure  
5 out what are you doing out there?

6 MS. BRITTINGHAM: Uh-huh.

7 CHAIRPERSON HILL: Okay. All right. I'm  
8 going to turn to the Office of Planning.

9 MS. THOMAS: Good afternoon again, Mr. Chair  
10 and members of the Board. Karen Thomas for the Office  
11 of Planning. We were happy that the applicant reduced  
12 the burden of proof from a variance to a special  
13 exception, and we will stand on the record of report  
14 and that it has satisfied the special exception  
15 requirements for -- under Section 5201. And I'll rest  
16 on the record of our report. Thank you.

17 CHAIRPERSON HILL: All right, great. Thank  
18 you. Does the Board have any questions for the Office  
19 of Planning?

20 Does the applicant have any questions for the  
21 Office of Planning?

22 [No audible response.]

23 CHAIRPERSON HILL: Okay. All right. I'm  
24 going to turn to the audience. Is there anyone here  
25 from the ANC? Is there anyone here wishing to speak

1 in support of the application? Is there anyone here  
2 wishing to speak in opposition to the application?

3 [No audible response.]

4 CHAIRPERSON HILL: All right. Turn back to  
5 the applicant. Is there anything else you'd like to  
6 add?

7 MS. BRITTINGHAM: No, thanks.

8 CHAIRPERSON HILL: Okay. Mr. Moy, just to be  
9 clear as to what it is that -- if you could read for  
10 me, please, the application?

11 MR. MOY: Yes, with pleasure. That would be  
12 as amended, the relief from the special exception, or  
13 rather for the special exception from the lot  
14 occupancy requirements, Subtitle E, Section 304.1, and  
15 nonconforming structure under Subtitle C, Section 202.

16 CHAIRPERSON HILL: Okay. Thank you for the  
17 clarification.

18 I'm going to close the record. Is the Board  
19 ready to deliberate?

20 MR. HART: Yeah, Mr. Chairman. After having  
21 reviewed the record and the report from the Office of  
22 Planning, regarding the relief that's being requested,  
23 I find that I can support the Office of Planning, the  
24 relief requested using those -- the report from the  
25 Office of Planning, and the information that the

1 applicant has provided, again is sufficient for me to  
2 be able to support this application and would like to  
3 make a motion to approve Application No. 19467.

4 MS. WHITE: Second.

5 CHAIRPERSON HILL: Motion is made and  
6 seconded.

7 [Vote taken.]

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

9 MR. MOY: Staff would record the vote as four,  
10 to zero, to one. This is on the motion of Vice Chair  
11 Hart to approve the application for the relief  
12 requested. Seconding the motion, Ms. White. Also in  
13 support, Chairperson Hill, Mr. Miller. We have a  
14 board seat vacant. Motion carries, sir.

15 CHAIRPERSON HILL: Thank you. We can do a  
16 summary order, Mr. Moy.

17 MR. MOY: Yes, sir.

18 CHAIRPERSON HILL: Thank you. Thank you all  
19 very much.

20 MR. STEENHOEK: Thank you.

21 CHAIRPERSON HILL: We are going to do,  
22 literally a three-minute break. A three-minute break.

23 [Off the record for a short recess.]

24 CHAIRPERSON HILL: Mr. Moy, if you could just  
25 go ahead and call our last case, please?

1 MR. MOY: Yes, sir. This would be Application  
2 No. 19446 of Max Karasik. I think I pronounced that  
3 correctly. Maybe. As amended for special exception  
4 relief under Subtitle E, Section 5201. This is from  
5 the lot occupancy requirements of Subtitle E, Section  
6 304.1 and nonconforming structure requirements of  
7 Subtitle C, Section 202.2.

8 This would construct a third-floor addition  
9 above an existing two-story, one-family dwelling, RF-1  
10 Zone at Premises 646 6th Street Northeast, Square 834,  
11 Lot 89.

12 I'm sorry. No, go ahead.

13 CHAIRPERSON HILL: That's okay. Go ahead.

14 MR. MOY: No, I'm done.

15 CHAIRPERSON HILL: Okay. So, if we could just  
16 introduce ourselves from my right to left, please?

17 MS. KARASIK: I'm Agnes Karasik. I'm a  
18 homeowner of 646 6th Street Northeast.

19 MR. KARASIK: Max Karasik, homeowner 646 6th  
20 Street Northeast.

21 MS. FOWLER: Jennifer Fowler, I'm the  
22 architect.

23 MR. LYONS: Bob Lyons, homeowner at 644 6th  
24 Street.

25 CHAIRPERSON HILL: Okay, great. So, Mr.

1 Lyons, you've applied or asked for a party status. Is  
2 that correct?

3 MR. LYONS: That's correct, yes.

4 CHAIRPERSON HILL: Okay. And, the -- where  
5 are you located to the property?

6 MR. LYONS: I -- 644.

7 CHAIRPERSON HILL: No, no, I'm sorry. Is it  
8 right next door?

9 MR. LYONS: Yes.

10 CHAIRPERSON HILL: Okay. It's immediately  
11 right next door. Okay. And I did see your request.

12 I mean, since you're -- you know, depending  
13 upon what the Board has, any questions, I mean, I see  
14 your request in terms of for party status. I mean,  
15 I'm definitely more -- you know, since you are  
16 directly next door, would be inclined to grant your  
17 party status request.

18 Does the Board have any thoughts?

19 [No audible response.]

20 CHAIRPERSON HILL: Okay. So, I'm going to go  
21 ahead and grant your party status request. So, what  
22 that means is you'll have an opportunity to cross-  
23 examine and present, and then also ask questions of  
24 the Office of Planning and as a full participant in  
25 the application process.

1           So, we're going to go first with the  
2 application, and then you'll have an opportunity again  
3 to ask questions of the applicant. Then you'll have  
4 an opportunity to present, and they will have an  
5 opportunity to ask questions of you. And the  
6 applicant will go ahead and I guess, you know, have a  
7 conclusion. And then, that's kind of going to be the  
8 order that we're going to go in.

9           I did print off -- well, I did print off the  
10 applicant's burden of proof actually, but have gone  
11 through the application. I guess, now that I think  
12 about it, also there was a request for postponing. Is  
13 that yours?

14           MR. LYONS: That's correct. And there was  
15 also a letter from the ANC 6-05, 6C-05, Chris Miller,  
16 supporting the request for an extension. So --

17           CHAIRPERSON HILL: Okay.

18           MR. LYONS: So, our I guess local member of  
19 the ANC posted a letter requesting that the Board  
20 grant an extension and he was in support, and that's  
21 part of the record.

22           CHAIRPERSON HILL: Okay. Why is it that you  
23 need the extension, or the postponement?

24           MR. LYONS: Well, so the process has been  
25 going on for quite a bit of time. The applicant made

1 a decision to change their drawings. We were given  
2 the impression that -- or, we were told by the  
3 applicant that they would provide us a copy of the  
4 drawings, which they did not. We were provided  
5 unofficial drawings, which differed from the drawings  
6 which were posted officially online. So, we have an  
7 issue with the information that was shown to and  
8 provided to people that sign letters of support. They  
9 couldn't have had the -- they couldn't have had the  
10 drawings that are online and posted, because they  
11 signed their letter of support prior to the date of  
12 those actual drawings.

13           The second item relating to a postponement is  
14 that the sign posted on the property, the affidavit  
15 was posted showing the sign out in -- on the front  
16 fence of the porch. After the affidavit was posted  
17 the sign was moved back and it was not really very  
18 accessible for people walking by.

19           And the date of the hearing, which is today,  
20 was never updated after the hearing was postponed.  
21 So, the notice to the public has been incorrect since  
22 I believe March 4th, when the hearing was postponed.

23           CHAIRPERSON HILL: Okay. Okay. So, depending  
24 upon the Board's thoughts, I mean, whether or not we  
25 end up continuing this hearing or get to a meeting a



1 decision or are able to do a bench decision, I'm  
2 inclined to continue to move forward with the  
3 presentation since everyone is here.

4 As far as Mr. Lyons, your comments on  
5 notification, I mean, you are here. So --

6 MR. LYONS: I'm here, but I believe that there  
7 clearly are potentially other parties that might want  
8 to be here, but read the sign and thought that the  
9 hearing had already taken place. The date on the sign  
10 was March 8th. So --

11 CHAIRPERSON HILL: Okay. Okay.

12 MR. LYONS: -- I'm just going based on the  
13 zoning regulations. It's my understanding that the  
14 notice has been incorrect since March 4th, and that  
15 there was an obligation of the agent to check the sign  
16 on a weekly basis, and if that had done, had been  
17 done, I would assume that they would have changed the  
18 date.

19 I was also told, when I talked to, I believe  
20 it was Allison Myers in the Office of Zoning, she  
21 indicated that she was going to provide the  
22 information to the applicant about the date not being  
23 correct on the sign. So, I don't know whether that  
24 happened or not, but it's my own --

25 CHAIRPERSON HILL: Okay. That's okay. I

1 understand. So, anyway, I'm going to interrupt you.

2 So, but I --

3 MR. LYONS: Just, can I make one other point  
4 because --

5 CHAIRPERSON HILL: Sure, Mr. Lyons.

6 MR. LYONS: -- I think in addition to all of  
7 that, the drawings that the applicant has provided do  
8 not provide myself any of my neighbors, or you, the  
9 ability to adequately evaluate the impact of this  
10 addition because --

11 CHAIRPERSON HILL: Okay. Mr. Lyons, I'm just  
12 going to interrupt you one second.

13 MR. LYONS: All right.

14 CHAIRPERSON HILL: I gave you party status.

15 MR. LYONS: Okay.

16 CHAIRPERSON HILL: So, just, you're going to  
17 get a chance to present, okay. So, I just was trying  
18 to get to the first issue first, which was again,  
19 whether or not we're going to have -- everybody is  
20 here, so we're going to hear everybody now, unless the  
21 Board has any issue with that. And then we'll see  
22 what we do at the end of it. But I just, because I  
23 just wanted to kind of -- didn't want you to get too  
24 far down your own road, which you're going to have to  
25 go down again in a minute.

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1 Does the Board have any thoughts? Are you  
2 okay? Is everybody fine?

3 MR. HART: Yeah, just one comment, Mr.  
4 Chairman. With regard to the public notice, I  
5 understand that the date may have been inaccurate, but  
6 I mean, I'm looking at all of the letters of either  
7 opposition or support, and just about all of them have  
8 happened after the date.

9 So, people are fairly clear that there is a --  
10 while they understand that -- while I understand your  
11 point, I'm just making the note that there are quite a  
12 number of letters of again, support and opposition  
13 that have happened subsequent to the date. There's no  
14 comment that I'm asking you to make. I'm just making  
15 that observation that these are -- that that's what  
16 has been provided and --

17 MR. LYONS: I thought I acknowledged that  
18 that's true. Yes.

19 MR. HART: So, that's it.

20 CHAIRPERSON HILL: Okay. Thank you, Mr. Hart.  
21 That was very helpful. You're very spot on.

22 Okay. So, Ms. Fowler, I'm going to go ahead  
23 and let you present. And as you can see, we're going  
24 to have more discussion as to particularly where we  
25 are with the party status in opposition, your

1 community outreach, what has been brought up now again  
2 already it's kind of like the plans that actually were  
3 approved, or where we were in that process, so you  
4 might want to address that as you go forward. And,  
5 yeah, Mr. Lyons, you looked like you were -- were you  
6 trying to get something from the secretary?

7 MR. LYONS: So, it was my understanding, I had  
8 attempted to post some additional items on the site  
9 that I wanted to --

10 CHAIRPERSON HILL: Uh-huh. And it didn't go  
11 up?

12 MR. LYONS: I couldn't, I couldn't get it up.  
13 So, there is a letter e-mail chain to the Office of  
14 Planning, kind of when the brakes got put on the  
15 project. And then I submitted a --

16 CHAIRPERSON HILL: Okay.

17 MR. LYONS: -- a new one --

18 CHAIRPERSON HILL: But it's not in the record  
19 right now.

20 MR. LYONS: No, it's not.

21 CHAIRPERSON HILL: Okay. So, let's get to  
22 that when we get to that, perhaps during your  
23 testimony.

24 MR. LYONS: And I had kind of what my  
25 testimony is going to be in case I don't -- I guess I

1 don't need to worry too much about passing this out  
2 right now because --

3 CHAIRPERSON HILL: You can go ahead and pass  
4 that out.

5 MR. LYONS: Hopefully I have enough copies for  
6 --

7 CHAIRPERSON HILL: Okay. Hold on one second.  
8 Ms. Glazer, you have a comment?

9 MS. GLAZER: Well, I think the proper course  
10 of the hearing should be to hear the applicant's case  
11 first.

12 CHAIRPERSON HILL: Okay. All right. So just,  
13 Mr. Lyons, I'm working through this as well. No, I  
14 appreciate it. We're all going to get there together.

15 So, Ms. Fowler, go ahead and if you want to  
16 please give your presentation. I'm going to just  
17 again, for me, I'm going to put 10 minutes up on the  
18 clock so I know where we are, and again address those  
19 issues that have kind of come through. If you can  
20 kind of walk us through the project again, and  
21 specifically again, what it is that you have gotten  
22 approval of from the ANC and the Office of Planning,  
23 and whether that's the same as what Mr. Lyons has  
24 already been thankfully, helping us kind of get to  
25 some of his issues.

1           So, I'll turn it over to you and start the  
2 clock. Thank you.

3           MS. FOWLER: Thank you. Do I need to address  
4 the posting questions or --

5           CHAIRPERSON HILL: I don't think you just yet.

6           MS. FOWLER: Okay. Okay. We originally filed  
7 this application with additional relief. We were  
8 requesting relief from 206.1 to remove the existing  
9 mansard. So, the plan was to build a third-floor  
10 addition above the existing footprint of the house.  
11 The homeowners were looking to kind of maximize their  
12 interior space. They also wanted to kind of have more  
13 of a cohesive design, kind of carrying the same brick  
14 detailing up to the third floor, rather than kind of  
15 having something stuck behind the mansard.

16           So, that's what we proceeded with in the  
17 initial application. We also have lot occupancy  
18 relief, it's a nonconforming structure to begin with,  
19 so we're building above that.

20           We filed these plans I believe like back in  
21 December, January, something like that. And then as  
22 we moved forward we went to the ANC with the plans for  
23 the third floor, and they were in support. We did get  
24 support from them on that. We also received support  
25 from Office of Planning for the original proposal,

1 which included to a 6.1.

2           We also, the -- my clients had spoken with the  
3 neighbors and had letters of support from Mr. Lyons as  
4 well as the neighbor on the other side. We came to  
5 learn later that they had kind of rethought their  
6 support. Mr. Lyons, particularly, and had some  
7 concerns. So, we ended up meeting with him in his  
8 home on March 10th, and that's when we kind of  
9 discussed his concerns, which mostly revolved around  
10 the mansard -- removal of the mansard, and kind of the  
11 impact on the block, and how this was going to impact  
12 the street scape.

13           As a result of that meeting, we -- my clients,  
14 the homeowners decided to eliminate the 206.1 and keep  
15 the mansard. And basically, what we've done is we've  
16 set the addition back three-foot, four-inches from the  
17 face of the building, which would allow us to keep the  
18 structure of the mansard intact.

19           We also were able to, when we were there at  
20 Mr. Lyon's property, we were able to take some  
21 measurements. They actually have an existing third-  
22 floor addition at 644, and it does have a small patio  
23 in the front, which gave us really good access to get  
24 some measurements of the existing mansard. So, we  
25 made some adjustments to plans to properly reflect

1 their addition.

2           We had been given some plans of their third  
3 floor that was built, I don't know, two or three,  
4 three or four years ago. I don't know exactly. But  
5 we followed those plans initially, but I think that  
6 the front wall had gotten pushed back further than the  
7 permit drawings.

8           So, the current plans reflect keeping the  
9 mansard, pushing back the addition three-feet-four-  
10 inches, and it also shows the location, the accurate  
11 location of the front wall of the third floor at 644  
12 6th Street.

13           Additionally, we did a sun study that's in the  
14 record. You'll see we're immediately to the north of  
15 644. So, we found there was no impact on shadows. In  
16 fact, most of the shadows are being cast on to 646  
17 from 644's addition. So, that is in the record.

18           We also included a series of photographs of  
19 the street scape. We initially did these when we had  
20 the 206.1 relief, but they are still in the record.  
21 You can see kind of photos walking down the block.  
22 You could see a variety of house styles, roof lines,  
23 and the street does slope down, so there is some  
24 stepping down from one house to the next.

25           Additionally, the three houses that match, so



1 644, 646, and 648, are all set back from the facades  
2 of the adjacent houses. And you can see that in the  
3 site photographs.

4           So, that's pretty much where we are. I feel  
5 like we've compromised. We've -- I know that the  
6 mansard was very important to the neighbors and we  
7 heard that, and we didn't take -- we weren't lightly  
8 proposing it, it was definitely something that we  
9 thought through initially and did various studies on  
10 how to accommodate what my clients were looking for.

11           But we did hear that and we were able to  
12 compromise and still make the plans work for what they  
13 need on the interior of the house. And I'll turn it  
14 over to the homeowners if they wanted to make a  
15 statement.

16           MR. KARASIK: Hello. My name is Max Karasik  
17 again. I'm a homeowner at 646 6th Street Northeast.  
18 We've been living there for four years now. We really  
19 like the neighborhood. We have a growing family. We  
20 have a two-and-a-half-year-old and a second one on the  
21 way; second child on the way. So, we worked very hard  
22 with Jennifer to come up with designs that would look  
23 like they're part of the neighborhood, rather than  
24 something that does not fit. And we worked hard to  
25 find materials and a design that would look good for

1 us because we are planning to stay there a long time,  
2 as well as for the neighbors who are near us.

3           And, originally discussed with us -- we  
4 started a discussion with them back in the summer, and  
5 they gave us their support in December, and then later  
6 on in January they raised concerns about view from  
7 their third-floor addition. And, we tried to -- we  
8 met with them to discuss that and we tried to come up  
9 with a solution. They've asked us to send us a  
10 proposal solution to address that, and we came up with  
11 what we thought would be a good solution, is that we  
12 would pay to extend their third-floor patio in the  
13 back for them to have views.

14           And but it turns out that did not -- they have  
15 declined this offer, and then the next concerns we  
16 heard from them were about the historical features of  
17 the house that they felt very strongly now that the  
18 mansard should not be removed. And so, we met with  
19 them to discuss that and Jennifer referred to that  
20 meeting. And we worked hard to come up with another  
21 design that would satisfy that strong concern of our  
22 adjoining neighbor, and that was the reason or that  
23 revision.

24           So, we have -- we then went and showed the  
25 revised plans to as many neighbors as we could in the

1 vicinity. And most of the neighbors support our  
2 revised plans as evidenced by the support letters that  
3 we have uploaded to the case. And, yeah, we feel that  
4 the neighborhood is for this.

5 CHAIRPERSON HILL: Okay. Are you okay?

6 MS. FOWLER: Yeah. I just wanted to mention  
7 also, on the timeline, as you can hear, this has been  
8 going on for a while and we did postpone the original  
9 hearing from March 8th and the revised plans were  
10 uploaded by the 22nd, which was two weeks ago. And I  
11 know that Mr. Lyons had a vacation that was kind of  
12 within that time frame so I understand you know, that  
13 they wanted more time. But we also were under another  
14 deadline, as you heard earlier, which is why we really  
15 wanted to go ahead and move forward today and get your  
16 reading on this project.

17 CHAIRPERSON HILL: Okay. Does the board have  
18 any questions for the applicant? Sure, either one.

19 MR. HART: Yeah, just a quick question. The  
20 neighborhood -- the neighbor at 648, they're in  
21 support of this?

22 MS. FOWLER: Yes.

23 MR. KARASIK: Yes, they are.

24 MR. HART: Thank you.

25 MR. MILLER: Thank you, Mr. Chairman. Good

1 afternoon. The -- and thank you for your presentation  
2 and for the changes that you did make to accommodate  
3 some of the neighbors and Office of Planning, keeping  
4 the mansard roof and the design, and the dormers, I  
5 guess.

6           So, your third floor is set back three-feet-  
7 four-inches from the face of the house, which was a  
8 change that you made, because the original plan had --  
9 it was flush with the second and first floors.

10           There's -- we're going to hear from Mr. Lyons  
11 shortly and I'm sure get into this, but you said you  
12 went up there and you were able to see exactly the  
13 relationship between what you're proposing and what's  
14 on 644. I think there's something in the record from  
15 Mr. Lyons that indicates that he's 11-foot setback on  
16 that third-floor. What is -- and I think there's  
17 something that you just presented that they may not be  
18 -- what is the relationship between -- what is the  
19 setback on the adjacent neighbor's property? Is it 11  
20 feet?

21           And this goes to the criteria for this type of  
22 special exception, that it shall not substantially  
23 visually intrude upon the character, scale, and  
24 pattern of houses along the subject street frontage.  
25 OP has opined that it does not significantly intrude,

1 and obviously, you think that but I just wanted to  
2 hear, and the ANC is in support but I want to hear  
3 more from you as to what the relationship is between  
4 the two, the two third floors.

5 MS. FOWLER: I apologize. I don't have the  
6 dimension on my plans of their addition. But -- and  
7 it was difficult to get an exact dimension because the  
8 mansard comes up and then there's a cornice line, so  
9 getting a dimension from the face of the building was  
10 approximate. But what I've shown on the side  
11 elevation, A5, gives you an idea of the relationship.  
12 You can see, there's the gray kind of pochade  
13 (phonetic).

14 MR. MILLER: Where is that in --

15 MS. FOWLER: Eighty-five in the architectural  
16 plans. If you looked in the revised 322.

17 MR. HART: Exhibit No. 43.

18 MS. FOWLER: Thank you.

19 MR. MILLER: What's the number again? I'm  
20 sorry.

21 MS. FOWLER: So, A5. It's like the second to  
22 last sheet.

23 MR. MILLER: Okay, got it.

24 MS. FOWLER: So, if you look at that, you  
25 know, I did take the measurement of the patio, and

1 that should be accurate. And as best I could,  
2 estimated the depth of the mansard. And then you can  
3 see the addition at 646, which is labeled as kind of  
4 that stucco wall. That's three-feet-four-inches back.

5 So, they basically have a cutout. The mansard  
6 is existing, and then there's a straight wall down to  
7 a patio space that's pretty narrow. And then their  
8 third-floor starts at that point where you can see the  
9 -- it's up at about 35-and-a-half-feet, from the  
10 grade.

11 CHAIRPERSON HILL: And there's no window on  
12 that side?

13 MS. FOWLER: No. I'm sorry, they have windows  
14 -- not on our property, on the proposal. 644 does  
15 have windows facing east, and a door.

16 CHAIRPERSON HILL: Okay. Thank you.

17 MR. MILLER: So, what is the square footage of  
18 the third-floor space?

19 MS. FOWLER: The new third-floor?

20 MR. MILLER: Yeah.

21 MS. FOWLER: It's about 694.

22 MR. MILLER: And if you were to set back  
23 further you'd obviously lose -- do you know how much  
24 you lose per foot?

25 MS. FOWLER: The challenge with setting it

1 back -- part of the challenge is that these outdoor  
2 spaces -- it's the outdoor space is not something that  
3 they're wanting and in fact I'm pretty sure that the  
4 neighbor had mentioned that that was space that they  
5 didn't really use. It's not a patio they use very  
6 much. But, the idea is that they're looking to fit an  
7 office, a kind of a family room, and a third bedroom  
8 on that space, on that floor.

9 MR. MILLER: Okay. Thank you very much.

10 MS. FOWLER: Thank you.

11 CHAIRPERSON HILL: All right. Does the Board  
12 have any more questions of the applicant? Okay.

13 So, Mr. Lyons, you're going to have an  
14 opportunity now to ask questions of the applicant,  
15 cross-examine the applicant based upon the testimony  
16 that they gave. So, whatever they kind of spoke  
17 about, and then you'll have an opportunity to present  
18 your case. So, do you have some questions for the  
19 applicant?

20 MR. LYONS: Well, yeah. I guess I'd like the  
21 applicant to clarify because they kind of talked about  
22 sort of a line of events, and you know, I believe it's  
23 in what we submitted to the Office of Planning, which  
24 I'd like to submit as you know, evidence.

25 But what I think is important is that the

1 applicant and my understanding from the applicant, the  
2 applicant's agent, the architect, had full knowledge  
3 of our strong opposition well before the ANC meeting.

4 CHAIRPERSON HILL: So, now I'm sorry, Mr.  
5 Lyons. I'm just trying to get to what your question  
6 is.

7 MR. LYONS: Okay.

8 CHAIRPERSON HILL: Your question is --

9 MR. LYONS: My question is --

10 CHAIRPERSON HILL: Because you'll have a  
11 chance to present, so there is a difference between  
12 cross-examining and presenting. I'm just trying to  
13 get to a question.

14 MR. LYONS: So, so, so my question is, and we  
15 will certainly in discussions with the applicant,  
16 confirmed, but I'm asking the agent, did you have  
17 knowledge of our opposition at the time you presented  
18 to ANC 6C, that we were in support, that we actually  
19 were in strong opposition to this project.

20 CHAIRPERSON HILL: So, the -- do you  
21 understand the questions, Ms. Fowler?

22 MS. FOWLER: Yes, I do.

23 CHAIRPERSON HILL: Okay.

24 MS. FOWLER: No, I was not aware of strong  
25 opposition. I knew that there were concerns that had



1 been raised regarding views from the roof deck.

2 CHAIRPERSON HILL: Okay.

3 MS. FOWLER: That was not something in the BZA  
4 purview, so it's not something that we raised, and  
5 they were not in attendance, the meeting --

6 CHAIRPERSON HILL: Okay. That's okay. So,  
7 I'm just asking the question. Okay. Go ahead, Mr.  
8 Lyons.

9 MR. LYONS: Well, again, we were very clear  
10 and specific when we met with the applicants.

11 CHAIRPERSON HILL: Okay.

12 MR. LYONS: And they told us that they were  
13 going to pass on our concerns. Our concerns were  
14 removing the historic façade and setting back to  
15 maintain the character.

16 CHAIRPERSON HILL: So, your question, I'm  
17 sorry, is that you had expected the applicant to  
18 provide that information to the ANC at the meeting?

19 MR. LYONS: Well, I had -- we had assumed that  
20 they would be forthright and say even though they had  
21 provided a -- signed a form, we indicated almost  
22 immediately in early January --

23 CHAIRPERSON HILL: Okay.

24 MR. LYONS: -- that we were in strong  
25 opposition. So --

1 CHAIRPERSON HILL: Okay.

2 MR. LYONS: So, again, we just found it  
3 troubling that we were represented as being in support  
4 when we had clearly had very --

5 CHAIRPERSON HILL: Okay. So your question,  
6 and I'm -- so your question, Ms. Fowler, is that did  
7 you represent that the neighbor was in support of the  
8 application at the time of the ANC meeting?

9 MS. FOWLER: We had a letter of support at  
10 that time, and we did mention that there was the  
11 concern about the views.

12 CHAIRPERSON HILL: Okay.

13 MS. FOWLER: I think that was all that was  
14 raised. I wasn't aware of the concern about the  
15 mansard at that time.

16 CHAIRPERSON HILL: Okay.

17 MR. LYONS: Okay. And I guess what I'm  
18 hearing now is that the applicant did not communicate  
19 to the -- because we mentioned the views in --

20 CHAIRPERSON HILL: Okay, I understand. That's  
21 okay.

22 MR. LYONS: -- January, we --

23 CHAIRPERSON HILL: Okay.

24 MR. LYONS: -- met, we actually met at the end  
25 of January, and we specifically stated the issues

1 about the zoning issues, the mansard, the dormers, and  
2 setting back to maintain the integrity. Basically,  
3 what the --

4 CHAIRPERSON HILL: Okay.

5 MR. LYONS: -- Capitol Hill -- okay.

6 CHAIRPERSON HILL: So, do you have any more  
7 questions on the testimony?

8 MR. LYONS: In the testimony, Ms. Fowler  
9 mentioned taking measurements and in some of her  
10 supplemental information she indicated that she  
11 measured the third-floor, but -- our addition. But  
12 when she came up and she measured, the only thing that  
13 she measured was outside, and the dormer. So, is that  
14 a correct characterization? There was no measurement  
15 of our third-floor addition. And in fact, the  
16 applicant asked you, do you need to take some  
17 measurements inside, and you said no.

18 CHAIRPERSON HILL: So, the question --  
19 somebody is going to come around. So, the question is  
20 again that, what measurements did the applicant take?

21 MR. LYONS: Yeah, because it was represented  
22 that measurements were taken of our third-floor  
23 addition, which they weren't.

24 MS. FOWLER: Well, my point when I was there,  
25 was to measure the setback, to get the actual setback

1 from the front of the house. So, he's correct, I did  
2 only measure exterior measurements because I really --  
3 it had nothing to do with what's happening beyond that  
4 front wall. So, I took the measurement of the  
5 mansard, of the parapet wall that comes up above the  
6 mansard, and also the setback from that parapet wall  
7 to the main -- to his property, to his third-floor,  
8 and the height of the third-floor, so that I could  
9 accurately represent the profile of the third floor on  
10 the plans.

11 CHAIRPERSON HILL: Okay. Okay.

12 MS. FOWLER: But I did not measure the  
13 interior dimensions of the spaces inside.

14 CHAIRPERSON HILL: Okay.

15 MS. FOWLER: Which was not relevant. I didn't  
16 need that information.

17 MR. LYONS: Yeah, but I guess my follow up  
18 question on that is, you were asked by the Board just  
19 a moment ago what the setback was, and you said you  
20 didn't know.

21 MS. FOWLER: Well, I have it represented in  
22 the plans. I don't have the actual dimension on  
23 there, so I can't answer that question.

24 CHAIRPERSON HILL: Okay. Okay, hold on. Go  
25 ahead, Ms. White.

1 MS. WHITE: No, I was just going to comment  
2 that, you know, some of the questions should probably  
3 be reserved for his actual presentation.

4 CHAIRPERSON HILL: Okay. All right. So, Mr.  
5 Lyons, unless you have any more specific -- I'll let  
6 you ask one more specific question if you do have one  
7 concerning the testimony. Otherwise, we're going to  
8 go ahead and ask you to present your testimony.

9 MR. LYONS: Okay. Well, the only other I  
10 guess question or point when it's kind of indicated  
11 that there's a setback of three-feet-four-inches, it's  
12 from my review of the drawings, and I'm not an  
13 architect, by maintaining the mansard you -- there's  
14 actually no setback from the mansard, and the drawings  
15 actually indicate actually cutting in to the mansard  
16 about one foot. Is that correct?

17 MS. FOWLER: The face of the mansard would  
18 remain intact, and then the first, the top section of  
19 it. And then it sits right behind the mansard.

20 CHAIRPERSON HILL: So, the setback is three-  
21 feet-four-inches.

22 MS. FOWLER: From the face of the building,  
23 correct.

24 CHAIRPERSON HILL: From the face of the  
25 building. Okay.

1 MS. FOWLER: And then the mansard and dormers  
2 do project out --

3 CHAIRPERSON HILL: Okay.

4 MS. FOWLER: -- forward of that.

5 CHAIRPERSON HILL: Okay. Okay. All right,  
6 Mr. Lyons, I'm going to go ahead and ask you to  
7 present your testimony.

8 MR. LYONS: All right.

9 CHAIRPERSON HILL: I'm going to put 10 minutes  
10 on the clock for you. And you had some handouts it  
11 looked like. Is that correct?

12 MR. KARASIK: I'm sorry. May I interject for  
13 a second?

14 So, Mr. Lyons, when he was asking his  
15 questions he also made a statement about our meetings  
16 in January.

17 CHAIRPERSON HILL: That's okay. We'll go back  
18 and forth. We'll go back and forth. I just like to  
19 hear Mr. --

20 MR. KARASIK: Right.

21 CHAIRPERSON HILL: So, go ahead and provide,  
22 please, the material.

23 MR. LYONS: [Speaking off microphone.]

24 CHAIRPERSON HILL: I'm sorry. You have to be  
25 on the microphone in order to be on the record. So,

1 but there is -- do you have a handout there for the  
2 applicant? Okay, great. Thank you.

3 Wait, Mr. Fowler, before you -- I mean, Mr.  
4 Fowler. Mr. Lyons. If you can just tell me what all  
5 that is before you walk up there? Thanks.

6 MR. LYONS: The first item is the e-mail chain  
7 between myself and Joel Lawson of the Office of  
8 Planning. And the second item is an e-mail that I  
9 just sent the other day, responding to their most  
10 recent report.

11 CHAIRPERSON HILL: Okay. Before you put that  
12 I'm going to kind of ask the OAG there. So, how does  
13 this timing work and everything, in terms of like  
14 material that's being submitted into the record?

15 MS. GLAZER: That really should be done during  
16 the opposition party's presentation of his case.

17 CHAIRPERSON HILL: Okay.

18 MS. GLAZER: Or, if it relates to the Office  
19 of Planning during -- after OP --

20 CHAIRPERSON HILL: No, so I'm saying, he can  
21 submit that now. The e-mail chain that he's speaking  
22 of.

23 MS. GLAZER: If he's presenting his case now.

24 CHAIRPERSON HILL: Okay. Yes, please. Go  
25 ahead, then, if you could give it to --

1 MR. LYONS: I think it just provides  
2 beneficial background support for the Board.

3 CHAIRPERSON HILL: Okay.

4 [Pause.]

5 CHAIRPERSON HILL: All right, Mr. Lyons, I'm  
6 going to -- while Mr. Moy is trying to sort through  
7 what we can get from the exhibits that you just gave,  
8 I'm going to go ahead and ask you to start. Okay?

9 MR. LYONS: Okay.

10 CHAIRPERSON HILL: And, I guess this is kind  
11 of your presentation here. Is that correct? The --  
12 no, the --

13 MR. LYONS: That's correct, yeah.

14 CHAIRPERSON HILL: Okay. Okay, great. All  
15 right. So, please, go ahead. And, Mr. Moy, if you  
16 just start that clock for me? Thank you.

17 MR. LYONS: So, you know, if it's okay, I  
18 don't know if I need to read or hit every --

19 CHAIRPERSON HILL: No, read, please. Read.  
20 Make your case.

21 MR. LYONS: But, so you know, just some  
22 background, you know, the applicant originally  
23 obtained letter from us and on the other side. But  
24 our letter was based on drawings that were inaccurate  
25 and we believe had a lot of omissions. And we



1 basically told the applicant as soon as we returned  
2 from our trip, that we were opposed.

3 All the information that was incorrect was  
4 used to obtain support from both the ANC and the  
5 Office of Planning. We and most of the neighbors on  
6 the block believed, and I guess we'll find out  
7 correctly or incorrectly, because of 607, 644, our  
8 property, and 620, all three properties were forced by  
9 some part of D.C. Government to set back their  
10 additions. One was a -- 607 is a roof deck. They're  
11 required to set back by 11 feet. I'm not exactly sure  
12 what our dimension is 11 feet. The Office of the  
13 Capitol Hill Restoration or -- group, they had  
14 submitted a letter into the record and they indicated  
15 that it was 11 feet. I'm not sure where they got that  
16 information.

17 620 is much further back and you can't even  
18 see the addition of 620 even from across the street.  
19 So, we and all our neighbors believe that we were safe  
20 from anything that would impact the character of the  
21 historic homes on the block.

22 The drawings that were submitted to indicate  
23 the addition provide really no information on the  
24 impact of this addition. If you look at this drawing,  
25 which is A3, you don't know whether our setback is 11

1 feet or 20 feet.

2 MR. HART: What's the --

3 MR. LYONS: Whether theirs is one foot or no  
4 feet. I mean --

5 MR. HART: What's the number of -- what's the  
6 exhibit number that you're looking at?

7 MR. LYONS: Well, it's the --

8 MR. HART: Or the date is it?

9 MR. LYONS: The date is 3/20, I believe they  
10 posted it on 3/22.

11 MR. HART: Thank you.

12 MR. LYONS: It's their drawings.

13 So, and again, I guess I don't need to go  
14 through the reasons for requesting a postponement  
15 because we've kind of decided that wasn't going to  
16 happen. And so I think that's --

17 CHAIRPERSON HILL: Well, Mr. Lyons, we're  
18 trying to see what's going to happen afterwards. We  
19 still don't know if it's going to be a continued  
20 hearing or what's going on so --

21 MR. LYONS: Okay. Okay. I got you.

22 So, I mean, we felt there were significant  
23 reasons to postpone the hearing. I mean, the  
24 applicant requested a postponement initially, which we  
25 supported. We were happy to -- and that was suggested

1 by the Office of Planning, I believe. But we believe  
2 that for us and the neighbors who have sent in  
3 heartfelt, thought out, sincere letters of concern,  
4 that there needs to be a better depiction of what the  
5 applicant intends to do.

6           And I don't know what -- you know, I'm not an  
7 architect. I don't know what you call it, but I know  
8 you had a case just before where they were kind of  
9 showing from an angle what it looked like. We don't  
10 have that, and we've never been provided that. And  
11 we've asked for it repeatedly.

12           I think I had mentioned that -- or the  
13 applicant had mentioned earlier that they felt that  
14 the neighbors were in support. There are currently, I  
15 believe, 10 letters of opposition. There are other  
16 neighbors who wish to oppose the project, but have not  
17 seen the information or have not had the opportunity  
18 to do that.

19           So, we believe that the neighbors that are in  
20 opposition, which are at least 10, we think there are  
21 probably many more, are pretty much unanimous about  
22 one thing, that they believe that the addition should  
23 be set back to preserve the character and the pattern  
24 of the houses on the street. And most of them that  
25 I've talked to believe that they, we, anybody else,

1 had to do that.

2 We believe that beside the impact to us and  
3 the neighbors on our street, that with the new  
4 regulations, zoning regulations in 2016, that this  
5 could set a precedent which could have unintended  
6 consequences in cases going forward throughout the  
7 city. So, we think it's an important case for that  
8 reason.

9 So, let me go right to the last page there,  
10 because the applicant had mentioned that he felt that  
11 basically that the trend in the neighborhood was, they  
12 supported the project. From our count, there are a  
13 total of 18 support letters, that they are signed by  
14 18 different parties, but none of these people wrote  
15 the letters. They were form letters that were  
16 provided to them and they were asked to sign.

17 Seven of the support letters were dated prior  
18 to the date that the revised plans were completed.  
19 And excuse my typo, I think I said I "competed" in my  
20 presentation.

21 So, those seven people indicated that they  
22 were provided and saw plans by the applicant, but they  
23 could not have seen the plans that were completed on  
24 the 20th and posted on the 22nd, because all those  
25 letters were dated the 19th or 18th, or earlier.

1           Nine of the support letters are from residents  
2 who don't live on 6th Street. So, when the notices go  
3 out to people within 200 feet, many of those could  
4 potentially be impacted by the back of the addition.  
5 There's nobody that is challenging anything with  
6 regards to the back of the addition. And so, we don't  
7 think that those nine support letters from -- mainly  
8 from 5th Street and G Street, should be given the same  
9 weight as the letters from people who are directly  
10 impacted on what it will look like, actually the  
11 people that live on 6th Street, between F and G.

12           Opposition letters total 11. One is from the  
13 Capitol Hill and I may have it incorrectly. I don't  
14 know whether it's preservation society. And then the  
15 other 10 opposition letters are from properties --  
16 property owners on 6th Street between F and G.

17           Oh, and I missed the last point on the support  
18 letters. We looked at the deeds and six of the  
19 support letters are not from residents listed on the  
20 property deeds, so we don't know whether they are  
21 renters or what. And we're not really sure whether  
22 that matters to the Board or not. We think it's -- we  
23 think that a property owner, you know, should carry  
24 more weight, but we don't know. But we thought that  
25 was worth making note of.

1           And just a, you know, a little bit about the  
2 letters in support that came in, I did a little math  
3 and I'm guessing that as far as years of residency  
4 from the 10 people that sent support letters, it's  
5 probably between 75 and 100. And I'd like to -- even  
6 though it's on the record, bring to the attention of  
7 the Board, the letter from Gladys Mathis, who has --  
8 who was born in Washington and has lived in her house  
9 at 612 for 51 years.

10           And, she's raised her children and her  
11 grandchildren, and she's incredibly opposed to  
12 anything changing the character and the pattern of the  
13 houses on the street.

14           CHAIRPERSON HILL: Mr. Lyons, you're kind of  
15 going over time. I just wanted to let you know, if  
16 you want to wrap it up.

17           MR. LYONS: Okay.

18           CHAIRPERSON HILL: Okay. Because we're going  
19 to have questions for you, so.

20           MR. LYONS: Okay.

21           CHAIRPERSON HILL: Okay.

22           MR. LYONS: I think that's mainly it. I think  
23 it's -- I just think it's important to note that the  
24 information provided, we don't believe is adequate to  
25 make a decision. And, we believe that not only

1 myself, but all the folks that have submitted support  
2 letters feel very strongly that everybody that has  
3 done any kind of addition has been forced to set it  
4 back and they would like to -- they believe that it  
5 should be set back and --

6 CHAIRPERSON HILL: Okay. I can't let you  
7 speak for all those people, but I appreciate your  
8 comments.

9 MR. LYONS: I think the letters will speak for  
10 them.

11 CHAIRPERSON HILL: So, I have some questions  
12 for Mr. Lyons. Does anybody else want to start?

13 MR. HART: Sure. Just, so the design over  
14 time has gotten -- has changed in that at first there  
15 was no mansard, and now there is a mansard that is  
16 being proposed as -- because the applicant has stated  
17 that they, after having conversations I guess, with a  
18 variety of folks, including yourself, they kind of  
19 said, well, maybe we should do this to see if that  
20 would help to alleviate some of the concerns that I  
21 think that you had.

22 I know that you're saying that it doesn't, but  
23 you stated that the letters of support were based on  
24 inaccurate information because the drawings that were  
25 being shown to them were prior to the current drawings

1 that we have, which show that there is less impact, I  
2 guess, or at least this is -- the mansard is being  
3 retained on these drawings.

4 MR. LYONS: Well, no, no, that's -- that would  
5 not be exactly correct because the architect prepared  
6 a set of drawings dated March 14th, which we were  
7 provided and were told that were not the official  
8 drawings.

9 It took us a while to kind of see it, but we  
10 noticed that --

11 MR. HART: Who is us? Are you talking about  
12 you --

13 MR. LYONS: Meaning my wife and I.

14 MR. HART: Okay. I just, I mean --

15 MR. LYONS: Okay. No, I --

16 MR. HART: -- because there were other people  
17 that we're kind of talking about so.

18 MR. LYONS: No, no. So, so, so there was the  
19 first set of drawings with the initial proposal, and  
20 then there was I guess an unofficial set of drawings  
21 that were prepared on the 14th of March, which we were  
22 provided a copy. And then there was an official set  
23 that was posted to IZIS on 3/20.

24 That group of seven support letters could not  
25 have seen the drawings prepared on 3/20 and submitted



1 on 3/22 because they signed their letter of support on  
2 3/19 and 3/18.

3 MR. HART: Okay. So, I guess what I'm getting  
4 to is that the drawings that they saw were presumably  
5 then, the first set of drawings that --

6 MR. LYONS: No, they were the second -- well,  
7 I don't know. They could have been --

8 MR. HART: What I'm saying is that there is no  
9 way to know. You just know that they were before the,  
10 what we have before us now.

11 MR. LYONS: Well, and that's exactly the  
12 point.

13 MR. HART: Okay.

14 MR. LYONS: We don't know what they saw. We  
15 know that they could not have seen the drawings that  
16 were submitted on 3/20. Or --

17 CHAIRPERSON HILL: Okay. That's okay.

18 MR. LYONS: -- dated on 3/20 and submitted on  
19 3/22.

20 CHAIRPERSON HILL: Mr. Lyons, so, we're going  
21 to keep -- I mean, again like, it's not a democracy  
22 vote in terms of how --

23 MR. LYONS: No.

24 CHAIRPERSON HILL: No, I'm just letting you  
25 know, in terms of how it works. Like, how long

1 somebody has lived in the property, how long -- what  
2 it is. How many, you know -- we don't weigh it that  
3 way. We look at the zoning regulations and we weigh  
4 the recommendations of the Office of Planning with  
5 great weight, as well as that of the ANC.

6 So, the questions that I have, and there are a  
7 bunch of them, but first of all, as I understand it,  
8 you didn't go to this particular ANC meeting, correct,  
9 where this was voted on?

10 MR. LYONS: I was not aware of it. I went, I  
11 went and I observed at an ANC meeting --

12 CHAIRPERSON HILL: Okay.

13 MR. LYONS: -- afterwards.

14 CHAIRPERSON HILL: Okay.

15 MR. LYONS: So I could get an idea of how  
16 things worked.

17 CHAIRPERSON HILL: Okay.

18 MR. LYONS: Then --

19 CHAIRPERSON HILL: That's okay. So, you  
20 didn't go to that ANC meeting. Did -- Ms. Fowler, so,  
21 the discussion about the plans, I mean, the plans that  
22 you have before us right now, those are the plans that  
23 the ANC had seen and voted upon?

24 MS. FOWLER: No, the ANC voted on the original  
25 filing, which was to remove the mansard, it included

1 to a 6.1, going straight up with the brick.

2 CHAIRPERSON HILL: Okay.

3 MS. FOWLER: Then we revised the plans that  
4 Mr. Lyons saw. I think we had a four-foot setback and  
5 then I was just -- you know, it wasn't final and  
6 that's what they indicated to him, and then we did a  
7 little more work. I think they were hesitant to have  
8 too much of a gap between the back of the mansard and  
9 the addition, to have water issues, so we moved it  
10 forward just a little bit more from a technical  
11 standpoint, but I think it was about six or eight-inch  
12 difference.

13 CHAIRPERSON HILL: Okay. And the plans that  
14 the Office of Planning had reviewed were which plans?

15 MS. FOWLER: They initially reviewed the  
16 original filing, and they supported that. And they  
17 then followed up, they did a supplemental filing.

18 CHAIRPERSON HILL: Okay.

19 MS. FOWLER: After our supplemental filing.

20 CHAIRPERSON HILL: Okay.

21 MS. FOWLER: That supported it as well.

22 CHAIRPERSON HILL: Okay.

23 MS. FOWLER: So, they've seen both.

24 CHAIRPERSON HILL: Okay. So, Mr. Lyons, the  
25 large issue to me, it seems like, is again the front

1 setback. Is that what you're most opposed to?

2 MR. LYONS: Correct.

3 CHAIRPERSON HILL: Okay. And so, the front  
4 setback right now is four-feet-three-inches. Four-  
5 feet-three-inches?

6 MR. LYONS: Three-feet-four-inches.

7 CHAIRPERSON HILL: Sorry. Three-feet-four-  
8 inches from the front, and your setback is 11 feet.

9 MR. LYONS: Yeah, and --

10 CHAIRPERSON HILL: Approximately.

11 MR. LYONS: -- I think it's important to note  
12 that there's actually no setback from the mansard.  
13 They're actually cutting into the mansard by a foot,  
14 from my reading of the drawings. And I don't think  
15 the drawings are adequate to --

16 CHAIRPERSON HILL: That's okay. I know, you  
17 don't like the drawings at all. I've got you. You  
18 don't think the drawings are adequate. So, I'm just  
19 trying to understand what your real issue is with the  
20 project, and it's not that the setback does not match  
21 your setback.

22 MR. LYONS: Well, it's the setback and it's  
23 also modifying the mansard because --

24 CHAIRPERSON HILL: Well, the mansard was going  
25 to be -- they were going to remove the mansard all

1 together, and they've decided not to do that. And so,  
2 it seems to me that you're -- I'm just asking the  
3 question. It seems like it's the setback that is the  
4 most compelling issue you have right now.

5 MR. LYONS: If, I mean, the setback takes care  
6 of any issues with the mansard. So, if they set back  
7 then they don't need to violate the mansard. If they  
8 violate the mansard, it's two issues. It's the  
9 setback and it's whether or not the --

10 CHAIRPERSON HILL: Okay.

11 MR. LYONS: -- the zoning requirements, you  
12 know, so if they do one foot, then somebody else does  
13 two foot, feet, then somebody else does three feet.

14 CHAIRPERSON HILL: Okay. Does anybody have  
15 any questions for Mr. Lyons?

16 [No audible response.]

17 CHAIRPERSON HILL: Okay. Does the Board -- I  
18 mean, sorry. Does the applicant have any questions in  
19 terms of cross-examination from the testimony that was  
20 given?

21 MS. FOWLER: I do want to clarify, I confirmed  
22 with my office that our calculations says their  
23 setback is nine feet.

24 CHAIRPERSON HILL: Okay.

25 MS. FOWLER: Based on my measurements that I

1 took.

2 CHAIRPERSON HILL: Okay.

3 MS. FOWLER: On that day.

4 CHAIRPERSON HILL: And your question is what?  
5 I'm sorry, Ms. Fowler.

6 MS. FOWLER: I'm sorry, I just wanted to  
7 clarify.

8 CHAIRPERSON HILL: Oh, okay. All right. So,  
9 you don't have a question?

10 MS. FOWLER: I just want to clarify, you  
11 mentioned that you had asked for some additional plans  
12 and I don't remember ever hearing that request. I  
13 didn't know if you could elaborate on what you --

14 MR. LYONS: No, what I was saying is so, we  
15 were -- when we met, our understanding was that if you  
16 guys were going to revise things that you -- something  
17 was going to happen within a couple of days. And I  
18 had indicated that the sooner the better because we're  
19 leaving the country.

20 So, that time went by and then the end of that  
21 following week came along and we hadn't heard  
22 anything. So, we e-mailed and we said, hey, what's  
23 going on. So, then we were invited over and we were  
24 shown the plans that are dated 3/14. So, those are  
25 the plans that we saw until we just by chance went on

1 the IZIS site and found the new plans. But we were  
2 told that as soon as the final plans were official,  
3 that Max and Agnes committed to providing us a copy,  
4 which they didn't do.

5 So, we didn't understand that and -- but  
6 there's an issue with the letters of support.

7 CHAIRPERSON HILL: No, no, I'm just trying to  
8 get to the question again. Sorry. I mean, the  
9 question was -- what was your question again, Ms.  
10 Fowler?

11 MS. FOWLER: He mentioned during his testimony  
12 wanting some other kind of drawing. Not, I'm not  
13 talking about the --

14 CHAIRPERSON HILL: Oh, so you're asking when  
15 was it that you were asked for these other kinds of  
16 drawings.

17 MS. FOWLER: Right. Some kind of a --

18 CHAIRPERSON HILL: And Mr. Lyons is saying  
19 that there was -- it was right after that first  
20 meeting.

21 MR. LYONS: We had indicated, and I'm not  
22 exactly sure. We had asked at least two times --

23 CHAIRPERSON HILL: You had asked for updated  
24 drawings, if there were going to be updated drawings.

25 MR. LYONS: We had asked for, for some

1 drawings that showed some, rather than one-  
2 dimensional, showed the impact of what it was going to  
3 look like.

4 CHAIRPERSON HILL: Okay.

5 MR. HART: You wanted a perspective rendering.

6 MR. LYONS: Exactly. And I didn't know what  
7 that was called. Thank you.

8 CHAIRPERSON HILL: Okay.

9 MS. FOWLER: I just wanted to clarify because  
10 I had never heard that request from them and I just  
11 wanted the Board to understand that we weren't  
12 ignoring that request, it was something that I never  
13 heard that was requested.

14 CHAIRPERSON HILL: Okay. Okay. It's not --  
15 okay. All right. That's okay.

16 MR. LYONS: Yeah, and we just feel that --

17 CHAIRPERSON HILL: Yeah, okay. Do you have  
18 any more questions, Ms. Fowler? Because I want to  
19 turn to the Office of Planning who is going to outline  
20 how they've gotten to this point, correct?

21 MS. FOWLER: I don't think we have any  
22 specific questions, but we'll have comments --

23 CHAIRPERSON HILL: Okay.

24 MS. FOWLER: -- when we get back to our --

25 CHAIRPERSON HILL: Okay. I'm sorry. Go



1 ahead, Mr. Miller.

2 MR. MILLER: I just had, I'm sorry, one quick  
3 question of Mr. Lyons.

4 Putting aside the question of whether you  
5 think -- whether anyone thinks the plans or the  
6 perspectives are adequate. When you support -- well,  
7 I'm not going to do it that way.

8 Did I hear you say that the changes that were  
9 made, that retain the mansard instead of the brick  
10 that was going to be flush, and there is some setback  
11 provided as opposed to the flush, that that is an  
12 improvement from what you understood the original  
13 plan? Or did I mishear -- was that not part of your -  
14 - just tell me, you think it's better than it was  
15 based on what you understand it to had been and  
16 currently is proposed to be?

17 MR. LYONS: I mean, honestly, that's a hard  
18 question to ask because we can't really understand  
19 what it would look like. And I think retaining the  
20 mansard is a good thing. But going into the mansard  
21 and up is hard to know -- I mean, I met with an  
22 architect who looked at it and he said, I think this  
23 would be worse than the initial --

24 MR. MILLER: Okay.

25 MR. LYONS: But, I mean, we were pleased to

1 see that they decided to keep the mansard.

2 MR. MILLER: Okay. Thank you.

3 CHAIRPERSON HILL: I've just got one more  
4 quick question of the applicant.

5 So, the ANC vote, it looked like it was four  
6 to two. So, how come it was split? What were the  
7 people against?

8 MS. FOWLER: I think it was generally the  
9 removal of the mansard.

10 CHAIRPERSON HILL: Okay, right. So, at that  
11 point it was removal of the mansard. And so, you got  
12 the vote with the removal of the mansard?

13 MS. FOWLER: Correct.

14 CHAIRPERSON HILL: Okay.

15 MS. FOWLER: But it was definitely not a  
16 clear-cut vote. It was a little contentious.

17 CHAIRPERSON HILL: Okay. Okay, great. All  
18 right. I'm going to turn to the Office of Planning.  
19 If you could please elaborate?

20 MS. THOMAS: Yes. Good morning again, Mr.  
21 Chair. Karen Thomas for the Office of Planning.

22 So, we can start with the original application  
23 which removed the mansard roof, and we did support  
24 that because we thought that it was -- it was a third-  
25 story addition that was well designed and was similar

1 to other third stories in a row-house district. We  
2 saw no issues with it at that time.

3           When we did note that there was some  
4 opposition to taking another look at the design, we  
5 submitted that to the applicant and said, well, could  
6 you take another look and not remove the mansard in  
7 light of the neighbor's concerns. And they did that  
8 and set the addition back.

9           With respect to cutting into the mansard, to  
10 address Mr. Lyon's questions or concerns, we don't see  
11 it as cutting into the mansard. It is set back behind  
12 the main wall of the house.

13           So, that's the way we understand it. We have  
14 approved situations like this prior and each case we  
15 take on a case-by-case basis. We have no issues with  
16 this version as proposed. We believe it has met the  
17 special exception test under 5201, particular with  
18 respect to the visibility from the street and the  
19 character issues. We like that it kept the dormers  
20 and everything else about the mansard, and it didn't  
21 affect the mansard.

22           And again, as I say, each case is on a case-  
23 by-case basis, so I can't address any of the other  
24 cases referred to by the applicant. The opposition  
25 party. And, I'll just leave it at that.

1 CHAIRPERSON HILL: Okay.

2 MS. THOMAS: I'd be happy to take any  
3 questions. Thank you.

4 CHAIRPERSON HILL: Okay. Thank you.

5 Does the Board have questions for the Office  
6 of Planning?

7 MR. HART: Yes, one question. Ms. Thomas, is  
8 there the -- there has been some testimony and some  
9 discussion around the setback for the neighbor, and  
10 also I guess other -- the setback for the third floor  
11 from the building face, and do you know of a change in  
12 the zoning perhaps, that caused the setback to happen  
13 in this case -- sorry, in Mr. Lyon's house or other  
14 houses, or other properties I guess, in the city. Has  
15 there been a change in the zoning between the ZR-58  
16 and ZR-16 that would have, I don't know, that would  
17 have caused this?

18 MS. THOMAS: No, the only changes we've had is  
19 what we're dealing with now under ZR-16. And but I  
20 don't see any. It's the same, what we refer to at  
21 Section 223, it's the same 223. We have changes in  
22 the nomenclature, but there is no set of changes.

23 MR. HART: Thank you.

24 CHAIRPERSON HILL: Does anyone else have any  
25 questions for the Office of Planning?

1 [No audible response.]

2 CHAIRPERSON HILL: Does the applicant have any  
3 questions for the Office of Planning?

4 MS. FOWLER: Yes, I do. First of all, thank  
5 you for your time on this, Ms. Thomas. It's very  
6 helpful.

7 I assume you looked at the sun study that we  
8 provided. We've talked a lot about the mansard and  
9 the street scape, but also the impact on the neighbors  
10 and do you agree that there is no -- very minimal  
11 impact to the adjacent neighbors based on that?

12 MS. THOMAS: Yes, we concur because due to the  
13 location of your house with respect to the applicant's  
14 house, with respect to the neighbor at 644, it will  
15 have no impact.

16 MS. FOWLER: Thank you.

17 CHAIRPERSON HILL: All right. Does the party  
18 in opposition have any questions for the Office of  
19 Planning?

20 MR. LYONS: I'm very new to all this so I  
21 guess, you know, my one question is I believe that  
22 there has been a fair amount of information and  
23 opposition that has come in fairly close to the timing  
24 of this hearing, this meeting. And I guess my  
25 question would be, would the Board consider postponing

1 a decision at least until myself and others in  
2 opposition would have an opportunity to meet with ANC  
3 6C, and present the information that we believe wasn't  
4 presented the first time around.

5 CHAIRPERSON HILL: Okay. Mr. Lyons, that's  
6 all right. I understand your question that you're  
7 asking of us. Do you have a question for the Office -  
8 - and I know that this isn't what you do. Do you have  
9 a question for the Office of Planning?

10 MR. LYONS: Yeah, I guess my question would  
11 be, and I know it was just submitted I believe  
12 yesterday, I sent an e-mail to Mr. Lawson, and I guess  
13 I would like to ask that as there was some  
14 reconsideration of the initial report and findings,  
15 you know, would there be an opportunity for the Office  
16 of Planning to step back and allow some exchange about  
17 the concerns that we presented in our most recent e-  
18 mail?

19 MS. THOMAS: We always support communication  
20 between the applicant and any opposition or questions  
21 that the community would have, and we'd support  
22 continued discussions if that's -- to have some  
23 clarification on your part. But --

24 CHAIRPERSON HILL: Okay.

25 MR. LYONS: And I guess in a round-about way,

1 you know, I'm hoping to avoid, you know, getting into  
2 an appeal process if that's at all possible. I mean,  
3 I'm looking at this from -- this is --

4 CHAIRPERSON HILL: That's okay, Mr. Lyons,  
5 we're --

6 MR. LYONS: -- (simultaneous speech) it's  
7 going to become that, and --

8 CHAIRPERSON HILL: Yeah, no. That's all  
9 right. That's okay.

10 I guess what I'm just trying to do is run the  
11 hearing properly in a way that gives everyone a fair  
12 opportunity to be heard and also have their questions  
13 answered. And I understand what you're kind of  
14 getting to now, which is asking us to do something  
15 different. I think the question I heard from you was  
16 that, was there anything new that you've seen, Ms.  
17 Thomas, right now that is just going to change your  
18 opinion as your report? You can't say anything. Is  
19 there anything that you've seen thus far that will  
20 change your report?

21 MS. THOMAS: No.

22 CHAIRPERSON HILL: Okay. All right. Okay.  
23 All right. Does the Board have any other questions of  
24 the applicant and -- okay.

25 I am going to turn and see if there is anyone

1 here. I know there's not. Is there anyone here from  
2 the ANC? Is there anyone here wishing to speak in  
3 support? Is there anyone here wishing to speak in  
4 opposition?

5 [No audible response.]

6 CHAIRPERSON HILL: Okay. So, I'm going to  
7 turn back and ask Mr. Lyons if he would like to go  
8 ahead and give a brief closing. And then I'm going to  
9 let the applicant have just a minute if you'd like to  
10 sum up your testimony. And then I'll ask the  
11 applicant to do the same, and if we have any questions  
12 then we'll see where we go from there.

13 MR. LYONS: Well, you know, I guess in  
14 closing, you know, what I'd like to say, and I can't  
15 evaluate from my perspective how well I've done in  
16 presenting to the Board here. I mean, this is all  
17 brand new. I can tell you that the -- what has gone  
18 into research and preparation to try to communicate to  
19 the Board, what we believe is a very real concern, not  
20 only of ourselves, but most of our neighbors, and --

21 CHAIRPERSON HILL: Mr. Lyons, I don't know if  
22 you can say most of your neighbors. I mean, I just  
23 can't have you representing all those people, you  
24 know?

25 MR. LYONS: And Mr. --



1 CHAIRPERSON HILL: And so, but I can --

2 MR. LYONS: Mr. Karasik did represent that he  
3 thought most of the neighbors were --

4 CHAIRPERSON HILL: Okay. All right. That's  
5 okay. I'm not listening to either one of you as far  
6 as like most of the neighbors, so.

7 MR. LYONS: Okay. I got it.

8 CHAIRPERSON HILL: Yeah.

9 MR. LYONS: I apologize --

10 CHAIRPERSON HILL: That's okay.

11 MR. LYONS: -- for saying that.

12 CHAIRPERSON HILL: I'm just letting you know.

13 MR. LYONS: Yeah. But I think 11, 10 or 11  
14 close proximity neighbors is significant and I think  
15 you can tell by reading their letters, how strongly  
16 they feel about this.

17 And I think, again, no one is opposed to a  
18 pop-up. Everybody is okay with folks wanting to build  
19 up if they need to. It's the issue of the character  
20 and the pattern and scale --

21 CHAIRPERSON HILL: Okay.

22 MR. LYONS: -- of the houses. And I think  
23 again, there's 10 letters. You can read them and you  
24 can see you know, so I won't try to -- I'm not trying  
25 to speak for them.

1 CHAIRPERSON HILL: Okay.

2 MR. LYONS: But I think it's significant.

3 CHAIRPERSON HILL: Okay.

4 MR. LYONS: And we just would like to have a  
5 little more time to try to communicate with the  
6 applicant and figure out if we can find some common  
7 ground.

8 CHAIRPERSON HILL: Okay.

9 MR. LYONS: And I think it's in one of the  
10 things that I gave you, there's an e-mail chain that  
11 explains I made an effort as recently as this weekend.  
12 I asked the applicant, could we please try to talk  
13 and meet on this before meeting --

14 CHAIRPERSON HILL: Okay.

15 MR. LYONS: -- and I was kind of shut down.

16 CHAIRPERSON HILL: Okay. All right. Okay.  
17 Ms. Fowler, is there anything you'd like to close  
18 with?

19 MS. FOWLER: So, I just wanted to address a  
20 couple items. The other setbacks in the area, I  
21 believe with his house -- my understanding from ANC  
22 Commissioner Joe Kelty, who lives on the block, that  
23 the developer was pulling the mansard off, the ANC put  
24 a halt to the construction, and there was a revision  
25 at that time. That's my understanding. This is just

1 kind of hearing it through the neighbors.

2           And I think that the setback itself was  
3 voluntary from our understanding, and there was no  
4 zoning reason why it had to be set back. So, I don't  
5 think it's, you know, fair to say, well we need to set  
6 back the same amount because that wasn't anything that  
7 was really forced on them.

8           I also wanted to reiterate, this is not in the  
9 historic district. It is a historic area, but it's  
10 visible third-floor additions are regularly approved.

11 There is a lot of precedence for them. We are  
12 setback three-foot-four-inches, and we're only five  
13 feet above the existing mansard, with this addition  
14 because there is some substantial attic space. We're  
15 not going to be looming very high over top of the  
16 house. And I think that was -- did you have anything  
17 else to say? Thank you.

18           MR. KARASIK: Yes, members of the board, Bob  
19 has made some statements that I think are -- that  
20 there was a question about speaking for a large part  
21 of the neighbors.

22           So, what we did, we tried to go house to house  
23 and speak with as many neighbors as we can and show  
24 them the revised drawings, even though they were not  
25 strictly very final drawings. We've tried to do this

1 as early as we can, and then to most -- to some of  
2 them we showed the final drawings. To some we showed  
3 these revised drawings -- yeah.

4 MS. KARASIK: [Speaking off microphone.]

5 MR. KARASIK: But Mansard was intact in all  
6 the drawings that we showed, and by far most of the  
7 people that we were able to speak to that did open the  
8 door did support our project. A few of them expressed  
9 some reservations and did not volunteer to sign a  
10 letter of support. But certainly, most of the people  
11 that we were able to speak to did, so that's why I  
12 made the statement that I did.

13 A couple of more things that I'm not sure, but  
14 it seems that Bob said there are 10 opposition  
15 letters, there are 18 support letters. The 612 that  
16 Bob has been talking about, long-term residents  
17 outside of 200 feet zone, Jennifer mentioned that  
18 their third-floor addition was voluntarily set back,  
19 not made to be set back.

20 Some of the letters of opposition incorrectly  
21 have incorrectly stated their light and air would be  
22 affected, even though they are several houses down  
23 from our house.

24 MS. KARASIK: Yes, I would like to just add  
25 that the other addition in the block is at 620, and we

1 believe that -- we talked to that neighbors and the --  
2 I think the -- I think it was set back far behind the  
3 third-floor addition to not to exceed the 60 percent  
4 allowance, and those neighbors strongly supported our  
5 plans.

6 MR. KARASIK: One more item with regard to  
7 request for postponement. We have already -- this  
8 hearing was postponed by four weeks in order to  
9 accommodate Bob's objections and to revise the  
10 drawings, come up with new plans. We are a little bit  
11 under time pressure because my wife is due in October  
12 for our second child. Thank you.

13 CHAIRPERSON HILL: Okay. Okay. All right.  
14 Does the Board have anything else? No? All right. I  
15 hate to -- well, I shouldn't say hate this. I  
16 understand the time perspective that you guys have,  
17 but I am not going to be able to get to a point where  
18 I can make a decision today, and I don't know what the  
19 rest of the Board says in terms of their thoughts. I  
20 mean, I don't know what else we need from or in the  
21 record, if anything, in order to get to a meeting so  
22 perhaps we can do a meeting the next time.

23 I think, Commissioner Miller, you were  
24 interested in the perspective rendering that Mr. Lyons  
25 had spoke of.

1 MR. MILLER: Yeah, I think that would be  
2 helpful to have.

3 CHAIRPERSON HILL: Okay. So, Ms. Fowler, like  
4 a perspective rendering of the third story. And if  
5 you could submit that into the record for us, and then  
6 we can take a look. There's everything that Mr. Lyons  
7 has submitted today, in terms of the e-mails and the  
8 presentation. Ms. Fowler, I'm going to leave the  
9 record, I guess, unless the Board has any other  
10 thoughts, open for you and your applicant to submit  
11 anything if you do have anything that you want to  
12 submit after having a chance to look at those, the  
13 information that that the applicant has just submitted  
14 to us. So, I'll leave the record open for that as  
15 well.

16 And I guess I would also encourage the  
17 applicant and the party status in opposition, so  
18 obviously, I know you've been trying to work together.  
19 I know you're trying to get to a spot where you could  
20 get the opposition to sign off. I don't know what  
21 continued discussion could possibly get you to that  
22 point. If you could get to that point, that would be  
23 better for all parties because the added impetus is  
24 that if I could get to -- and I don't know if the  
25 opposition gets pulled, I can do a summary order. I

1 think.

2 Mr. Moy, is that correct?

3 And so, if you do get the opposition to agree,  
4 then you could get a summary order which maybe you  
5 could get under your time deadline. If not, then it  
6 would go to a full order and that takes a long time to  
7 get the writing done, and I'm sure Ms. Fowler can  
8 explain that to you as well, as to the added incentive  
9 to try to work with Mr. Lyons.

10 I guess, Mr. Lyons, again in terms of some of  
11 the things you brought up, you know, there was, you  
12 know, the ANC has voted to approve, although it was a  
13 tight vote. The Office of Planning is in approval of  
14 this application and they are the ones that we rely  
15 on, or at least I also rely on quite a bit, to come to  
16 a determination as to how the criteria is being met.  
17 So, again, as not being a zoning expert, and I don't  
18 actually claim to be a zoning expert myself, that you  
19 know, the Office of Planning is the ones that we kind  
20 of look at. So, they have gone through their criteria  
21 as to why this has met the test to actually move  
22 forward.

23 I tell you those things so that you could  
24 possibly work with your neighbor, because you know,  
25 there is a bit of a, you know, pulling yin and yang

1 going on. If everybody can get to the same point  
2 there's a benefit for both. And so, I guess that's it  
3 then.

4 Leaving the record, open, Mr. Moy, for the  
5 applicant to respond to the written testimony that's  
6 been submitted today. And, Mr. Lyons, if you can  
7 submit those into the records, you have two submittals  
8 for e-mail chains it looks like. And then also this  
9 slide -- or not slide presentation, but you know, the  
10 spiral binder. If you could submit that into the  
11 record.

12 MR. LYONS: And if I do that on IZIS then I  
13 don't have to make extra --

14 CHAIRPERSON HILL: Yeah, exactly.

15 MR. LYONS: -- copies. All right.

16 CHAIRPERSON HILL: I think that's correct.  
17 Correct, Mr. Moy, you don't have to go over and make  
18 copies. So, yeah, make sure that it gets uploaded  
19 into IZIS. IZIS? IZIS. IZIS.

20 And, we've got to change the name of that  
21 thing. And so, was it only two years ago?

22 MR. HART: Mr. Chairman.

23 CHAIRPERSON HILL: Yes?

24 MR. HART: Just one ask, I guess, or request.  
25 Ms. Fowler, you stated that there were other examples



1 of both setback and not setback. If you could provide  
2 a few of those. It does not have to be exhaustive.  
3 You know, several from the photographs of neighboring,  
4 you know, houses that are either on this street or a  
5 block up or down would be helpful to see that.

6 MS. FOWLER: Okay. But not specifically that  
7 are zoning approved, but just in general?

8 MR. HART: I mean, I'm just looking at just in  
9 general that --

10 MS. FOWLER: Just in general. Okay. That's  
11 fine.

12 MR. HART: Yeah, because I'm not sure how the  
13 -- yeah, and the zoning ones may be -- I'm not even  
14 sure how that would --

15 MS. FOWLER: It would be hard to track down.  
16 Yes.

17 MR. HART: Yes.

18 MS. FOWLER: Okay. We'll do that. Thank you.

19 CHAIRPERSON HILL: Mr. Moy, are we clear what  
20 we're asking for?

21 MR. MOY: I'd like to go over it very quickly,  
22 Mr. Chairman, so I -- for my own edification.

23 So, the applicant is to provide into the  
24 record, perspective drawing or rendering of the third-  
25 story. And I'm assuming that's in comparison or in

1 context with the adjacent buildings, homes.

2 MR. HART: Mr. Moy, can I make that -- could I  
3 actually adjust that a little bit to say that in the -  
4 -

5 MR. MOY: This is for you.

6 MR. HART: A street level perspective showing  
7 the building from -- actually, probably from both  
8 across the street and along the sidewalk. So, on the  
9 other side of the street and along the sidewalk. I  
10 guess it would be two then, because I think it's just  
11 showing a perspective rendering. You can show one  
12 that's, you know, bird's eye and a lot of other things  
13 that would not be as helpful. But I think those two  
14 would be helpful.

15 MR. MOY: Exactly. And then the sub B to that  
16 is which, Vice Chair Hart mentioned, was a sample of  
17 other setbacks nearby, or on the block, whatever you  
18 find.

19 And then as I understand it, then the Board is  
20 allowing Mr. Lyons to respond to your filings, to the  
21 applicant's filings. Yes? No? No?

22 CHAIRPERSON HILL: No.

23 MR. MOY: No? Okay.

24 CHAIRPERSON HILL: It's just that Mr. Lyons  
25 has submitted written testimony today and I wanted to

1 give the applicant an opportunity to respond to that  
2 testimony if they need to or want to.

3 MR. MOY: Okay. So, that would be it. So,  
4 Mr. Chairman, so I'm looking at -- this is a continued  
5 hearing or a decision meeting?

6 CHAIRPERSON HILL: I'd be fine with a decision  
7 meeting. Does the Board need anything else?

8 [No audible response.]

9 CHAIRPERSON HILL: Okay. Decision meeting.

10 MR. MOY: Okay. So, I'm looking at, I was  
11 going to say, if the timeline works for the parties,  
12 April 19th.

13 So, if the applicant can make your filings by  
14 -- in a week, or do you need more time or less time?

15 MS. FOWLER: I'm not going to be in town for  
16 that date. I don't know if this is a just -- do we  
17 present at all during that hearing, or no? Okay.

18 CHAIRPERSON HILL: So, you would need -- but  
19 you would need to submit everything by when, Mr. Moy?

20 MR. MOY: Well, if the Board is good with  
21 April 19th, then if the applicant can make their  
22 filings within a week. Let's say then it would be,  
23 let's say Wednesday, April 12th.

24 MS. FOWLER: I'm fine with that. I don't know  
25 if the neighbor is going to feel like that's enough

1 time, but I can't speak for him. But I think we can  
2 make that work from our end.

3 MR. LYONS: That's very difficult for me  
4 because we just took on a new contract and I've got  
5 training in Denver that I've got to put on.

6 CHAIRPERSON HILL: That's okay. I'm just  
7 trying to figure this out actually, also in the hopes  
8 that you do get a chance to talk with one another.  
9 But also when, Mr. Miller, are you back with us?

10 MR. MOY: It was the 19th.

11 CHAIRPERSON HILL: Oh, it's the 19th. Okay.  
12 So, we are going to do it the 19th. Okay? So, what  
13 that means, Mr. Lyons -- I don't know if you guys are  
14 going to get to a point where you can agree or not.  
15 You know, I mean, they have -- they are incentivized  
16 to work with you so that they can get a summary order.  
17 And again, that's something that Ms. Fowler can  
18 explain, which means you could possibly get to a place  
19 where you might be able to build sooner. Okay?

20 And, Mr. Lyons, you're incentivized because  
21 there's a variety of things we're taking into account  
22 in terms of the things we're supposed to take into  
23 account, which is great weight, in terms of the ANC  
24 has signed off, in terms of the Office of Planning, if  
25 you read their report in terms of the criteria. So,

1 I'm just letting you know, you both have a reason to  
2 try to get together and get to a place as soon as  
3 possible, if that is possible.

4 So, whether this -- it's not going to take  
5 more than -- you know, Ms. Fowler, you try and -- you  
6 guys try and set up a time and see if you can kind of  
7 get to anything that might get Mr. Lyons and your  
8 client together in the same place. I know you do  
9 these all the time, right?

10 And so, you know, you -- both the applicant  
11 and -- how do you say your last name again?

12 MR. KARASIK: Karasik.

13 CHAIRPERSON HILL: Karasik. Mr. -- the  
14 Karasiks, as well as Mr. Lyon and the Lyons here, you  
15 know, Ms. Fowler has been doing this for a long time  
16 and hopefully she can try to get you guys to a place  
17 where you could agree. The pressure is on you now,  
18 Ms. Fowler.

19 But you can leave -- I'm just trying to say  
20 like, leave right now, set up a time because the 19th  
21 -- and then a week before the -- when is filings  
22 again? The 12th.

23 MR. MOY: Well, yeah. What we could do is if  
24 there's no responses then we could make a decision on  
25 the 19th, a Wednesday, and get the applicant maybe

1 another date to work with the party opposition maybe.

2 CHAIRPERSON HILL: What day is that?

3 MR. MOY: It would be the 13th, which is a  
4 Thursday.

5 CHAIRPERSON HILL: Thursday.

6 MR. MOY: Unless you want to do a Friday, the  
7 14th.

8 CHAIRPERSON HILL: Friday is fine, the 14th.

9 MR. MOY: Let's do it Friday the 14th, gives  
10 the applicant a little more time.

11 MS. FOWLER: That's for filing?

12 MR. MOY: For filing.

13 MS. FOWLER: That's for filing. So, that  
14 means you will have had a conversation worked out,  
15 whatever you can work out, and then we'll have the  
16 opportunity to review the information by that Friday.  
17 Okay?

18 MS. FOWLER: And are we the only ones that are  
19 upload -- or, we're the only ones that have the file  
20 open, the applicant.

21 CHAIRPERSON HILL: Yes. Yes, the record is  
22 closed.

23 MS. FOWLER: It's closed.

24 CHAIRPERSON HILL: Other than -- yeah, and the  
25 ANC is always able to submit information. So, but as

1 far as like, you know, just you are the -- well, the  
2 applicant -- I'm sorry. The party status individual  
3 is going to submit the information that they have,  
4 you'll have an opportunity. Would you be able to do  
5 that relatively soon, Mr. Lyons? Submit the  
6 information in -- oh, you have the information. You  
7 have it in front of you. I'm just saying, if you have  
8 any comment about it, I just want to make sure you  
9 have time to look at that. So, that's what he's  
10 submitting.

11 MS. FOWLER: That's fine.

12 CHAIRPERSON HILL: Okay?

13 MS. FOWLER: A lot of these are e-mails we've  
14 been aware of --

15 CHAIRPERSON HILL: Okay. Okay.

16 MS. FOWLER: -- before, so.

17 CHAIRPERSON HILL: So, but if you can upload  
18 it into IZIS as soon as possible, that would be very  
19 good of you. And so, that's all I've got.

20 MR. MOY: I just got confused. So, Mr. Lyons  
21 is also filing something?

22 CHAIRPERSON HILL: Mr. Lyons has to give this  
23 stuff, put this into IZIS.

24 MR. LYONS: I'm going to upload it into IZIS.

25 MR. MOY: Oh, we were going to do the -- since

1 we have the hard copy --

2 CHAIRPERSON HILL: Oh, great.

3 MR. MOY: -- staff was going to do that.

4 CHAIRPERSON HILL: Oh, great. You're off the  
5 hook.

6 MR. LYONS: Oh, thank you.

7 CHAIRPERSON HILL: So you don't have to do it.  
8 That's great. Wonderful. Yeah. Okay. So, we don't  
9 need anything from you anymore, okay, in terms of the  
10 information. And then you will have an opportunity to  
11 respond by that Friday, to the information as well as  
12 the other items that were requested. Okay?

13 MR. LYONS: Can I just ask one question?

14 CHAIRPERSON HILL: Sure.

15 MR. LYONS: What happens on the 19th or will  
16 we be having --

17 CHAIRPERSON HILL: The 19th we're just having  
18 a meeting. I don't know if you were here at the very  
19 beginning or not, but we will decide. There will not  
20 be any more information taken into the record after  
21 that Friday.

22 MR. LYONS: So --

23 CHAIRPERSON HILL: You don't have to be here.

24 MR. LYONS: Okay.

25 CHAIRPERSON HILL: No, that's what my



1 colleague just said, actually out loud. But you can  
2 be here. Or you can watch. But there won't be any  
3 discussion from us with anyone. It's a meeting  
4 decision.

5 MR. LYONS: Got you.

6 CHAIRPERSON HILL: Okay?

7 MR. LYONS: Okay. I'm just trying to  
8 understand.

9 CHAIRPERSON HILL: Sure, of course.

10 MR. LYONS: Thank you.

11 CHAIRPERSON HILL: Sure. All right. Anything  
12 else? Okay. All right. Thank you all very much.

13 MR. LYONS: Thank you.

14 CHAIRPERSON HILL: Mr. Moy, do we have  
15 anything else?

16 MR. MOY: Not from the staff, sir.

17 CHAIRPERSON HILL: All right. Then we stand  
18 adjourned.

19 [Whereupon, at 2:50 p.m., the Public Hearing  
20 was adjourned.]

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