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

PUBLIC HEARING AND MEETING
OF THE BOARD OF ZONING ADJUSTMENT

9:37 a.m. to 1:31 p.m.
Wednesday, September 13, 2017

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

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6 MICHAEL MILLER, Zoning Commission

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

2 CHAIRPERSON HILL: All right. Good morning,
3 everyone. The hearing will please come to order.

4 Just so the audience knows what we're going to
5 do here, we're going to start off with, there's a
6 Foreign Missions case, and so we're going to be doing
7 that first and then we'll get on with our normal
8 meeting cases as well as hearing cases.

9 We're located in the Jerrily R. Kress Memorial
10 Hearing Room at 441 4th Street Northwest. This is the
11 9/13/2017 public hearing of the Board of Zoning
12 Adjustment of the District of Columbia, convening to
13 act on a chancery application pursuant to the Foreign
14 Missions Act, 22 USC 4301-4316, and Chapter 10 of the
15 zoning regulations.

16 My name is Fred Hill, Chairperson. Joining me
17 today is Board Member Lesyllee White. The federal
18 representatives are Marcel Acosta, representing the
19 National Capital Planning Commission, and Peter May,
20 representing the U.S. National Park Service.

21 Copies of today's hearings agenda are
22 available to you and are located in the wall bin near
23 the entrance door. Please be advised that this
24 proceeding is being recorded by a court reporter and
25 is also webcast live. Accordingly, we must ask you to

1 refrain from any disruptive noises or actions in the
2 hearing room. When presenting information to the
3 Board, please turn on and speak into the microphone,
4 first stating your name and home address. When you're
5 finished speaking, please turn off the microphone so
6 that your microphone is no longer picking up sound or
7 background noise.

8 All persons planning to testify, either in
9 support or in opposition, are to have filled out two
10 witness cards. Those witness cards are located on the
11 table near the entrance door and on the witness
12 tables.

13 Upon coming forward to speak to the Board,
14 please give both cards to the reporter sitting to the
15 table at my right. The order of procedures for a
16 foreign mission case is as follows: statement and
17 witness of the applicant; government reports,
18 including the United States Secretary of State, and
19 the District of Columbia Office of Planning on behalf
20 of the mayor; reports or recommendations by other
21 public agencies; report of the Advisory Neighborhood
22 Commission; persons in support; persons in opposition.

23 Please note that request for party status in a
24 chancery application are not applicable because it is
25 a rulemaking proceeding. The following time

1 constraints will be maintained and we'll work with the
2 applicant in terms of their case. Persons testifying,
3 whether in support or in opposition, will be limited
4 to three minutes, except as the ANC has additional
5 time if necessary. These time constraints do not
6 include questions from the Board. The Board may place
7 further reasonable restrictions on, or permit
8 additional time for testimony as it deems appropriate.

9 Because this is a rulemaking proceeding, there
10 are no parties, and therefore, there is no cross-
11 examination. The record will be closed at the
12 conclusion of each case, except it will remain open
13 for any materials specifically requested by the Board.
14 The Board and the staff will specify at the end of
15 the hearing exactly what is expected, and the date
16 when the materials must be submitted to the Office of
17 Zoning. After the record is closed, no other
18 information will be accepted by the Board.

19 The District of Columbia Administrative
20 Procedures Act requires that the public hearing on
21 each case be held in the open before the public,
22 pursuant to Section 405(b) and 406 of that act. The
23 Board may, consistent with its rules of the procedures
24 of the act, enter into a closed meeting on a case for
25 purposes of seeking legal counsel on a case, pursuant

1 to D.C. Official Code Section 2-575(b)(4), and/or
2 deliberating on a case pursuant to Section, D.C.
3 Official Code Section 2-575(b)(13), but only after
4 providing the necessary public notice, and in the case
5 of an emergency closed meeting after taking a roll
6 call vote.

7 The decision of the Board in this legislative
8 proceeding must be based exclusively on the public
9 record. To avoid any contrary, the Board requests
10 that persons present not engage the members of the
11 Board in conversation.

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

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

22 Mr. Secretary, do we have any preliminary
23 matters?

24 MR. MOY: Not with in reference to this
25 particular foreign missions case.

1 CHAIRPERSON HILL: Okay, great. So, if anyone
2 is here for the foreign missions case, as well as
3 anyone else who is going to testify later, if you
4 wouldn't mind please standing and taking the oath
5 that's going to be administered by the secretary here
6 to my left?

7 MR. MOY: Good morning.

8 [Oath administered to the participants.]

9 CHAIRPERSON HILL: All right, Mr. Moy. If you
10 could call our case, please?

11 MR. MOY: Yes. Thank you, Mr. Chairman. That
12 would be Application No. 19557. This is of the
13 Commonwealth of Australia, pursuant to 11 DCMR,
14 Subtitle X, Chapter 2, to replace an existing chancery
15 use by demolishing the existing Australian chancery
16 building and replacing it with a new chancery
17 building. This is in the MU-15 Zone at premises 1601
18 Massachusetts Avenue Northwest, Square 181, Lot 162.

19 CHAIRPERSON HILL: Good morning, everyone. If
20 you could please introduce yourselves from my right to
21 left here?

22 MR. SEAGROVES: Cliff Seagroves, acting
23 director of the Office of Foreign Missions, Department
24 of State.

25 MR. KABATT: Chris Kabatt with Wells and

1 Associates, representing the applicant.

2 MR. McPHILLIPS: Justin McPhillips from the
3 Australian Embassy.

4 MR. COLLINS: Christopher Collins, Holland and
5 Knight.

6 MR. LESLIE: Tim Leslie, Bates Smart
7 Architects.

8 MS. HOTALING-EIG: Emily Eig, EHT Traceries.

9 MR. DETTMAN: Shane Dettman, Holland and
10 Knight.

11 CHAIRPERSON HILL: We have new microphones and
12 there doesn't seem to be enough. You'll have to
13 share.

14 Okay. Well, welcome. Mr. Collins, are you
15 going to be presenting to us, or --

16 MR. COLLINS: I will.

17 CHAIRPERSON HILL: Okay. You're going to
18 start? Okay. Just, let's see, there's one
19 preliminary issue I guess, that Mr. Leslie is not in
20 our expert book. Mr. Leslie, where is again, Mr.
21 Leslie?

22 MR. LESLIE: Oh, sorry.

23 CHAIRPERSON HILL: That's okay, yeah. I
24 thought I had it right but I wasn't sure.

25 MR. LESLIE: You did. You did.

1 CHAIRPERSON HILL: Yeah. So, we've reviewed
2 your CV, and I don't have any issues. Does the Board
3 have any issues admitting him as an expert? So, we'll
4 go ahead and admit you into our book as an expert.
5 And if you ever make it back over here again, now
6 you're in our book so you can apparently work in D.C.
7 as an expert.

8 So, Mr. Collins, I guess, you know, we've had
9 an opportunity to review the record. I think the
10 record is pretty full, and I think that in terms of
11 efficiency, how much time do you think you might need?
12 And well, put it this way, I was going to think that
13 you could maybe do this in like 20 minutes.

14 MR. COLLINS: Mr. Chairman, it depends on who
15 you --

16 CHAIRPERSON HILL: Can you speak into that one
17 right there? It's just a little difficult.

18 MR. COLLINS: It depends on who you want to
19 hear from.

20 CHAIRPERSON HILL: Okay.

21 MR. COLLINS: We have five witnesses.

22 CHAIRPERSON HILL: Okay.

23 MR. COLLINS: You have the testimony of Mr.
24 McPhillips from the Embassy. We submitted that in
25 writing.

1 CHAIRPERSON HILL: Yes.

2 MR. COLLINS: So we could dispense with that
3 if you'd like.

4 CHAIRPERSON HILL: Okay.

5 MR. COLLINS: I think the bulk of the
6 presentation would be with Mr. Leslie. There is a
7 Historic Preservation report in the record. There is
8 a traffic report in the record, and Mr. Dettman's
9 report on the urban planning issues is contained in
10 pages 18 through 35 of our statement of the applicant,
11 which is Exhibit 41 of the record. So, we could
12 dispense with that as well if you'd like.

13 CHAIRPERSON HILL: Okay. I'm going to let you
14 go ahead and kind of walk me through it in whatever
15 judicious manner you can in terms of if we have -- you
16 have 20 minutes currently on the clock, and so I'll
17 let you go ahead and lead us through that. I don't
18 think there's any -- you know, I wouldn't mind hearing
19 from the embassy since they came down here and just,
20 you know, maybe an opening statement. Other than
21 that, I think right, the architects and Traceries
22 might be helpful from hearing from us.

23 MR. COLLINS: All right. Well, why don't we
24 do that? We'll start with Mr. McPhillips, and then
25 we'll go to Mr. Leslie, and then we can go to Ms. Eig.

1 CHAIRPERSON HILL: Okay, great. Thank you.

2 MR. COLLINS: Thank you.

3 MR. McPHILLIPS: Good morning. My name is
4 Justin McPhillips. I am the Council General and the
5 Minister Counselor for management at the Australian
6 Embassy, here in Washington, D.C.

7 Ambassador Hockey sends his greetings and has
8 asked me to represent him and the Australian
9 Department of Foreign Affairs and Trade, at today's
10 public hearing. This is a very important project for
11 our country.

12 Our embassy has been located at Massachusetts
13 Avenue and 16th Street for the last 50 years. Our
14 building is ready to be replaced. Our government
15 investigated whether to completely renovate and repair
16 the building instead of replacing it. However, after
17 a complete study and deliberation, it was concluded
18 that the extensive amount of renovations and repairs
19 necessary would still not achieve a first-class
20 environmentally friendly, safe and secure facility for
21 the 21st Century.

22 So our government made the decision to replace
23 the building. We held a nation-wide design
24 competition and selected the well-respected firm of
25 Bates Smart for the project. Bates Smart, in turn,

1 has assembled a team of highly experienced and well
2 qualified local U.S. professionals to help us navigate
3 through the Washington D.C. approval process, and to
4 address all the relevant issues. You will be hearing
5 from some of them today.

6 The project you are about to see is the result
7 of a collaboration among many stakeholders, both in
8 Australia and here in the United States. We believe
9 we have been particularly responsive to the local
10 authorities, who we have met with on numerous
11 occasions. We engaged with the local Advisory
12 Neighborhood Commission well before we filed our FMBZA
13 application. We have met and discussed the project
14 with our surrounding neighbors as well. I have
15 personally been involved in many of these meetings as
16 the ambassador's representative.

17 The relationship between Australia and the
18 United States is unique, characterized by a genuine
19 cultural affinity between our peoples, and a deep
20 level of political, strategic, and economic
21 engagement.

22 In 2018, Australia and the United States will
23 mark the centenary of mateship. A friendship first
24 formed in the trenches of World War I, during the
25 Battle of Hamel on July 4th, 1918. Information about

1 that celebration is included with the papers that
2 we've filed with you.

3 As the State Department has pointed out in
4 their letter to you, our government has been helpful
5 in addressing the needs of the U.S. Embassy in
6 Canberra, for safe, secure, and functional facilities.

7 We respectfully request that you approve our
8 application for our new chancery. Thank you, and I'll
9 be happy to answer any questions you may have.

10 CHAIRPERSON HILL: Thank you. Mr. McPhillips,
11 welcome. Thanks for coming down and I'm sure you've
12 had an experience going through the process of our
13 city, and then the ANCs, and it's just wonderful to
14 have you down here as well and I know that, you know,
15 we all wish you the best of luck in terms of your
16 project.

17 Does anyone have any questions?

18 [No audible response.]

19 CHAIRPERSON HILL: Okay. All right, Mr.
20 Collins.

21 MR. COLLINS: Thank you. Next is Tim Leslie
22 of Bates Smart. He has presented into the record, the
23 drawings at Exhibits 41B-1 and 41B-2. His architect
24 report is at Exhibit 41C-1 and 41C-2, which highlights
25 responses to the agency comments that we received

1 since the original application was filed. His outline
2 of testimony is at Exhibit 13, and he is prepared to
3 give his presentation.

4 CHAIRPERSON HILL: Great. Thank you.

5 MR. LESLIE: Good morning. So, my
6 presentation is approximate 10 minutes. I'll try to
7 be reasonably speedy.

8 CHAIRPERSON HILL: No, that's all right. This
9 is going very smoothly, very well. Please, you know,
10 just don't feel -- I don't want anybody to feel
11 rushed. I was just trying to get -- Mr. Collins
12 sometimes wants an hour and so I was just trying to --
13 I just was trying to cut that off as best I could.
14 But, thank you.

15 MR. LESLIE: Thank you. So, I'll just give a
16 brief overview to start with. So, the first, I guess,
17 15 slides here are talking about our competition
18 entry, which is back in 2016. Our winning competition
19 entry. And then I'll move through and I think there's
20 approximate another 10 slides on top of that which
21 talk about the changes that happened through our
22 engagement with the local authorities here in
23 Washington, D.C.

24 So, the challenge for us as architects was to
25 -- was put forward by the Australian government to

1 represent Australia in a building within our
2 Washington context. This is quite a tricky thing to
3 do. How do you manifest a building's culture through
4 a building?

5 What we sought to do was actually look at
6 aspects of Australian nature, what makes the continent
7 unique, and try to imbue aspects of that into our
8 building. And so one of the key things you understand
9 about our country when you visit, is the idea of the
10 expanse of the continent. The huge skies, the idea of
11 the horizon line, and the painterly qualities of the
12 landscape as can be seen here in this West Australian
13 image of Lake Ballard.

14 Another thing is the native flora and fauna.
15 Here we have eucalypt trees, gum trees. The foliage
16 of those trees are quite particular in terms of how
17 they cast a dappled light over the ground, and we're
18 very interested in incorporating those aspects of
19 light within the embassy. So ideas of direct
20 sunlight, dappled light, and so forth.

21 And then furthermore to that is, I guess, the
22 quintessential Australian, I guess emblem. Uluru, or
23 Ayers Rock as it's sometimes known in the Outback of
24 Australia. So, the coloration of the Outback was
25 quite significant to us in terms of imbuing a quality

1 to this building.

2 So, how does that manifest itself in terms of
3 a building in terms of Washington? The site, to us,
4 is incredible. It's on the presidential access, and
5 at the intersection of 16th Street and Massachusetts
6 Avenue.

7 What was of interest to us was in terms of the
8 L'Enfant Plan and indeed the ideas of democracy
9 represented in Washington and its architecture, was
10 they hark back to very much a Greek and Roman ideal,
11 and what we were interested in was, even though the
12 key buildings of Washington and an access, we are just
13 off access on this site, but it's a very important
14 building for Australia and our representative
15 component in this country.

16 So we were interested in the idea of how you
17 approach the building, and being on Scott Circle was
18 of great interest to us because you actually sweep
19 around the building, and you actually approach it from
20 a range of different angles, and that was a huge
21 opportunity.

22 So what we started looking at was how do we
23 imbue these types of qualities of Australia into the
24 building? So, in the interior we looked at using
25 natural materials, timber, and a range of different

1 screening devices to filter the light and get that
2 idea of a dappled aspect internally.

3 Externally, we were interested in the idea of
4 the colors of the Outback. And so, what we are
5 looking at here was on the top left of that image, is
6 a famous painting by Fred Williams. This is probably
7 one of the first pieces of artwork that actually
8 characterized Australia as you see it. Prior to that
9 most of the art was very much of cows on meadows, very
10 much that English pastoral approach, which just
11 doesn't exist in a drought stricken country.

12 So, those colors are really quite important in
13 the idea of the horizon line.

14 So then what we looked at was, how do you
15 represent that in a material. We started looking at
16 steel. Also, because we export a huge amount of
17 materials, like we mine, so that's a very important
18 part of our economy as well, so some of those
19 materials and representing them on the building.

20 The problem with steel is, it's quite a dark
21 material. But when you cut steel you get this burn
22 mark across it. And we were quite taken by that and
23 this idea of the burn mark representing the idea of
24 the horizon.

25 So, we continued in our endeavors of research

1 and we started looking to copper. And copper has
2 these beautiful tones that you see in the Australia
3 landscape. Also, if you apply flame or indeed an
4 alloy to copper, you can get a range of different
5 colors through there, to the blues and purples, as
6 well as the oranges and reds.

7 So, that takes us to the façade. So the
8 façade was a crenulated façade or constantinaed
9 (phonetic). This is to give a variety of different
10 lighting effects across the building, so rather in a
11 monolithic reading the building is actually broken
12 into these gentle woven elements, and those copper or
13 brass, indeed it might be a range of different
14 materials depending on our further research and the
15 weathering of those materials, brings on different
16 qualities of light throughout the day as the sun sets.
17 And this is indeed representative of what you might
18 see if you go out to see Uluru at sunset, which is a
19 famous thing to do as a tourist.

20 How that represents itself in the built form
21 is seen in these vignettes across the bottom. As you
22 move around the building it transforms itself. So,
23 closest to the Philippines embassy, which is on the
24 west of the building, or the lowest left-hand image to
25 the left there, it's a masonry building, and the

1 building responds to that by being more dense in that
2 element.

3 But as we move towards the Scott Circle and
4 towards the vista to the White House, the building
5 opens up and becomes more glassy and transparency, and
6 opening up in terms of a democratic position.

7 Then as you move around along 16th Street
8 towards the north, towards the First Baptist Church,
9 again, this idea of solidity comes back into the
10 building.

11 So, looking at the southern elevation, which
12 is the main entry to the building, we have a double-
13 high entry in the center of the building, completely
14 transparent. The idea is to welcome the passerby into
15 Australia. Australia is a very welcoming country.
16 The idea is, you can see straight through to the
17 building to the other side and see the landscaped
18 green wall on the other side.

19 Further to that, to the right-hand side of
20 that image down low, is the art gallery. The current
21 building has a gallery space, but it's actually
22 concealed inside. A lot of people go through. What
23 we want to do is promote Australia culture through
24 this art gallery, so it's on the signature corner of
25 Scott Circle.

1 Moving to the interior. So, as you move
2 through on that access, you get to the heart of the
3 building. And the heart of the building is flooded
4 with natural light in this glass atrium. This is a
5 key signature move, and as you move into the building
6 you look up to the sky and that connection back to
7 nature. The ground floor is clad in timber, so again,
8 this idea of warmth and the light coming from the side
9 is filtered through screens.

10 This cross-section running north/south
11 explains the diagram at the workplace setting and the
12 importance of that atrium space, and indeed the
13 interconnecting stair that links the floors together.
14 One of the issues that you find in an embassy is
15 because of the security arrangement since the
16 workplace gets solid. So this stair area allows for
17 people to interact throughout the building.

18 This is the floorplate showing how that
19 configuration works and the flexibility of a side core
20 and central atrium arrangement. And the
21 sustainability agendas of the building. We're aiming
22 for LEED Platinum. We may not be able to achieve that
23 through some of the security overlays. But in terms
24 of the workplace settings, which are more
25 standardized, we'll have those aspects. So, it's got

1 a green roof, solar panels, incredible amenity for the
2 workplace. That's a key component for the Australia
3 government.

4 Circulation is pretty straightforward. We've
5 simplified all of the vehicular access to the public
6 alleyway, where it belongs. In terms of the vehicular
7 drop-off for dignitaries and so forth, that's been
8 pushed to the southwest corner of the site, away from
9 the current intersection. And then the pedestrian
10 entries to the southeast, separated from the vehicles.

11 The building is wrapped in landscape. Indeed,
12 we are really interested in this idea of the building
13 being set amongst nature.

14 A security component is a key component in an
15 embassy, as you'd be aware. We've been working very
16 hard to actually conceal the security overlay to this
17 building. We have a two-meter perimeter zone which
18 needs to be kept clear for observation. And then
19 further to that we've got a five-meter standoff, which
20 is an anti-ram component in terms of an upstand wall
21 and bollards where we have movement through.

22 This is the competition diagram. This changed
23 as we worked with DDOT and UPO, to further refine the
24 security approach in terms of the landscape
25 principles.

1 So this was our competition entry in terms of
2 the ground plane. And what you'll see is the
3 predominant critique of the building was the lack of
4 street trees, first and foremost, and a range of other
5 aspects. So we had two street trees to Massachusetts
6 Avenue, four to 16th Street.

7 What we've done, working with the authorities,
8 is to double those to both sides. So we now have four
9 street trees to, as I jump to the FMBZA submission,
10 four to Massachusetts Avenue and eight to 16th Street.

11 We also put a second row of trees in. That
12 took quite some solving, but through perseverance we
13 figured out how we could get the porte-cochere and the
14 second row of trees to work harmoniously together.
15 And you can see that here. That's a second row of
16 Cercovas going through.

17 To 16th Street, we have a stand, or a series
18 of tops of trees, which are birch trees. Again,
19 that's to give a variety. Slender trunks, lighter
20 foliage to the oak trees that approach 16th Street.

21 I guess the rest of this type of landscape
22 setting and the reduction of the curb cut and so
23 forth, is covered in our submission. So I can come
24 back to this should you have any queries about the
25 further developments we did with the authorities to

1 refine this.

2 This is just showing greater detail of the
3 floorplan, the ceremonial access, and representational
4 spaces on the ground floor, and the gallery space and
5 how that works. Again, I can come back to that.

6 And the cross-section, talking about how the
7 anti-ram wall is concealed by a small two-foot azalea
8 shrub to the public side, which is going to be
9 increased to three foot based on feedback from the
10 authorities recently. And then a sloping hedge on the
11 inside face.

12 The sloping hedge to the inside face is a key
13 component in terms of when you're sitting on the
14 inside, you're in this ball of greenery, and when the
15 azaleas flower, it will be really quite dramatic being
16 inside those representational spaces looking out
17 towards the street, seeing these flowers and trees
18 within that setting.

19 One of the other aspects we were asked just
20 recently to look at was the porte-cochere, and the
21 number of verticals that were in the porte-cochere.
22 This is a delicate balance of getting the finest of
23 the structure, and the number of verticals.

24 What we've managed to do is reduce that from
25 six columns to five columns. So that's not in the

1 original drawings. This has been something that's
2 happened since. So, we're proposing to reduce the
3 number of verticals. So that opens up the vista to
4 the ground floor of the building. The five columns is
5 quite good because there's five states of Australia,
6 so there's a story you can build around that. Great
7 post-justification.

8 So finally, just some slides that take you
9 around the building in terms of how it's manifest
10 itself through this process. These don't have the
11 street trees shown, but as you move through the
12 general concept from the competition stage has been
13 maintained.

14 And then finally, the southern elevation. So,
15 this is showing the southern elevation with no trees,
16 with the second row of trees, and then finally not put
17 in our competition renders, but -- because we're way
18 too close, but this is with the street trees shown as
19 well.

20 What we like about this is the building is
21 encapsulated in landscape, and we get a range of
22 different coloration. When dignitaries arrive, they
23 pull in, into this avenue of trees, so a dappled lot
24 underneath the porte-cochere, and then they move
25 through, into the space.

1 So we believe that this building has captured
2 the quality that we're after, which is a variety of
3 different light settings, filtered light, direct
4 light, and the exterior actually captures the
5 qualities of the Australia landscape through this
6 coloration and so forth, whilst being contextually
7 responsive to the Washington context.

8 Thanks for your time.

9 CHAIRPERSON HILL: Thank you. Does anyone
10 have any questions for Mr. Leslie?

11 MR. MAY: So, one of the areas of relief
12 that's required for this has to do with the setback of
13 the penthouse. And I'm trying to understand why it
14 actually truly is necessary, because your elevator
15 core is far enough away from that side of the building
16 that the rest of it could move. There's a stairway
17 there that might be causing part of the problem, but
18 it's next to what looks like a utility space. I don't
19 know why that couldn't move. Can you explain to me
20 why it's necessary that you -- why you could not meet
21 the setback requirement for the penthouse?

22 MR. LESLIE: So, in terms of the configuration
23 of the roof plan and its relationship back to the
24 core, so there's a range of things. One is that the
25 green area ratio that we're after across that whole

1 context is required to get the 0.3 requirement. So,
2 dislocating the plant and moving it further away from
3 the core has an impact on that.

4 MR. MAY: But you don't have to move it like
5 five or six feet, right?

6 MR. LESLIE: It has quite a dramatic -- I can
7 pull up the roof plan if you'd like.

8 MR. MAY: Yeah, sure.

9 MR. LESLIE: I've just got to find the folder.
10 [Pause.]

11 MR. LESLIE: So what we've been seeking to do
12 in terms of this configuration and locating the core
13 where it is, is a range of things. So, one is that
14 the parapet -- so first of all, in terms of the
15 intent, what we perceive the intent of the setback.
16 So we're going from the top of the parapet --

17 MR. MAY: Doesn't have to do with intent. I'm
18 talking about the literal reading. It's supposed to
19 be set back a distance equal -- set back a distance
20 equal to its height off of the roof.

21 MR. LESLIE: Yeah.

22 MR. MAY: And the parapet is just gravy. So,
23 explain to me why it's necessary that it be that
24 close. That's all.

25 MR. LESLIE: Okay. So, there's a range of

1 reasons. So, from inside, as well -- so externally,
2 we wanted to move it as far away as possible from the
3 main intersection, so the Massachusetts access and the
4 16th Street access.

5 MR. MAY: Right.

6 MR. LESLIE: In terms of the atrium and the
7 internal perspective as well of the space, it was key
8 not to have the core visible from the interior
9 component. But in terms of the plant as well, it's
10 about having it adjacent to the riser shafts that go
11 up and down through the building in terms of -- so the
12 mechanical system, the --

13 MR. MAY: So, where are the shafts in this
14 drawing?

15 MR. LESLIE: So, they're located around -- can
16 you see my mouse on your --

17 MR. MAY: Yeah.

18 MR. LESLIE: Yeah. So there's risers kind of
19 down --

20 MR. MAY: Got it. I see that.

21 MR. LESLIE: -- here, and they also had
22 dropped down through there, and there. So, moving
23 this space across and away ends up building -- putting
24 more mass over to this side of the building to the
25 south, or indeed over to the north. And then in terms

1 of the running of the ducts that comes through, those
2 ducts then all get larger to do that extra run.

3 So if I go down a floor, these are the riser
4 shafts running through the building here, feeding from
5 the roof.

6 MR. MAY: You know, ordinarily I would push
7 back on this and ask you to look at redesigning it
8 because these are all things that, in my view, can be
9 accommodated. And we have vast experience in dealing
10 with things like this and how much things actually can
11 move. I mean, your air shafts are 25 feet away from
12 the edge of the building. That's not really driving
13 the rest of it. It's how you arrange the other stuff
14 around it.

15 Can you tell me, in those various views that
16 you have of the building, do you have something that
17 captures the view down that alley so we could see
18 whether it's actually visible?

19 MR. LESLIE: Yup. So that's a view down the
20 alleyway.

21 MR. MAY: Right. And you had that other one
22 that was a composite of like nine images. Are any one
23 of those a better view? Yeah, I mean, one of those
24 top ones. Okay. I'm going to try to pull that up on
25 my screen because it's a little hard to see on the one

1 that I'm looking at there.

2 [Pause.]

3 MR. MAY: All right. So, we're seeing that
4 little black line is a little bit of the penthouse?

5 MR. LESLIE: That's right.

6 MR. MAY: Yeah, I mean, that's the problem
7 that I have, is that visibility because you know,
8 you're taller than the building next door, so it's not
9 just that it's on an alley. It's that it's visible
10 from the street. And it gets worse as you get further
11 up the street.

12 [Pause.]

13 MR. MAY: So, I understand, it's set back 5-
14 11, and it's what, nine or 10 feet tall, right? I'm
15 just saying, it could have been 10 feet if you had
16 taken the setback consideration, or the setback
17 requirement, a bit more seriously, I think you could
18 have done it. But I'm not going -- you know, I'm not
19 going to push to get it changed because it is -- I
20 mean, it's otherwise a beautiful building. It's
21 really not highly visible. But I mean, it is a
22 serious requirement and there are reasons why, and you
23 see it in the rendering, you know, a little bit
24 further down the street why we want to have it set
25 back.

1 If there were occupiable space on the roof, I
2 most definitely would have pushed to have that setback
3 reduced. Or increased. But since there's no
4 occupiable space, I'm not going to make an issue. So,
5 thank you.

6 CHAIRPERSON HILL: We've had a lot of issues
7 with penthouse setback in recent day -- not days. In
8 recent months. And so, that's why it again continues
9 to kind of get brought up, and Mr. Collins could also
10 testify to that as well.

11 But you seem to be doing well, so I'm going to
12 keep my -- keep moving along. Maybe Mr. May is going
13 to Australia sometime soon, I'm really not sure. Or
14 maybe not. That's true, you never know how this plays
15 out.

16 Ms. White, you had a question?

17 MS. WHITE: I'm just trying to follow some of
18 the integration of some of the conditions that were
19 suggested to you by OZ, like the bicycle racks,
20 upgrading of streetlights, parking spaces for bikes.
21 I saw on Competition Sheet 13, you had a little line
22 that said bicycle access. It was like a dotted green
23 line. But I didn't actually see where that is
24 located. So, this is kind of minor compared to what
25 Mr. May suggested, but there were conditions that were

1 suggested.

2 MR. LESLIE: Okay. I can answer that. So in
3 terms of the visitor bicycle parks, they're located
4 just in this corner here.

5 MS. WHITE: Okay.

6 MR. LESLIE: There was a request that recently
7 came through to look at whether we could relocate them
8 closer to the entry. The reason why we've got those
9 bicycle racks where they are is a multitude of
10 reasons.

11 So first of all, those bikes are going to be
12 used by couriers quite a lot. Our loading dock is
13 down the alley way. So the requirement of the visitor
14 park is that it has to be within 120 feet, I believe,
15 of the main entry, which we are. So we met the
16 requirement. But also, we're not allowing basically
17 delivery of parcels through the front entry. They all
18 go through the back. We have our own screening at the
19 rear in the loading dock. So some of our deliveries
20 and visitors will be using these bike racks to deliver
21 down there. And then others will be perhaps someone
22 like me, coming to visit and riding. And so, I could
23 equally park there.

24 The other aspect is the security component of
25 the bikes. So our security booth is located in the

1 southwest corner, and that was a key component of the
2 whole brief. In fact, it was the only thing that was
3 stipulated in the competition brief, was the security
4 had to be located there. The reason for that is they
5 have oversight of the public alley and it only goes up
6 and down the public alley. Anyone who arrives in
7 terms of the porte-cochere, has got oversight by the
8 security guards, including bicycles. And then further
9 to that, an entry into the building.

10 Bikes are quite important to us, and as you
11 can see at the northern end of the site, all of our
12 staff bikes are above ground level as well because
13 we're not allowed to take the bikes under the
14 building. So they're separated out as well.

15 So the other key components, and then further
16 to that in terms of the ceremonial access, having
17 bicycles on that also isn't really quite becoming of
18 the main -- like we have for Australia Day we'll have
19 up to 500 people within the building for that. And so
20 there's a huge amount of people, traffic, that comes
21 back out through there as well.

22 So we've kept the bikes as being a mode of
23 transport, they've been with the other cars and so
24 forth under the oversight of the security guard and
25 close to the loading dock. That's the rationale.

1 MS. WHITE: Thank you. Just so I have it on
2 my calendar, what's the date for Australia Day?

3 MR. LESLIE: The 26th.

4 MS. WHITE: Thank you.

5 MR. LESLIE: It's under 26th of January, but
6 there's a bit of pushback at the moment back home
7 because it's not very considerate for the indigenous
8 people. It's called Invasion Day. So, yeah.
9 Probably shouldn't have that on the record, actually.

10 MS. WHITE: Understood. Understood.

11 CHAIRPERSON HILL: Okay, great. Thanks.

12 Let's see. Mr. Collins, I don't know if we wanted to
13 -- does anybody have any more questions for Mr.
14 Leslie?

15 [No audible response.]

16 CHAIRPERSON HILL: Whether we wanted to hear
17 from Traceries just briefly, I guess, if you want to
18 give a small report on the -- or if you have anything
19 to add. Actually, not even add. If you can summarize
20 what we have seen in the record, that would be great.

21 MS. HOTALING-EIG: So, I'm Emily Eig with the
22 EHT Traceries, and we did a study of the compatibility
23 in order to meet the Foreign Missions Act requirement
24 for an assessment of historic preservation effect, we
25 might call it. And we did a report, which you have

1 seen.

2 To summarize, and I will actually just do this
3 very quickly. I have a really nice presentation that
4 I'm not going to show you, so but that's okay.

5 CHAIRPERSON HILL: Thank you.

6 MS. HOTALING-EIG: You're welcome. The
7 important thing is that we used -- well, first, the
8 important thing is that this is a noncontributing
9 existing building, and Historic Preservation Office
10 has concurred with that. It was built in 1969. It's
11 outside of the period of significance for the historic
12 district.

13 The Historic Preservation guidelines were used
14 as the guidelines for the assessment evaluation.
15 Historic Preservation Review Board has adopted these
16 guidelines, and they include 12 factors of
17 compatibility, but they have four overriding design
18 principles, and one is that a new building should
19 enhance the existing environment with its -- that's
20 part of its compatibility with neighboring buildings.

21 That compatibility is achieved through careful
22 intention of 12 different factors. Compatibility does
23 not mean duplication of existing building or
24 environment. A new building should be seen as a
25 product of its own time.

1 And fourth, that to reproduce the building
2 creates a false sense of history; that by relating to
3 the existing buildings and environment, but being of
4 its own time, a new building shows a district's
5 evolution, just as the existing buildings show its
6 past.

7 So we went through each of those 12 factors
8 and assessed the building. And I can list those
9 factors to you. Just, I won't go through the whole
10 thing. Okay. And that we did find that the
11 building's design demonstrates compatibility with the
12 16th Street Historic District, and Embassy Row, which
13 we took into account because it is at that juncture of
14 16th Street and Embassy Row, Massachusetts Avenue
15 district doesn't come this far, but actually is a
16 continuation thereof, in your experience.

17 CHAIRPERSON HILL: Okay, great. Thank you.
18 Does the Board have any questions?

19 [No audible response.]

20 CHAIRPERSON HILL: Okay. All right. I'm
21 going to, Mr. Collins, I'm going to start turning to
22 different departments here. I'm going to start over
23 with the Office of Planning.

24 MS. THOMAS: Good morning, Mr. Chair and
25 members of the Board and FMBZA. Karen Thomas with the

1 Office of Planning.

2 The Office of Planning essentially requests
3 that the Board not disapprove the Community of
4 Australia's request to replace its chancery building
5 at the corner of 1601 Massachusetts Avenue, and within
6 the historic districts of 16th Street and
7 Massachusetts Avenue.

8 Our analysis focused on the municipal interest
9 which included the zoning, zoning requests that they -
10 - zoning relief that they requested, and the public
11 space and historic preservation issues which were
12 intertwined.

13 DDOT also had some comments and concerns,
14 which I think the applicant sufficiently addressed.
15 I'm not going to speak for DDOT. They have their
16 report, but I do note that it had some conditions in
17 their report.

18 And with that, I'll essentially stand on the
19 record of our report and I'll be happy to take any
20 questions. Thank you.

21 CHAIRPERSON HILL: Does the Board have any
22 questions for the Office of Planning?

23 MS. WHITE: No.

24 CHAIRPERSON HILL: All right. Does the
25 applicant have any questions for the Office of

1 Planning?

2 MR. COLLINS: No, sir.

3 CHAIRPERSON HILL: Okay. I guess we have to
4 hear from the State Department also.

5 MR. SEAGROVES: If you'd like.

6 CHAIRPERSON HILL: Well, that's what it says
7 on my notes, so.

8 MR. SEAGROVES: Yes. You know, we've
9 submitted our standard letter to the record that we
10 don't have anything different to say from that, but I
11 can go into more detail if you'd like.

12 We certainly support this project and the
13 Australia government has been very helpful with our
14 building and land-use needs in Sydney, Melbourne,
15 Perth, and Canberra. And so we hope to be able to
16 reciprocate that by your decision not to disapprove
17 their application.

18 CHAIRPERSON HILL: Anybody have any questions
19 for the State Department?

20 [No audible response.]

21 CHAIRPERSON HILL: All right. Okay. I don't
22 think the applicant has any questions for the State --
23 I don't even know if that's what the next step is,
24 because this doesn't happen that often, for me.

25 Okay. Let's see. So, is there anyone here

1 from the ANC wishing to speak?

2 [No audible response.]

3 CHAIRPERSON HILL: Is there anyone here
4 wishing to speak in support of the application?

5 [No audible response.]

6 CHAIRPERSON HILL: Is there anyone here
7 wishing to speak in opposition to the application?

8 [No audible response.]

9 CHAIRPERSON HILL: All right. Okay. Then,
10 let's see. Mr. Collins, I guess the only couple
11 questions I have, the applicant agrees with all the
12 conditions that were set forth by DDOT, right? That
13 all kind of --

14 MR. COLLINS: Well, let me address those if I
15 may?

16 CHAIRPERSON HILL: Sure.

17 MR. COLLINS: I'm looking at the page 2 of
18 their report, and their report is Exhibit 45 of the
19 record. And on the middle of page 2 they listed five
20 points that says, first of all, I think we've
21 addressed this, but the location of the short-term
22 bicycle parking spaces are required to be relocated
23 closer to the main entrance. In fact, they are not
24 required by the zoning regulations to be relocated.
25 11C DCMR, Section 804.2 states that short-term bicycle

1 parking spaces are required to be within 120 feet of a
2 primary entrance to the building. And Mr. Leslie
3 explained why they are located where they are. They
4 are in full compliance with 11C DCMR, Section 804.2,
5 and we'd rather that they stay where they are.

6 CHAIRPERSON HILL: Okay.

7 MR. COLLINS: Secondly, the two-foot high
8 hedges need to be increased to three feet. I don't
9 think we have a problem with that. DDOT requires that
10 the street lights be upgraded to current DDOT
11 standards. I think that's a standard condition they
12 have whenever there's a development of a property,
13 that the adjacent street lights be upgraded. I think
14 that's a standard requirement.

15 CHAIRPERSON HILL: Okay.

16 MR. COLLINS: The public alley is required to
17 be designed and built to DDOT standards using concrete
18 rather than blue limestone. We think that blue
19 limestone would be very nice, but if they want
20 concrete, we'll be happy to do concrete.

21 And then the number and width of vertical
22 beams must be reduced, and Mr. Leslie went through
23 that study. That's something that we're able to get
24 that done since the time we got this report, and it
25 works, and it represents the five states of Australia,

1 so that is very fortunate. So, yes, those are the
2 answers to the conditions.

3 CHAIRPERSON HILL: Okay. So, you're agreeing
4 to condition 2, 3, and 4.

5 MR. COLLINS: And five.

6 CHAIRPERSON HILL: And five. Well, five you
7 made the changes. Now. Okay, and five, right.

8 MR. COLLINS: The changes were met when the
9 work -- yes.

10 CHAIRPERSON HILL: Okay. All right. And
11 then, I'm just curious, how did the ANC meeting go?
12 Like --

13 MR. COLLINS: Very well. We engaged with the
14 ANC several times. We had -- before we filed the
15 application, we invited the ANC commissioners to a
16 meeting at the embassy so they could see the existing
17 embassy, see the gallery and have an informal
18 discussion. And unfortunately, only one of the
19 commissioners was able to make it that evening, but
20 she did come.

21 We subsequent scheduled a meeting with the SMD
22 commissioner at the architect's office, and did the
23 same presentation to him at lunch. And he had some
24 good ideas, some good thoughts, and directed us to
25 discuss with the General Scott Condo across the

1 street; gave us the contact information.

2 We engaged with them. We contacted them
3 twice. They were not -- they did not respond with any
4 interest of a presentation until most recently where
5 we did make a presentation to them. One other member,
6 a board member, found out about it, invited us over
7 and we made a presentation. It was like a town hall
8 with about 50 residents there. And that went very
9 well.

10 And then we did go to the full ANC, to their
11 two separate meetings. They have a Planning and
12 Zoning Committee meeting, where it went very well. It
13 was a lot of discussion, a lot of questions, and we
14 were the only -- fortunately, we were the only ones on
15 the agenda because it went very long, but it was all
16 very good. And then we went to the full ANC and they
17 endorsed it unanimously.

18 CHAIRPERSON HILL: Okay. Okay, great. All
19 right. Does the Board have any more questions for
20 anybody?

21 MR. ACOSTA: I just had a quick question. I
22 just wanted to get some clarification. I don't know
23 if anybody from DDOT is here today?

24 MS. THOMAS: No.

25 MR. ACOSTA: Okay, because I'm just trying to

1 figure out how to resolve the first condition. Do you
2 happen to know if their request to relocated the bike
3 parking was more of a preference, or they have a
4 strong objection to the location that the applicant
5 had originally proposed?

6 MS. THOMAS: In the meetings, I was kind of
7 surprised to see that written into the record. That
8 didn't have much discussion with respect to that
9 short-term biking. The long-term biking brought some
10 questions, but that was resolved, but not so much the
11 short-term biking because it did meet the
12 requirements.

13 MR. ACOSTA: Okay.

14 MR. COLLINS: Mr. Acosta, if I may address
15 that? I wasn't going to bring this up unless it
16 became an issue, but it is a federal law in the
17 Foreign Missions Act, Section 4306(b)(3) of the
18 Foreign Missions Act says that in each of the areas
19 described in the paragraphs 1 and 2, which includes a
20 chancery in the MU-15 Zone, the old SP Zone, the
21 limitations and conditions applicable to chanceries
22 shall not exceed those applicable to other offices or
23 institutional uses in that area.

24 So any other office or institutional use could
25 have their short-term bicycle parking spaces within

1 120 feet of a primary entrance.

2 MR. ACOSTA: Understood. I was just trying to
3 ascertain kind of the rationale for DDOT's
4 recommendation to us. So I understand the point that
5 you're making.

6 MR. COLLINS: Yeah.

7 MR. ACOSTA: I just wanted to ask the City if
8 they had a particular reason for requesting this
9 relocation.

10 MR. COLLINS: We had two or three meetings,
11 joint meetings hosted by Office of Planning. We had a
12 separate one at DDOT. This issue didn't come up until
13 we had this report. So this is something we didn't --

14 MR. ACOSTA: Okay. Well, that's what Ms.
15 Thomas mentioned, so I just wanted to understand the
16 basis of that recommendation that they made to the
17 body. Thank you.

18 CHAIRPERSON HILL: Okay. So just to be clear
19 for me again, and I'm just going to read them because
20 we're going to do the, not to disapprove at some
21 point. The conditions are the two-foot high hedges
22 that are adjacent to the ram wall along 16th Street
23 shall be increased to three feet in height to match
24 the height of the security ram wall and fully obscure
25 it. Yes?

1 MR. COLLINS: Correct.

2 CHAIRPERSON HILL: Okay. The street lights
3 shall be upgraded to current DDOT standards with LED
4 fixtures. Correct?

5 MR. COLLINS: Yes.

6 CHAIRPERSON HILL: The public alley shall be
7 designed and built to DDOT standards using concrete
8 rather than blue limestone as proposed?

9 MR. COLLINS: Yes.

10 CHAIRPERSON HILL: And then the number and
11 width of the vertical beams of the ports must be
12 reduced?

13 MR. COLLINS: They have been reduced. The
14 plan that this is reacting to had six.

15 CHAIRPERSON HILL: No, I understand.

16 MR. COLLINS: Okay.

17 CHAIRPERSON HILL: I just want to hear yes.

18 MR. COLLINS: Yes. We have -- yes.

19 CHAIRPERSON HILL: Okay. Okay, great.

20 MR. COLLINS: Yes, we have already --

21 CHAIRPERSON HILL: Thank you. And how do you
22 say it?

23 MR. COLLINS: Porte-cochere. Go ahead.

24 MR. LESLIE: Porte-cochere.

25 CHAIRPERSON HILL: Okay. Thanks.

1 MR. LESLIE: And could I just quickly --

2 CHAIRPERSON HILL: Sure. Sure.

3 MR. LESLIE: I just wanted to, because Justin
4 will pull me up later. I'm very embarrassed to say
5 that we actually have six states in Australia, not
6 five. So, you should never do things on post-
7 justification on the fly. So, we've got a seven-
8 pointed star, six states and one territory, and our
9 territories.

10 MR. ACOSTA: I was going to ask about the
11 territories too.

12 MR. LESLIE: Yeah, so it's a seven -- yeah.
13 Yeah. So, apologies.

14 CHAIRPERSON HILL: Well, thanks for providing
15 that clarification because I was, from here on out,
16 going go right down to the death and be like, there
17 are five states. You know? I mean, the Embassy came
18 before us and so, okay, there's six. That's good.
19 Thank you for clarifying that.

20 All right. Does the applicant have anything
21 further to add?

22 MR. COLLINS: No, sir.

23 CHAIRPERSON HILL: Okay. I'm going to go
24 ahead and close the hearing. Is the Board ready to
25 deliberate?

1 [No audible response.]

2 CHAIRPERSON HILL: Okay. Obviously, they have
3 done -- well, I can start. I mean, they have done
4 their due process homework and what, you know, we are
5 charged with doing is making sure that the issues and
6 regulations of the city are also adhered to, which I
7 believe they have been. I do understand the comment
8 that Mr. May had brought up and I do think that it's a
9 justified comment. However, I would be in favor of
10 moving forward with this project. Does anyone have
11 anything else they'd like to add?

12 MR. MAY: Yeah, I don't need to repeat myself
13 when it comes to the rooftop setback. I was just
14 thinking, you know, a lot of the conditions that came
15 out of the DDOT report actually aren't relevant to the
16 case, I think. I mean, I understand that there are
17 certain requirements and certain things that they want
18 to have done, and they mostly have to do with public
19 space. They're not, I mean, you know, the street
20 lights. That's not -- I mean, I'm just saying this
21 because I don't think it needs to be a condition of
22 our order that these things be met. They've said
23 they're going to do them. I think that's
24 satisfactory, so.

25 CHAIRPERSON HILL: So you're making my job

1 more confusing and harder. Is that --

2 MR. MAY: I'm trying to make your job easier.

3 CHAIRPERSON HILL: Oh, really?

4 MR. MAY: I'm trying to make OAG's job easier.

5 CHAIRPERSON HILL: Okay. All right. Okay.

6 Okay. Does anyone have any comments on Mr. May's
7 comments?

8 [No audible response.]

9 CHAIRPERSON HILL: All right. Ms. White, did
10 you have something to say?

11 MS. WHITE: No, I'm satisfied from the
12 presenters that they're meeting the standards and I'm
13 comfortable with recommending that the BZA not
14 disapprove.

15 CHAIRPERSON HILL: Okay. Then I'm going to go
16 ahead and make a motion not to disapprove Application
17 No. 19557 of the Community of Australia to demolish
18 and replace existing chancery in the existing
19 Australian chancery building and replace with a new
20 chancery building in the MU-15 Zone at premises 1601
21 Massachusetts Avenue Northwest, Square 181, Lot 162.

22 MS. WHITE: Second.

23 CHAIRPERSON HILL: The motion has been made
24 and seconded.

25 [Vote taken.]

1 CHAIRPERSON HILL: And I do think, I have to
2 make a separate motion, and this, Mr. Moy, you can
3 help me if this isn't correct, but a separate motion
4 not to disapprove the relief as encouraged by the
5 Office of Planning?

6 MR. COHEN: That's correct.

7 CHAIRPERSON HILL: Okay.

8 MR. COHEN: And, Mr. Chair, you should
9 probably specify which conditions you're imposing, or
10 choosing not to impose.

11 CHAIRPERSON HILL: We're choosing not to
12 impose any of the conditions.

13 MR. COHEN: That's totally your call.

14 CHAIRPERSON HILL: Right. So, yes. Okay. So
15 again, I'm going to make a motion not to disapprove
16 the relief as encouraged by the Office of Planning.

17 MS. WHITE: Second.

18 CHAIRPERSON HILL: Motion has been made and
19 seconded.

20 [Vote taken.]

21 CHAIRPERSON HILL: Motion passes, Mr. Moy.
22 Both motions pass.

23 MR. MOY: Yes, I'm going to combine the vote.
24 So staff would record the vote as four, to zero, to
25 one. This is on the motion of Chairman Hill to not

1 disapprove. Seconding the motion, Ms. White. Also in
2 support, Mr. Peter May and Mr. Marcel Acosta. We have
3 a board seat vacant. The motion carries, sir.

4 CHAIRPERSON HILL: Okay, thank you. Summary
5 order. Is that --

6 MR. MOY: It's a rulemaking.

7 CHAIRPERSON HILL: Rulemaking. Rulemaking
8 proceeding.

9 And is it Mr. McPhillips? I'm sorry. Mr.
10 McPhillips. So, thanks for coming down. It's been a
11 pleasure to be here and, you know, this is something
12 that I'll remember also now is, I get to kind of like
13 drive by that building. It's an amazing corner and
14 you know, anything -- I love those State Department,
15 anything that, you know, we can do obviously to help
16 further on our friendship, it's just, it's been, it's
17 a pleasure.

18 MR. McPHILLIPS: Thank you, Mr. Hill. Also
19 (garbled speech) to the ambassador, and thank you for
20 your time this morning.

21 CHAIRPERSON HILL: Thank you. All right.
22 Thank you, all.

23 We actually are going to take a three-minute
24 break as we change people. Thank you.

25 [Off the record from 10:30 a.m. to 10:38 a.m.]

1 CHAIRPERSON HILL: Good morning, everyone.
2 We're going to get back started in our regular portion
3 so I have to read, basically, a lot of the similar
4 things that I had to read before, but bear with me.

5 We're located in the Jerrily R. Kress Memorial
6 Hearing Room at 441 4th Street Northwest. This is the
7 September 13th, 2017 public hearing of the Board of
8 Zoning Adjustment of the District of Columbia.

9 My name is Fred Hill, Chairperson. Joining me
10 today is Carlton Hart, Vice Chair, Lesyllee White,
11 board member, and representing the Zoning Commission
12 for one of our discussion cases is Rob Miller. And
13 then Peter May will be with us once again, later in
14 the day.

15 Copies of today's hearing agenda are available
16 to you and located in the wall bin next to the door.
17 Please be advised that this proceeding is being
18 recorded by a court reporter, and is also webcast
19 live. Accordingly, we must ask you to refrain from
20 any disruptive noises or actions in the hearing room.

21 When presenting information to the Board, please turn
22 on and speak into the microphone, first stating your
23 name and home address. When you're finished speaking,
24 please turn off your microphone so it's no longer
25 picking up sound or background noise.

1 All persons planning to testify either in
2 favor or opposition must have raised their hand and
3 been sworn in by the secretary. Also, each witness
4 must fill out two witness cards. These cards are
5 located on the table near the door and on the witness
6 table. Upon coming forward to the Board, please give
7 both cards to the reporter sitting at the table to my
8 right.

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

16 The order and procedures for special
17 exceptions and variances, as well as appeals, are also
18 listed in the bin as you come into the hall.

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

1 Board.

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

15 The decision of the Board in cases must be
16 based exclusively on the public record, so to avoid
17 any appearance to the contrary, the Board requests
18 that persons present not engage the members of the
19 Board in conversation.

20 Please turn off all beepers and cell phones at
21 this time so not to disrupt the proceedings.

22 Preliminary matters are those which relate to
23 whether a case will or should be heard today, such as
24 request for a postponement, continuance, or
25 withdrawal, or whether proper and adequate notice of

1 the hearing has been given. If you're not prepared to
2 go forward with the case today, or if you believe that
3 the Board should not proceed, now is the time to raise
4 such a matter.

5 Mr. Secretary, do we have any preliminary
6 matters?

7 MR. MOY: Thank you, Mr. Chairman. Very
8 quickly, I do, administratively for today's docket.
9 Rather, Appeal No. 19550 of ANC 6C has been postponed,
10 rescheduled to October 4th. Application No. 19547 of
11 Todd Helmus and Rena Rudavsky, I believe, has been
12 postponed, rescheduled to October 18th. And
13 Application No. 19459 of Andrew Phillips, has been
14 withdrawn by the applicant.

15 Finally, the only other matter, preliminary
16 matter I have for the Board, whether or not you want
17 to entertain this at the moment or later in today's
18 hearing but --

19 CHAIRPERSON HILL: No, that's fine.

20 MR. MOY: There is an application that is
21 scheduled for hearing on September 27th, 2017. It's
22 Application No. 19508 of John Tekeste. There is a
23 procedural motion where the applicant is requesting to
24 postpone and reschedule to a later date this year.
25 And that is in the case records under Exhibit 60.

1 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.
2 So, yeah. If the Board is ready to deliberate or
3 speak upon this matter in terms of the postponement.
4 The reason why I'm bringing this one up is that this
5 is the third time that we're postponing this case.
6 And so, if the Board is in agreement, I would move to
7 postpone this.

8 However, I would like to point out to the
9 applicant that this is the last time we will probably
10 entertain the motion unless there is some real
11 critical reasons as to why we're not -- why would we
12 not be able to move forward with this after this next
13 time. This is the third postponement.

14 So, does the Board have any additional
15 thoughts to that, or is that fine?

16 [No audible response.]

17 CHAIRPERSON HILL: Okay. All right. Then,
18 Mr. Moy, let's postpone this. Is there a time when we
19 can do it so that we think there's enough, again, time
20 for the applicant to have their case ready for us?

21 MR. MOY: Yes, sir. I would, as suggested by
22 the applicant, which is the last hearing of this year,
23 which would be December the 20th. So the Board, at
24 your discretion, you either go with that date, the
25 last hearing of 2017, on the 20th of December. Or if

1 you want to move it to January the 10th. But, I guess
2 2017 is a good year.

3 CHAIRPERSON HILL: Sure. I mean, that's two
4 months from now, or three months from now.

5 MR. MOY: Yeah. Yeah.

6 CHAIRPERSON HILL: Sure, that's fine.

7 MR. MOY: Okay.

8 CHAIRPERSON HILL: Okay. Great. Thank you.

9 Okay. And for the audience here, we're
10 basically going in the order -- well, how is it, we're
11 jumping around. We're going in the order of the
12 meeting cases. However, we're going to do the appeal
13 case first in terms of our decision cases. And then
14 we're going to basically follow the order of the
15 hearing cases with the exception that we already have
16 heard now the application for the Community of
17 Australia.

18 So with that, Mr. Moy, would you like to call
19 the appeal case?

20 MR. MOY: All right. Thank you, Mr. Chairman.
21 I had to find the right page.

22 Okay. I believe that would be Appeal No. --
23 this is for decision making. This is Appeal No. 19505
24 of 57th Street Mews, Inc., pursuant to 11 DCMR,
25 Subtitle 7, Section 302, from the decision made on

1 February 28th, 2017 by the Zoning Administrator,
2 Department of Consumer and Regulatory Affairs, to
3 revoke building permit No. B, that's B as in Bravo,
4 1307755, to permit the construction of an addition to
5 a one-family dwelling and conversion to an 18-unit
6 apartment building in the R-4, formerly the C-2-A
7 Zone, at premises 1511 A Street Northeast, Square
8 1070, Lot 0094.

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

11 Okay. I can go ahead and start in terms of
12 what I hope is helpful in providing a framework. I
13 was pretty -- I had a difficult time with this. I
14 think I know where I am, and so I'll share with that
15 as I kind of go through and see what the Board has to
16 say on their different positions.

17 So, just in terms of kind of framing my
18 thoughts here, June 14th, 2013 is when the appellant
19 filed their -- the original application. Then,
20 December 8th, 2014 is when there was the map amendment
21 at the Zoning Commission.

22 March 12th, 2015, was when there was a letter
23 requiring new plans from DCRA concerning the
24 application of the appellant.

25 In March 20th, 2015, there was a letter

1 rejecting the application and requiring a new
2 application from the appellant.

3 Then May 29th, the effective date of the
4 Zoning Commission case rezoned the property to R-4.
5 So that was the date when the permit needed to have
6 been completed in order to -- or before that date, I
7 should say, in order to have qualified for the higher
8 density zone.

9 Then in June 16th, 2016, the OAH rendered a
10 decision that the rejection of the building permit was
11 an error, and they, DCRA and the applicant, understood
12 that there was 70 days, 70 additional days to get
13 their permit finished in order to fall within the
14 higher density zone before the -- it was, you know,
15 downzoned to the R-4.

16 July 27th, the owners submitted plans to DCRA
17 for new plans for application pursuant to the OAH
18 order.

19 September 7th is when the 70-day window had --
20 no. September 7th is when they actually got their
21 permit issued. So, now this is when I get kind of a
22 little backed up here.

23 So if -- DCRA started the 70-day clock on June
24 16th, which is when the OAH order came out. And so
25 that means that the plans had to be accepted by --

1 now, this is where I'm lost.

2 [Pause.]

3 CHAIRPERSON HILL: Right. Thank you. So,
4 August 25th is when the permit would have had to have
5 been issued. If you go with the applicant, and they
6 say that the 27th, which is the date? Twenty-fifth.
7 Oh, let's see. If the applicant would then be able to
8 get their order in by the 9th -- oh, now I'm lost.
9 I'm completely lost. Can somebody help me with the
10 timeline here again?

11 MS. WHITE: So, I mean, so basically there
12 were kind of like three options with respect to the
13 70-day period. So, the first one that you stated was
14 that, which was the DCRA position, was that the 70
15 days from the OAH decision, which was June 16th, 2016,
16 which means that the date would be August 25th, 2016,
17 which is DCRA's position that the effect is that the
18 permit was issued in error and properly revoked, which
19 is their position.

20 The other position, which is the applicant's
21 position, was that 70 days from when DCRA accepted
22 plans on July 26th --

23 CHAIRPERSON HILL: Thank you.

24 MS. WHITE: -- which means that the permit
25 would not be issued in error and it would be

1 improperly -- and improperly revoked. So, that day
2 would be October 5th, right?

3 CHAIRPERSON HILL: Yes.

4 MS. WHITE: 2016. And so there's also a third
5 position, which would be 70 days from the July 1st
6 filing of the applicant, which means the permit would
7 not be issued in error and it would also be improperly
8 revoked. So that would mean you would look at the
9 date September 9th, 2016.

10 CHAIRPERSON HILL: Thank you, Ms. White.

11 MS. WHITE: Is that right, Mr. Chairman?

12 CHAIRPERSON HILL: Thank you, Ms. White.

13 Okay. This --

14 MS. WHITE: I'm the newbie on the block, so
15 I'm trying.

16 CHAIRPERSON HILL: No, I -- oh, I appreciate
17 that very much. I got lost in my whole thought
18 process here.

19 MS. WHITE: Happens to me all the time.

20 CHAIRPERSON HILL: So, we are talking about
21 pretty close timelines here in terms of, even if you
22 get to October 5th.

23 The struggle that I had was what would be kind
24 of a -- I was even just thinking what was kind of a
25 fair and -- you know, what would be fair in terms of

1 if the property owner, you know, it was just kind of
2 difficult for how long it took for them to get through
3 this process with DCRA.

4 I also thought that the community had gone
5 through a very lengthy process in terms of getting the
6 property downzoned from C-2-A to R-4. And I thought
7 about how long that process takes, and how serious a
8 process that is. One has to get, you know, as many
9 people on board as possible in the area. You have to
10 go before the zoning commission. There's a lot of --
11 and the zoning commissioner here would be able to
12 attest that it's not an easy thing to do and it takes
13 time and it's a lengthy process.

14 My thoughts were that from June 14th, 2013,
15 you know, to when the case started on December 8th,
16 2014, is a considerable amount of time. And that I
17 would think that the applicant would have been aware
18 of this possibility that the set down, you know, was
19 going before the Zoning Commission and then would do
20 their best to even, you know, try to fight it or what
21 have you. So, I was kind of going back and forth
22 between the community and what they had done in terms
23 of what their process was, and what they testified to
24 in terms of they had done everything accordingly to
25 get that area downzoned from C-2-A to R-4. And then

1 at the other side, I was conflicted with how the
2 amount of time that the applicant and the struggle
3 that the applicant had possibly gone through. And
4 then this was a very complicated -- I mean, we heard
5 the case for a very long time. There was, you know,
6 the D.C. Engineer's seal was not accurate, I mean, and
7 so things that I thought the applicant should have
8 been more aware of also, and so there was kind of
9 fault on their side for the time and how long it took
10 DCRA to get their act together with the applicant.

11 So, and so that's where I've been kind of
12 struggling with this. And again, I'm going to turn it
13 all over to my fellow board members in a moment. But
14 I kind of came down on that you know, there was a
15 certain date that the -- again, which date you choose
16 is the date to follow. And I was siding on the side
17 of DCRA in terms of their 70 days starting after June
18 16th, which means that the applicant permit falls
19 outside of the window, and therefore it needed to be
20 R-4 zoned, and therefore it was not improperly, the
21 permit was not improperly rejected.

22 And so I came down, at this point, on that
23 side. And anybody can go next.

24 MS. WHITE: I can chime in a little bit in
25 terms of where I'm thinking.

1 I think part of the main questions that we
2 have to decide whether or not the permit issuance date
3 of September 7th, 2016 by DCRA, falls within the
4 equitable vesting date. September 7th, you know, was
5 the date that DCRA issued the permit as compliant with
6 the requirements of C-2-A Zone District. But in
7 making this determination, the question is also
8 whether or not the equitable vesting date falls within
9 one of the 70-day windows.

10 The 70-day window is derived from the timeline
11 from March 20th, 2015, erroneous rejection, to May
12 29th, 2015, which was the date of the downzoning of R-
13 4 permits issued thereafter are vested under R-4.
14 Part of my analysis is also that in reviewing the case
15 and the record, that I believed that the facts support
16 that DCRA was erroneously rejection of the building
17 permit application on March 20th, 2015, and OAH's
18 final order on June 16th, 2016, supports the fact that
19 the March 20th rejection was erroneous and directed
20 the applicant to file new plans.

21 I'm persuaded by the applicant's submission on
22 July 1st, revives the original application and the
23 vesting rights are back in place under the old C-2-A
24 zoning regs. So, even if we adopted the appellant's
25 argument that the 70 days starts when DCRA accepted

1 their July 26th plans, the permit would still not be
2 issued in error or improperly revoked.

3 So the other question that I had is that, you
4 know, did OAH's order bring to life the vesting
5 rights. And DCRA says that no, that the new plans on
6 July 26, 2016 were reviewed under the R-4 Zoning
7 standards. But the appellant says yes, were you know,
8 we calculate the number of days from the time that the
9 applicant application was canceled, to the date of the
10 case 14-20 adoption, which was May 29th, 2015, as 70
11 days.

12 So in my view the application would be in the
13 appellant's view, the building was properly -- the
14 building permit was properly issued under the vested
15 C-2-A zoning rules under the 70-day rule.

16 So where I am right now is applying the
17 vesting provisions to the facts of the case. I would
18 rule in favor of the applicant. The application for
19 the building permit was filed prior to the
20 commissioner's set down of the case 14-20, and vested
21 under C-2-A, where the valid permit was issued on
22 September 7th, 2016. So my view is a little bit
23 different. It's a complicated case.

24 CHAIRPERSON HILL: Mr. Miller?

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

1 thank you, Ms. White, both for your discussion.

2 This is a very convoluted case and the amount
3 of back and forth and off and on and revisions and
4 revivals, and it's just mind boggling, and I'm sure,
5 frustrating for all those concerned, including the
6 property owner and the neighborhood, and the DCRA, I'm
7 sure, as well. And I'm not sure what's all involved
8 in all that. And I understand the equities that each
9 of you were laying out.

10 But I personally don't want to subscribe to
11 the equitable vesting issue, and I'm not basing my own
12 decision in this case on a 70-day deadline that starts
13 somewhere under somebody's clock, and starts another
14 place under the applicant's clock, and another clock
15 under DCRA.

16 I'm much more inclined to go with the
17 intervener. I think they are the intervener. ANC,
18 Brian Alcorn, straight forward argument on the lack of
19 vesting under the clear language and plain meaning of
20 the zoning regulations, because the permit that was
21 issued in September 2016, then subsequently revoked,
22 but the permit that was issued in September 2016, was
23 16 months after the property was rezoned to R-4 by the
24 Zoning Commission in May 2015.

25 Moreover, I believe that there wasn't even a

1 substantially completely application filed prior to
2 the Zoning Commission's R-4 downzoning set down in
3 December 2014. The vesting rules require a
4 substantially complete application, and we know that
5 the application had been both rescinded with numerous
6 comments in May of 2014, and then its approval was
7 revoked in October 2015, with testimony from the
8 Zoning Administrator at our hearing, that the
9 revocation was based not only about the substantial
10 deficiency regarding the lack of the professional
11 engineering certification, but also the lack of
12 information to verify the building height measurement
13 based on the grade of the property, which turned out
14 to be over three feet too high, which would require
15 excavation to lower the first floor by that three plus
16 feet.

17 So to my mind, all of the subsequent revivals
18 or reinstatements, or the rejections, or even the
19 revocations and rejections of the application by DCRA
20 after the December 14th Zoning Commission rezoning set
21 down, are irrelevant to me, except they are all
22 subsequent to the set down. And so my view, the most
23 restrictive advertising -- restrictive zoning
24 advertised in the set down, R-4, applies under the
25 vesting rules, as long as that was the zone ultimately

1 adopted by the Zoning Commission, which it was.

2 So I may get to the same result as you do, Mr.
3 Chairman, but it's just I'm a -- I can't buy into the
4 whole 70 day -- it's just too much. And I think that
5 the plain meaning of the vesting rule allows us to say
6 that it hadn't vested, even though I respectfully -- I
7 respected your argument as to why on the equities, you
8 might want to find otherwise.

9 So that's where I am. I hope I didn't make
10 that more convoluted.

11 CHAIRPERSON HILL: No, Mr. Miller, I thought
12 you did that very well. I thought you did it better
13 than I did.

14 MR. MILLER: So, that's where I am.

15 CHAIRPERSON HILL: So, thank you. Mr. Hart?

16 MR. HART: So, I guess it comes down to me to
17 figure out where we are with all of this.

18 MS. WHITE: Absolutely.

19 MR. HART: And, I appreciate the comments of
20 my fellow board members, and I do also reiterate that
21 the case had a lot of, definitely a lot of back and
22 forth between the DCRA and the appellant. And I
23 understood that, you know, there was an added piece in
24 this that described the -- or that it included the
25 rezoning for the site. Excuse me. It's not the

1 rezoning for the site. It's a rezoning for the square
2 or the area. It's a much larger area than just the
3 site itself.

4 And it kind of -- to me, it kind of came down
5 to when the Office of Administrative Hearing, the OAH,
6 issued an order, their order was really trying to --
7 it had the effect of turning back the clock, and that
8 -- and the way in which I -- the reason which I say
9 that is, in the order they actually made null and
10 void, the DCRA revocation of the building permit from
11 March 20th of 2015. And ordered that the petitioner
12 submit to DCRA, and that DCRA should accept for
13 filing, new plans prepared and stamped by a
14 professional engineer licensed to practice in the
15 District of Columbia.

16 And to me, what that did was say, this is how
17 you should proceed. DCRA looked at -- and DCRA
18 submitted a letter to the applicant telling them that,
19 you know, what was kind of going on with this, with
20 the OAH, and what DCRA's position was. And the
21 applicant, after the June 16th, OAH, Office of
22 Administrative Hearing -- excuse me, June 16th, 2016
23 order, the applicant provided plans under a new
24 professional engineer license that was stamped, on
25 July 1st of 2016. And then that application was

1 approved by the -- by DCRA on July 26th of 2016 --
2 excuse me, they were -- it was not approved. It was
3 accepted by DCRA on July 26th.

4 And then, on September 7th of 2016, DCRA
5 issued the permit so they approved the application as
6 the complaint -- excuse me. As the project was
7 compliant with the requirements of C-2-A and not the
8 R-4.

9 And in that, DCRA -- in my reading of that was
10 that DCRA had looked at the application and made the
11 determination that the C-2-A was the correct zoning
12 for the site, regardless of what had happened in May
13 29th, 2015, which was the effective date of the
14 rezoning to R-4.

15 And that part is what kind of stuck out with
16 me, because after that September 7th, 2016 date, the
17 DCRA then revoked the permit in February 28th, which
18 was five months later. A little more. Six months
19 later. February 28th of 2017. And so it seemed as
20 though that the developer had submitted professional
21 drawings in a fairly timely manner that took some time
22 to go through the process. The developer, the
23 appellant in this case, received a permit that they
24 believed was valid in September of 2016. And they
25 were kind of moving forward in my estimation, and it

1 seems as though that is what we should be really
2 looking at.

3 I understand the arguments that my fellow
4 board members are making. I just feel that if we're
5 looking at the case and trying to address the issues
6 that are at hand, it seems as though in my reading of
7 this, that the application revocation on February
8 28th, 2017 was not proper for DCRA's part.

9 I understand that there are a lot of different
10 parties to this, and understanding of this. I just
11 have a difficult time going back to the C-2-A --
12 excuse me, going back to the R-4 zoning rezoning date
13 which was May 29th, 2015, when the Office of
14 Administrative Hearing case was almost -- actually,
15 over a year later. And the order that was issued
16 after that seems as though it was kind of resetting
17 the clock.

18 And DCRA seemed to understand that in
19 developing the 70-day timeline and time frame, and
20 that 70-day time frame was really created because of
21 the difference in time between March 12th, 2015, when
22 the DCRA letter went out kind of rejecting the
23 application, but not rejecting it. It was saying that
24 there were some deficiencies, and the May 29th date of
25 2015 when the zoning was -- the rezoning from the C-2-

1 A to the R-4 took effect.

2 And so, I kind of understand all the process.

3 It is just difficult for me to get to a point where
4 DCRA, it seems as though, has made some errors in the
5 process. Quite a few errors in the process. And I
6 think that in this case, the equitable way to kind of
7 look at this is through how the -- starting at the
8 Office of Administrative Hearing order, which was June
9 16th, and understanding that they required that new
10 plans be prepared at that time. We got new plans, or
11 there were new plans that were accepted, and then a
12 permit was given on September 7th, which seems like
13 it's a fairly short period of time for permits.

14 We heard from, and had testimony as well as
15 read in the record, that we were looking at a, you
16 know, four to six-month regular review period for
17 projects, and it seems as though this is kind of
18 within all of that time frame.

19 And so, I would be on the side of the
20 appellant in this case, and thinking that the permit
21 would be a valid permit for C-2-A Zone district.

22 CHAIRPERSON HILL: Okay. Thank you. I
23 thought that was also well said.

24 Mr. Miller, did that change anything for you?

25 MR. MILLER: No, thank you.

1 CHAIRPERSON HILL: Okay. No, thank you.

2 MR. MILLER: It looks like we're going to have
3 two failing motions.

4 CHAIRPERSON HILL: Ms. White, did any
5 discussions that we had, or did any discussions that I
6 had or that Mr. Miller have, put you over on our side,
7 or are you still over there with Mr. Hart?

8 MS. WHITE: I'm -- my position hasn't changed.
9 I'm trying to keep an open mind to see what, and
10 hearing Mr. Hart I think almost made my position even
11 stronger. But I also looked at it from an equitable
12 perspective in terms of the back and forth, and you
13 know, and I think that's why the 70-day rule kind of
14 comes into play in order to, you know, allow an
15 equitable approach to making a decision with respect
16 to this case, and making a determination about whether
17 or not the C-2-A reg applies, or the R-4 Zoning would
18 apply in this case.

19 So in my -- where I am right now, I still feel
20 as though, you know, the C-2-A should apply in this
21 particular case.

22 CHAIRPERSON HILL: Okay. All right. I have
23 taken the discussion into account and am not able to
24 change my position right now. And so, I think, Mr.
25 Moy, I'm trying to see where this puts us at.

1 So we're at -- it seems we're in a two/two,
2 and so what I would possibly suggest, since we only
3 have four right now, is to maybe put this on -- like,
4 let us all kind of have a little opportunity to look
5 at this again and think about it again, and then maybe
6 we can come back to it either next week or -- well,
7 you know, the week after that because I'm actually not
8 here next week.

9 So, we could maybe put it on the meeting case
10 again for two weeks from today, and see if after
11 having an opportunity to think about the discussion
12 that we have here, if any one of us change our minds.

13 And hopefully we don't flip-flop and change our minds
14 back to two/two. But Mr. Moy, does that sound
15 reasonable. I don't know. Or do we have to make
16 motions where we get to a deadlock?

17 MR. MOY: Mr. Chairman, I've seen it both ways
18 from the Board. Traditionally, a member would make a
19 motion --

20 CHAIRPERSON HILL: Okay. Okay.

21 MR. MOY: -- and vote on it, and then that
22 sets the stage for --

23 CHAIRPERSON HILL: All right. Okay.

24 MR. MOY: -- the two/two.

25 CHAIRPERSON HILL: All right. So, that's

1 good. So I'm going to make a motion to reject Appeal
2 -- no. Yeah. Make a motion to reject Appeal No.
3 19505 and ask for a second.

4 MR. MILLER: Second.

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

7 [Vote taken.]

8 CHAIRPERSON HILL: Okay. So we've got two
9 nays, right? So, two nays and two -- so, the motion
10 fails. Would somebody like to make a motion the other
11 way?

12 MR. HART: I'll make a motion to approve
13 Appeal No. 19 -- looking for the number now. 19505,
14 making a motion to approve the appeal as read by the
15 secretary.

16 MS. WHITE: Second.

17 CHAIRPERSON HILL: Motion has been made and
18 seconded.

19 [Vote taken.]

20 CHAIRPERSON HILL: So the motions don't pass.
21 So, Mr. Moy, we're going to go ahead and put this
22 back on the meeting calendar for two weeks from today.

23 MR. MOY: All right. That would put you at
24 the last hearing in September, which would be
25 September the 27th.

1 CHAIRPERSON HILL: Okay. Mr. Miller, when are
2 you back with us?

3 MR. MILLER: I'm not sure, but I'll be
4 flexible.

5 CHAIRPERSON HILL: Okay. Thank you. I need
6 you. Or not. I don't know.

7 Okay. So, all right. So we'll close that
8 meeting case, Mr. Moy. And I need like three minutes
9 again, real quick.

10 [Off the record from 11:18 a.m. to 11:27 a.m.]

11 CHAIRPERSON HILL: We're going to get back
12 started again, and it is a little disjointed today
13 because of the embassy case, and then some decision
14 cases that have taken longer to process. And so, just
15 bear with us here a little bit for those in the
16 audience because the next thing we're going to do is -
17 - we still have to call the second part to the case
18 that we heard, or the case that we deliberated upon
19 just a moment ago. And then also there are two items,
20 Application No. 19546 and then also Application
21 16334A, which we will then hear next because the
22 commissioner whom will be sitting on those cases is
23 Michael Turnbull, and he is not here. So, we're going
24 to be processing those with an absentee ballot. And
25 then we'll get Mr. May back up here and we can get

1 back on with our normal routine.

2 So just wanted to let everybody know about
3 that. And so, Mr. Moy, if you would like to call the
4 second half of that previous case. Or not second, not
5 second half. But just if you could call the next
6 case, please?

7 MR. MOY: Yes. Thank you, Mr. Chairman. On
8 the heels of Appeal 19 -- on the heels of Appeal
9 19505, is the consolidated appeals of 19410 and 19412
10 of ANC 6C and ANC 6A. And as the Board will recall,
11 at the July 19th hearing, the Board determined to hold
12 their decision on this consolidated appeal in abeyance
13 until a decision of -- until a decision is rendered on
14 Appeal No. 19505.

15 CHAIRPERSON HILL: Okay, thank you.

16 MR. MOY: Which you just held.

17 CHAIRPERSON HILL: Thank you. So, I would
18 make a motion that we hold -- and I don't even know if
19 it's a motion, Mr. Moy. You can tell me if it's not.
20 But I would go ahead and make a motion to hold that
21 case in abeyance until the week of the 27th, I think
22 it was, two weeks from today. I would ask for a
23 second.

24 MR. HART: Mr. Chair, it's two cases.

25 CHAIRPERSON HILL: Oh, both cases, then.

1 Thank you. Hold both cases in abeyance.

2 MR. HART: Second.

3 CHAIRPERSON HILL: The motion made and
4 seconded.

5 [Vote taken.]

6 CHAIRPERSON HILL: The motion passes, Mr. Moy.
7 We'll move that to the 27th.

8 MR. MOY: Yes, thank you, sir. All right. So
9 that brings us to -- okay, here we go. Oh, here we
10 go. All right. That brings us to Application No.
11 19546 of Ademiluyi. This, as amended for special
12 exception relief under Subtitle E, Section 5203.3;
13 from the rooftop architectural element requirements of
14 Subtitle E, Section 206.1(a); from the penthouse
15 requirements of Subtitle C, Section 1500.4; and from
16 the penthouse setback requirements of Subtitle C,
17 Section 1502.1(c)(2). This would construct a rear
18 addition to an existing one-family dwelling in the RF-
19 1 Zone at 2521 12th Street Northwest, Square 2862, Lot
20 140.

21 CHAIRPERSON HILL: Okay, thank you. Is the
22 Board ready to deliberate?

23 MR. HART: Yes, sir.

24 MS. WHITE: Yes.

25 CHAIRPERSON HILL: Okay. So, I can start.

1 After going through the hearing and going through the
2 record again, I didn't have a lot of issues with the
3 project in terms of the relief that has been
4 requested. There was some discussion from
5 Commissioner Turnbull in terms of the penthouse, and
6 he had asked the applicant to submit some additional
7 plans and drawings.

8 There was one that I think got rid of the dog
9 leg, and then another one that had a sloped roof. I
10 believe that I personally found the sloped roof to be
11 more appealing, and I thought that that would have
12 been something that Commissioner Turnbull had kind of
13 alluded to. And if that were necessary -- I'm sorry.
14 And if we were to do that, then the applicant would
15 need to also be granted relief from unequal heights,
16 which is, I believe, C-1500.10. And I would turn to
17 the Office of Planning to ask for clarification on
18 that.

19 Before I do that, I just wanted to see what
20 the Board had to say.

21 MR. HART: Mr. Chairman, yeah, and I would --
22 I also read the record and kind of went through the --
23 reviewed the new documents that the applicant has
24 submitted. In looking at the documents, I also had
25 the same concern that Commissioner Turnbull did,

1 regarding the size of the proposed penthouse. And
2 they have reoriented the penthouse so that it is no
3 longer as wide looking as it is. It's actually just a
4 straight run now, and that helps to reduce the
5 visibility, or at least the way that -- how much can
6 be seen from the street, and from other vantage
7 points. So, I think that they've definitely made an
8 improvement in the design, and would be supportive of
9 that. But I would like to hear from the Office of
10 Planning as well.

11 MS. WHITE: I concur with both of you. I'm
12 comfortable with, actually with both options. I mean,
13 obviously the slope option is more appealing. So I'll
14 reserve my vote until Office of Planning has had a
15 chance to weigh in.

16 CHAIRPERSON HILL: Okay, great. Thanks. So
17 just turning to the Office of Planning again, and
18 clarification on, or comments on anything you possibly
19 have heard. I'm most interested in, again, the Office
20 of Planning's thoughts on the sloped roof and whether
21 or not they would be in approval of the relief that
22 would need to be requested for that.

23 MR. MORDFIN: Good morning. I'm Stephen
24 Mordfin with the Office of Planning. And they would
25 need special exception relief in order to do the slope

1 as shown on the drawing that the applicant submitted,
2 A-007-C. I believe it's from 1500.9 that they would
3 need that relief, not 1500.10, that they would need
4 the relief to do the sloped roof from the -- I don't
5 know if you received the supplemental report that the
6 Office of Planning submitted dated September 12th.
7 And based on that, that says whether you could have a
8 sloped roof.

9 So I'm not sure if it's a roof or if it's a
10 wall that the applicant -- how you would define that,
11 what the applicant has submitted in that drawing.

12 CHAIRPERSON HILL: Okay. So but, and this is
13 based upon information that I had received earlier in
14 terms of the 1500.10. And so, the Office of Planning
15 however, would be in support of the relief in 1500.9
16 for the sloped roof design, correct?

17 MR. MORDFIN: Yes.

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

21 MR. HART: Just a kind of point of
22 clarification. Mr. Mordfin, did you say that you had
23 submitted a supplemental?

24 MR. MORDFIN: Yes.

25 MR. HART: And I know I was just looking in

1 the record now and I didn't see it. You said that it
2 was submitted yesterday?

3 MR. MORDFIN: Yes. It was submitted to BZA
4 submissions.

5 MR. HART: Okay.

6 MR. MORDFIN: Because there was only one week
7 between the last hearing, and so --

8 MR. HART: I was not saying in the lateness, I
9 was just saying that I hadn't seen it on our -- in the
10 exhibits, and I just wanted to understand when it was
11 submitted.

12 But I actually have heard your testimony and
13 that would suffice for me.

14 CHAIRPERSON HILL: Okay. Actually, the
15 applicant is here, correct? If the applicant could
16 come forward just for a moment?

17 If you could just introduce yourself for the
18 record? And did you guys get sworn in earlier?

19 MR. ADEMILUYI: Yes.

20 CHAIRPERSON HILL: Okay. And if you can fill
21 out witness cards. Did you fill out witness cards?
22 Not yet? Or, okay, just give them to the transcriber,
23 please, after you're done testifying.

24 Could you state your name for the record
25 again?

1 MR. ADEMILUYI: Good morning, everyone. It's
2 Oluseyi Ademiluyi.

3 MR. BOSTAM: And this is Shamur Bostam.

4 CHAIRPERSON HILL: Okay. So, you've heard
5 everything that we've said and so I just wanted to
6 clarify you guys, I mean, if this seems to move
7 forward the Board seems to be leaning towards the
8 sloped roof option. And so, you understand what we're
9 talking about, correct?

10 MR. ADEMILUYI: I do.

11 CHAIRPERSON HILL: Okay.

12 MR. BOSTAM: Yes.

13 CHAIRPERSON HILL: All right. Okay. You
14 don't have any questions for us, do you?

15 MR. BOSTAM: Well, the way the application
16 stands right now is that we're not asking for that
17 relief, but it's just a procedural --

18 CHAIRPERSON HILL: If I understand correctly,
19 I mean, you can ask for the requested relief verbally
20 now. So we would be adding to your relief, a special
21 exception for C-1500.9. And that is something you
22 would like to do. Yes?

23 MR. ADEMILUYI: Yes.

24 MR. BOSTAM: Yes.

25 CHAIRPERSON HILL: Okay. Is that good enough?

1 All right.

2 MR. MORDFIN: Yeah, that's sufficient.

3 CHAIRPERSON HILL: Okay. All right. Okay.
4 All right. So, okay. Pardon me?

5 MR. ADEMILUYI: No, I was just a little
6 concerned --

7 CHAIRPERSON HILL: Yeah.

8 MR. ADEMILUYI: -- is that definitely the
9 correct one?

10 CHAIRPERSON HILL: Yeah. No, that's the
11 correct one. Yeah. At least that's what the Office
12 of Planning is telling me, so, though -- yeah, it's
13 the correct one.

14 Let's see. Okay. So, that's it. So, thank
15 you very much, gentlemen.

16 So back to the Board here. Does the Board
17 have any questions for anybody?

18 MR. HART: No, sir.

19 CHAIRPERSON HILL: Okay. All right. Then I'm
20 going to go ahead and make a motion to approve
21 Application No. 19546 to amend, pursuant to 11 DCMR,
22 Subtitle X, Chapter 9, for special exceptions under
23 Subtitle E, Section 5203.3; from the rooftop
24 architectural element requirements of Subtitle E,
25 206.1(a); from the penthouse requirements of Subtitle

1 C-1500.4, and from the penthouse setback requirements
2 of Subtitle C-1502.1(c)(2); as well as special
3 exception C-1500.10 to construct a rear addition to an
4 existing one-family dwelling in the RF-1 Zone at
5 premises 2521 12th Street Northwest, Square 2865, Lot
6 140, and ask for a second.

7 MR. HART: Just one --

8 CHAIRPERSON HILL: Sure.

9 MR. HART: -- clarification. Is 15.10,
10 1500.9?

11 CHAIRPERSON HILL: Oh, I'm sorry. Thank you
12 so much. I apologize. We went back and forth so much
13 and I had it in my brain that it was the right one.
14 And so, adding to -- clarifying that I'm making a
15 motion for special exception 1500.9 and not C-1500.10,
16 and ask for a second.

17 MR. HART: Seconded.

18 CHAIRPERSON HILL: Motion has been made and
19 seconded.

20 [Vote taken.]

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

22 MR. MOY: Thank you, Mr. Chairman. Before I
23 give a final vote we do have -- or rather I have, in
24 my hands, an absentee ballot from Michael Turnbull,
25 who participated on the case application. And his

1 vote is to approve, and his comments the recommended
2 changes as shown in Exhibit 43, which is the reduced
3 penthouse design with the sloped roof. So, that would
4 be consistent with the Board's motion.

5 So that would give a final vote of four, to
6 zero, to one on the motion of Chairman Hill to approve
7 the application with the relief as amended. And this
8 would be as shown on the revised drawings under
9 Exhibit 43, Sheet A-007-C. Seconded the motion, Vice
10 Chair Hart. Also in support, of course, Mr. Turnbull,
11 absentee ballot, and Ms. White. Board seat vacant.
12 The motion carries.

13 CHAIRPERSON HILL: Thank you, Mr. Moy.
14 Summary order.

15 MR. MOY: Yes, sir. Thank you.

16 CHAIRPERSON HILL: Thank you. Thank you,
17 gentlemen.

18 MR. ADEMILUYI: Thank you.

19 MR. MOY: The next case application for
20 decision is Application No. 16334A of Bright
21 Beginnings, Inc. This is a request for a modification
22 of a consequence of BZA order No. 16334, requesting a
23 change in the conditions to permit an increase in the
24 number of staff, extending the hours of operation, and
25 expanding the operating space of an existing child

1 development center in the RF-1 Zone at 128 M Street
2 Northwest, Square 557, Lot 849. Two preliminaries,
3 Mr. Chairman. We have filed in the record, two
4 documents that are untimely, which would require the
5 Board to waive the time requirements if the Board
6 agrees. There is a OSSE letter that was filed on
7 Tuesday, September 12th. That's in the case record.
8 As well as a support letter from ANC 6E, filed Monday,
9 September the 11th.

10 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.
11 If the Board doesn't have any objections, I would
12 allow those into the record because I think they're
13 important for the Board to be able to use in our
14 deliberations.

15 MS. WHITE: I agree.

16 CHAIRPERSON HILL: Okay. All right. So, Mr.
17 Moy, we're going to waive the time requirements on
18 those.

19 MR. MOY: Thank you.

20 CHAIRPERSON HILL: Okay. Is the Board ready
21 to deliberate? Okay, I can start.

22 After going through the record, I mean, this
23 was kind of pushed back a couple of times, and I don't
24 really have any issues with the application. I had
25 wanted to hear from, or was interested in hearing from

1 the ANC 6E, which we have now done, and they were in
2 approval of this. The conditions would change from
3 the original conditions based upon the request of the
4 applicant. And just to clarify, those would be the
5 operation hours of the center shall be between 7:00
6 a.m. and 11:30 p.m., Monday through Friday. The
7 center shall not exceed 98 children and 60 staff
8 members, or otherwise as indicated by the Office of
9 the State Superintendent of Education.

10 The child development center shall be located
11 in suites 150, 300, 320, and 325 of the Perry School
12 Community Service Center, and any proposed alterations
13 of the building shall be carried out in compliance
14 with Historic Preservation Review Board requirements.

15 So, with those conditions, unless the Board
16 has anything to add, I would go ahead and make a
17 motion.

18 MS. WHITE: Second.

19 CHAIRPERSON HILL: Okay, and I'm sorry. We'll
20 make the motion. So, I'll go ahead and make the
21 motion to approve Application No. 16334A of Bright
22 beginnings, as read by the secretary, and as the
23 conditions were read into the record, and ask for a
24 second.

25 MS. WHITE: Second.

1 CHAIRPERSON HILL: Motion has been made and
2 seconded.

3 [Vote taken.]

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

5 MR. MOY: Again, Mr. Chairman, I have an
6 absentee ballot from Mr. Michael Turnbull, who also
7 participated on this application, and his absentee
8 vote is to approve with such conditions as the Board
9 may impose.

10 Yes, so that would give a final vote of four,
11 to zero, to one. This is on the motion of -- this is
12 for approval with the four conditions as cited in your
13 motion, Chairman Hill. Seconded the motion, I
14 believe, is Ms. White. Also in support, Vice Chair
15 Hart, and of course Mr. Turnbull's with his absentee
16 ballot. Board seat vacant, motion carries.

17 CHAIRPERSON HILL: Thank you, Mr. Moy.
18 Summary order.

19 MR. MOY: Yes, thank you.

20 CHAIRPERSON HILL: Thank you.

21 [Pause.]

22 [Mr. May joins the Board.]

23 CHAIRPERSON HILL: All right. I believe, Mr.
24 Chairman, we're back at the top of the order, so which
25 I believe would be two case applications that are

1 under expedite review calendar cases. The first is
2 Application No. 19545 of Christian Walker. This is a
3 request for special exceptions under Subtitle E,
4 Section 5201; from the lot occupancy requirements of
5 Subtitle E, Section 304.1; rear yard requirements,
6 Subtitle E, Section 306.1. This would construct a
7 rear deck addition in an RF-1 Zone at 520 Hobart Place
8 Northwest, Square 3054, Lot 70.

9 CHAIRPERSON HILL: Okay, great. Thank you,
10 Mr. Moy. Welcome back, Commissioner May.

11 MR. MAY: A pleasure to be here.

12 CHAIRPERSON HILL: It feels like it was
13 yesterday.

14 Is the Board ready to deliberate?

15 [No audible response.]

16 CHAIRPERSON HILL: Okay. All right. I can
17 start. I thought this was relatively straightforward.

18 I don't really have any issues with it. I did see
19 the record in terms of the Office of Planning's report
20 in which they were -- their analysis was to approve.
21 And I guess I had wished that we had gotten something
22 from ANC 1B, and --

23 MR. MOY: Mr. Chairman.

24 CHAIRPERSON HILL: Oh, I'm sorry. Yes?

25 MR. MOY: I'm sorry to interrupt.

1 CHAIRPERSON HILL: Sure.

2 MR. MOY: I neglected to mention that this
3 morning we did --

4 CHAIRPERSON HILL: Okay.

5 MR. MOY: -- receive a letter in support from
6 ANC 1B.

7 CHAIRPERSON HILL: And what does it say?

8 MR. MOY: So, I want to -- I'm looking for it
9 now.

10 CHAIRPERSON HILL: Okay. Oh, you said
11 Chairman Hart. I mean, Mr. Hart.

12 MR. HART: Yes.

13 CHAIRPERSON HILL: You said it was an
14 approval, 10, to zero, to zero?

15 MR. HART: Yes.

16 CHAIRPERSON HILL: Okay. Okay. Great. Well,
17 that makes it even better for me.

18 So again, I now am even more comfortable with
19 moving forward with this. Does the Board have
20 anything else they'd like to add?

21 MS. WHITE: No, I think it's pretty clear, and
22 we've got support across the board so I'm comfortable.

23 CHAIRPERSON HILL: Okay. Then I'd go ahead
24 and make a motion to approve Application No. 19545 as
25 read by the secretary and ask for a second.

1 MR. HART: Second.

2 CHAIRPERSON HILL: Motion has been made and
3 seconded.

4 [Vote taken.]

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

6 MR. MOY: Staff would record the vote as four,
7 to zero, to one. This is on the motion of Chairman
8 Hill to approve the request for a special exception.
9 And seconded the motion, Vice Chair Hart. Also in
10 support, Mr. Peter May, and Ms. White. Board seat
11 vacant. Motion carries.

12 CHAIRPERSON HILL: Mr. Moy, do we need to
13 again waive that, then, into the record from the ANC?
14 No, because the ANC just can always add something
15 into the record as the Office of the Attorney General
16 is nodding his head yes. I assume that's correct.
17 Okay. All right.

18 Then the motion passes, and can we do a
19 summary order?

20 MR. MOY: Yes, sir.

21 CHAIRPERSON HILL: Thank you, Mr. Moy.

22 [Pause.]

23 CHAIRPERSON HILL: Whenever you're ready, Mr.
24 Moy.

25 MR. MOY: Yes, I am looking for my -- I

1 misplaced my paperwork. Sorry.

2 CHAIRPERSON HILL: I never know whether you're
3 waiting for me or whether --

4 MR. MOY: My apologies.

5 CHAIRPERSON HILL: So, no, I'm sorry. I just
6 sometimes, you know --

7 MR. MOY: I'm just trying to keep up with you,
8 Mr. Chairman.

9 All right. Application No. 19552 of Alden
10 Whittaker as amended for a special exception under
11 Subtitle E, Section 5201; from the nonconforming
12 structure requirements of Subtitle C, Section 202.2;
13 lot occupancy requirements, Subtitle E, Section 304.1;
14 and the rear yard requirements of Subtitle E, Section
15 306.1. This would construct a rear deck addition to
16 an existing nonconforming one-family dwelling, RF-1
17 Zone, 609 Orleans Place Northeast, Square 855, Lot
18 358.

19 CHAIRPERSON HILL: Thank you, Mr. Moy. Is the
20 Board ready to deliberate? Okay. I can start.

21 After reading through the record and in
22 addition to the analysis provided by the Office of
23 Planning which was in support, the only kind of issue
24 that I had with this was that there was some
25 opposition and I don't really like doing expedited

1 reviews kind of when there's opposition in terms of
2 not having kind of an opportunity to flesh out some of
3 the questions. However, after again, clearly reading
4 through the record and understanding what the
5 opposition seems to have put forward, I didn't really
6 have an issue with their concerns. So, I would be
7 able to move forward on this as an expedited review.

8 Does the Board have any comments?

9 MS. WHITE: No, I'm -- also try to pay
10 attention when there is opposition in the record. But
11 also given the fact that they didn't request a hearing
12 as part of their opposition, gives me some comfort
13 level that the parties will be able to co-exist
14 peacefully.

15 CHAIRPERSON HILL: Okay. Anyone else? No?
16 Okay. Mr. May?

17 Okay. All right. Then I'm going to go ahead
18 and make a motion to approve Application No. 19552 as
19 read by the secretary.

20 MS. WHITE: Second.

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

23 [Vote taken.]

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

25 MR. MOY: Staff would record the vote as four,

1 to zero, to one. This is on the motion of Chairman
2 Hill to approve the application for the relief
3 requested. Seconding the motion, Ms. White. Also in
4 support, Mr. Peter May and Vice Chair Hart. Board
5 seat vacant. The motion carries.

6 CHAIRPERSON HILL: Thank you, Mr. Moy.
7 Summary order?

8 MR. MOY: Yes. Thank you.

9 CHAIRPERSON HILL: I always like when people
10 get up and leave. You're like, oh, you were on that
11 case.

12 [Pause.]

13 MR. MOY: I believe, Mr. Chairman, we're into
14 the thick of the hearing session now.

15 CHAIRPERSON HILL: Yes, sir.

16 MR. MOY: And should I begin with Application
17 No. 19551?

18 CHAIRPERSON HILL: Yes, please.

19 MR. MOY: All right. Application, Case
20 Application No. 19551 of Jared and Lorilee Binstock.
21 This is a request for a special exception under
22 Subtitle E, Section 5201; from the rear yard
23 requirements of Subtitle E, Section 205.4. This would
24 construct a three-story addition in the RF-1 Zone,
25 1349 South Carolina Avenue Southeast, Square 1039, Lot

1 66.

2 CHAIRPERSON HILL: Great. Thank you. Good
3 afternoon. If you could please introduce yourselves
4 from my right to left?

5 MR. BINSTOCK: Jared Binstock.

6 MS. ERWIN: My name is Stephanie Erwin. I'm
7 here to represent the architect.

8 CHAIRPERSON HILL: Okay, great. Let's see.
9 Did you guys get sworn in this morning?

10 MS. ERWIN: Yes.

11 CHAIRPERSON HILL: Okay. So, I don't have a
12 lot of specific questions concerning the application.
13 I would like to hear, and I'll let the Board chime if
14 they have any specifics they'd like to hear. Would
15 like to hear, again, about the project itself and how
16 you're meeting the criteria for us to grant the
17 requested relief. And I'm going to put 10 minutes on
18 the clock.

19 I still don't have a clock, Mr. Moy, is that
20 right?

21 MR. MOY: Apparently, but I'm keeping track
22 too, on this device. But you just can't see it up at
23 the -- on the ceiling.

24 CHAIRPERSON HILL: Oh, okay. All right.

25 MR. MOY: But I'll wave.

1 CHAIRPERSON HILL: Okay, that's all right.
2 That's all right. Is that ever going to get fixed?

3 MR. MOY: Yes, it will.

4 CHAIRPERSON HILL: Okay.

5 MR. MOY: Hopefully by next week.

6 CHAIRPERSON HILL: Okay. All right. Okay.
7 All right. So, you guys, I'll put 10, you know, 10
8 minutes and just go ahead and start whenever you'd
9 like. Thank you.

10 MS. ERWIN: As Mr. Moy mentioned, on the
11 applications for 1349 South Carolina Avenue Southeast,
12 it's in the RF-1 Zone, and the current lot size is
13 2,013 square feet. The existing lot occupancy is 38.4
14 percent, and the applicant is proposing a rear
15 addition as well as a third-level addition, which
16 would make the new lot occupancy 46.4 percent.

17 In the longest portion of the addition, it
18 will be 13 feet past the adjacent neighbor rear walls,
19 so we're requesting relief from Subtitle E, 205.4.
20 Essentially, we need relief for the three feet past
21 the 10 feet allowed under the code. So, we're
22 requesting the special exception for that.

23 This is not a historic district, so it was not
24 reviewed by HPRB or HPO. We have assigned neighbor
25 support letters from both adjacent neighbors. We also

1 have a letter of support from CHRS as well as
2 unanimous support from the ANC. We also received a
3 favorable supportive report from the Office of
4 Planning, which I'm sure they'll go over.

5 In regard to the special exception criteria
6 that's covered in depth on the record under the burden
7 of proof, which is Exhibit 8. But just to summarize,
8 the project is in harmony with the intent of the
9 zoning regulations of Square 1039, which has multiple
10 zones, lot shapes and types of structures. It will
11 not adversely affect neighboring properties,
12 specifically the adjacent and abutting neighbors per
13 the code. We have signed support letters, as I
14 mentioned, from both of those neighbors.

15 The privacy, light, and air will not be unduly
16 compromised or affected, and it will not visually
17 intrude. The rear addition will not be visible from
18 public space, and the third story will be constructed
19 with high-quality materials to blend with the design
20 and character of the neighborhood. We're also not
21 asking for any height relief. It's still going to be
22 under the 35 that's per the code for RF-1.

23 CHAIRPERSON HILL: Mr. Binstock, have you been
24 here before us before?

25 MR. BINSTOCK: No.

1 CHAIRPERSON HILL: No? Ms. Erwin, you've been
2 here a few times. Yeah. Okay.

3 Does the Board have any questions for the
4 applicant?

5 Please, go ahead, Mr. May.

6 MR. MAY: So, I believe we received a letter,
7 a couple letters from other neighbors who have
8 concerns about it. Would you care to address those?

9 MS. ERWIN: Yes, I believe there's one
10 specific neighbor, three doors down, and she submitted
11 a letter that had concerns. One of the items she was
12 concerned with is the fact that this is in a historic
13 district, and that's not correct.

14 MR. MAY: Right.

15 MS. ERWIN: It's not historic.

16 MR. MAY: It's across the street from the
17 historic district.

18 MS. ERWIN: That's correct. I believe that
19 she was also concerned with the design and the height.
20 But again, we're not asking for relief from height.
21 We're allowed to have the 35 feet and we're just
22 asking for those three feet of relief in the rear,
23 which I don't think that --

24 MR. MAY: Right.

25 MS. ERWIN: -- she understands. And Mr.

1 Binstock can speak to this, but he did try to go down
2 and speak with her regarding the application and to
3 explain everything to her.

4 MR. MAY: Right.

5 MS. ERWIN: This was originally on an
6 expedited review for last week. Then, once we
7 received that letter from her we were requested to be
8 put on a public hearing so that we could come and
9 speak with the board.

10 MR. MAY: Okay.

11 MR. BINSTOCK: Sure. So, I -- once we found
12 out that a neighbor had submitted a letter, I had gone
13 over to her house to try to understand her concerns
14 and how we might be able to address them. I think,
15 essentially, she sort of refused to engage and said
16 that she was opposing the project generally because
17 she had understood that we were in a historic district
18 and she thought that doing the kind of project overall
19 was in contravention of the historic nature of her
20 home.

21 She didn't express any concerns about the
22 three-foot rear addition. It was I think mainly with
23 respect to the height and general project scope. But
24 we never really got into details because she had said
25 that, you know, she was just opposing the project

1 generally.

2 MR. MAY: Okay. So, one other question.
3 There was another neighbor that had objections, but
4 around the corner on Kentucky, having to do with
5 access to the rear of the building. Do you care to
6 address any of those concerns that were raised?

7 MS. ERWIN: There's not going to be a change
8 in the rear of the building, besides if --

9 MR. MAY: That's not what it was about. It
10 was about construction logistics. So how is this
11 going to get built, and the access?

12 MS. ERWIN: At this point we only have the
13 preliminary plans in the folder because we wanted to
14 get BZA approval before coming up with --

15 MR. MAY: Right.

16 MS. ERWIN: -- anything like traffic control
17 plans, delivery of materials, anything along those
18 lines.

19 MR. MAY: Right.

20 MS. ERWIN: So, we haven't even gotten into
21 that phase. Of course we'll take in account neighbor
22 concerns with the access, and if it's required, we'll
23 pull the necessary DDOT permits for the rear of -- for
24 any construction staging.

25 MR. MAY: Yeah.

1 MS. ERWIN: There is not a garage behind the
2 house. It's completely open.

3 MR. MAY: Right.

4 MS. ERWIN: So my assumption would be, we
5 would pull the proper permit to come in for the alley,
6 and then stage in the rear of the house so that there
7 are no materials in public space.

8 MR. MAY: Right. I think it's more the in and
9 out that's the concern, and I understand that you're
10 not necessarily at that stage right now, but living in
11 a block that's not that different from that I
12 understand how problematic a neighbor's construction
13 can be when you're accessing through the alley, paying
14 particular concern to, since there's going to be
15 excavation associated with this, right, because you're
16 building an addition?

17 MS. ERWIN: Yes.

18 MR. MAY: You have to make sure that that, you
19 know, you abide by the storm water regulations and
20 that -- and that's difficult because you've got to get
21 a lot of soil out of there, right?

22 MS. ERWIN: Yes.

23 MR. MAY: I mean, it's a difficult thing and
24 it's not monitored as closely, probably, as it should
25 be, by the regulating authorities. But just to be a

1 good neighbor, I think you want to make sure that it
2 doesn't cause an undue disturbance to the neighbors
3 and their use of the alley.

4 MS. ERWIN: Yes. Absolutely agree.

5 MR. MAY: Yeah. All right. That's it.

6 CHAIRPERSON HILL: Okay. So, Mr. Binstock,
7 just to follow up with Commissioner May, I mean,
8 you're going to do everything you can to make sure
9 that the alley is taken care of and that you don't
10 inconvenience your neighbors in terms of if this does
11 move forward, your project?

12 MR. BINSTOCK: Yeah, absolutely.

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

15 MS. VITALE: Good afternoon, Mr. Chair,
16 members of the Board. I'm Brandice Elliott
17 representing the Office of Planning.

18 The Office of Planning supports the request
19 for the special exception for the rear wall extension.
20 And I think that the applicant already clarified that
21 there's actually two parts to this addition. There is
22 the third-story, and then there's also the rear
23 addition. Relief is only required for the rear
24 addition. So, I just wanted to clarify that.

25 But I am happy to answer any questions you

1 have. I'll leave it at that.

2 CHAIRPERSON HILL: Does anyone have any
3 questions of the Office of Planning?

4 I kind of do, just real quick. And the
5 analysis, can you just walk me through again the
6 analysis, because I know that the 10 feet thing comes
7 in a lot with us. And so, you know, can you just walk
8 me through, again, how you're determining that the
9 extra three feet meets the criteria in your opinion?

10 MS. VITALE: Well, the impact of a rear
11 addition is different depending on the neighborhood,
12 the type of house, you know, the proximity to other
13 neighbors. In this case I think what we took into
14 account is, primarily, we have neighbors in support of
15 this particular project, the ones that would be most
16 impacted by the addition.

17 The other thing that was considered is that
18 this is three feet beyond matter of right. And the
19 fact that the shadowing from the structure would not
20 necessarily you know, overwhelm the rear yards of
21 those adjacent neighbors. And so, I think that was a
22 large consideration for this.

23 We also have very large lots on this
24 particular street. And so, I believe they are about
25 100-feet deep on average. So, even with the addition

1 there's still an almost 50-foot rear yard setback.
2 So, there's still a sense of openness, even with the
3 additional three feet. And so, that gave us a sense
4 of comfort with the size of the rear addition.

5 CHAIRPERSON HILL: Okay, great. Thank you.

6 Does the applicant have any questions for the
7 Office of Planning?

8 MS. ERWIN: No.

9 CHAIRPERSON HILL: Okay. Is the ANC here? Is
10 there anyone here wishing to speak in support?

11 [No audible response.]

12 CHAIRPERSON HILL: Is there anyone here
13 wishing to speak in opposition?

14 [No audible response.]

15 CHAIRPERSON HILL: All right. I'm going to
16 turn back to the applicant. Is there anything else
17 you'd like to say?

18 MS. ERWIN: No, I do have the drawings, the
19 photos, and the plat which are also in the record, so
20 if you want me to go over any of that, if you guys
21 have any questions? Okay.

22 CHAIRPERSON HILL: I don't think so. All
23 right. Does the Board have anything else?

24 [No audible response.]

25 CHAIRPERSON HILL: All right. Going to close

1 the hearing then. Is the Board ready to deliberate?

2 Okay. I can begin. I mean, based upon now
3 just going through all of the questions that I had in
4 terms of how the Office of Planning kind of went
5 through their analysis, I would agree with their
6 analysis that is in the record. And then also the
7 support that we have from ANC 6B, nine, to zero, to
8 two, DDOT has no objection. We have a letter in
9 support from the Capitol Hill Restoration Society, and
10 then also what makes me more comfortable moving
11 forward is that there are letters of support from both
12 adjacent neighbors, and I do believe that the
13 applicant meets the criteria for which we can approve
14 this.

15 Does the Board have anything else they'd like
16 to add?

17 [No audible response.]

18 CHAIRPERSON HILL: Okay. Then I'll go ahead
19 and make a motion to approve Application No. 19551 as
20 read by the secretary, and ask for a second.

21 MR. HART: Seconded.

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

24 [Vote taken.]

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

1 MR. MOY: Staff would record the vote as four,
2 to zero, to one. This is on the motion of Chairman
3 Hill to approve the application for the relief
4 requested. Seconding the motion, Vice Chair Hart.
5 Also in support, Mr. Peter May and Ms. White. We have
6 a board seat vacant. Motion carries.

7 CHAIRPERSON HILL: Thank you. Summary order,
8 Mr. May. Moy.

9 MR. MOY: Yes. Do that again. That's fine.
10 That's an honor for me, actually.

11 CHAIRPERSON HILL: Thank you. Thank you.
12 You're welcome.

13 MR. MOY: All right. Okay. I believe the
14 next case application is No. 19536 of Brian and
15 Carolyn Wise. This is -- I'm going to read the
16 original caption, Mr. Chair. I'm unclear of any
17 revisions to the relief, but what has been captioned
18 is as amended for a special exception relief under
19 Subtitle C, Section 703.2; minimum parking
20 requirements of Subtitle C, Section 701.5, and
21 Subtitle E, Section 5204; from the rear yard
22 requirements of Subtitle E, Section 5104; and the side
23 yard requirements of Subtitle E, Section 5105. And
24 pursuant to Subtitle X, Chapter 10 for variances from
25 the lot frontage requirements, Subtitle C, Section

1 303.3; lot area and width requirements, Subtitle E,
2 Section 201.1; alley centerline setback requirements,
3 Subtitle E, Section 5106; and use requirements of
4 Subtitle U, Section 600.1(e). This would construct a
5 two-story flat on an alley lot, RF-3 Zone, 205 3rd
6 Street Southeast, Square 762, Lot 828.

7 CHAIRPERSON HILL: Okay. Could you please
8 introduce yourself?

9 MS. ERWIN: I'm Stephanie Erwin, and I'm here
10 representing the applicant, which is the architecture
11 firm, Blue Star, and Brian and Carolyn Wise are the
12 homeowners.

13 CHAIRPERSON HILL: Okay. And you're the only
14 one here today?

15 MS. ERWIN: Yes.

16 CHAIRPERSON HILL: Okay.

17 MS. ERWIN: Do you want me to --

18 CHAIRPERSON HILL: That's okay. That's okay.
19 I just wanted to clarify.

20 So, Ms. Erwin, I guess this has been a little
21 bit muddied, and it continues to be so. And so, you
22 know, I don't really know what we're going to do with
23 you today. I mean, there might be people here,
24 actually, that want to speak, so I'm going to go
25 through the whole process and we're going to go

1 through with the Office of Planning. But you know,
2 you had started with the reasonable accommodations, I
3 believe, and that now has been rejected, or turned
4 down. And so, I'll let you go ahead and tell us --
5 explain to us why you're here so that we can hopefully
6 get to something at some -- I guess that's why you're
7 here because you want to kind of move this forward in
8 some particular way. However, I don't think there's a
9 whole lot we're going to do with you today. So
10 please, go ahead, Ms. Erwin.

11 MS. ERWIN: So, as you mentioned, we just
12 received the reasonable accommodation rejection on
13 Monday, late in the afternoon. So, at that point we
14 decided we're going to move forward with single-family
15 home instead of a flat. So, we're no longer going to
16 be requesting the use variance, and we also believe
17 that will -- we will no longer need the parking
18 variance either.

19 I spoke with the Office of Planning briefly on
20 this, as well as Mr. Moy. But since we were on the
21 schedule I came here today just to get on the record
22 that we needed to make these changes. It just wasn't
23 because of how long the process took with DCRA, which
24 I know they have the 45 days, we just received that on
25 Monday. So, now we have to change the plans and how

1 we're going to move forward. But those drawings have
2 not been completed. They will be in the next few
3 days, and I know the Office of Planning also needs to
4 review those before they're able to weigh in on it.

5 CHAIRPERSON HILL: Okay. So, I don't know.
6 Does anybody have anything for the applicant? I'm
7 going to turn to the Office of Planning. The Office
8 of Planning is going to probably say, yeah, that's all
9 right.

10 So, going to turn to the Office of Planning.

11 MR. MORDFIN: Good afternoon, I'm Stephen
12 Mordfin.

13 And the Office of Planning will need time to
14 review the application when it's been revised.
15 Because they're adding the parking garage inside the
16 building, we would also need comments, then, probably
17 from DDOT as to how that's going to function with the
18 alley. There's also a letter in the file from one of
19 the neighbors, indicating that this would adversely
20 affect some significant trees. So therefore, I would
21 also request comments from Urban Forestry, so I would
22 need time to be able to get comments from those
23 agencies before we could weigh in, also. It's also
24 dependent on when we do receive the revised drawings
25 and the revised application from the applicant.

1 CHAIRPERSON HILL: Okay. So, Ms. Erwin, you
2 know -- I mean, you've got a lot of stuff ahead of you
3 now, right, before we see you again. And I am just
4 going to ask the -- first, does the Board have
5 anything else to add to the Office of Planning or
6 questions for the Office of Planning? No?

7 Okay. And then I am going to see if there's
8 anybody here because there was some opposition and I
9 just don't want -- I want whoever did come to have an
10 opportunity to speak, since this was on the docket.
11 So, is there anyone here from the ANC? Is there
12 anyone here wishing to speak in support of the
13 application? Is there anyone here who wishes to speak
14 in opposition to the application?

15 Could you please all come forward? You can
16 just all sit at that side there. That's fine. Okay.

17 So you guys all filled out your witness cards
18 and you got sworn in earlier, and you were here in the
19 morning when you got sworn in? You haven't sworn in?

20 Okay. If you could just stand and take the oath from
21 Mr. Moy?

22 Mr. Moy, if you could execute -- execute?

23 MR. MOY: With pleasure.

24 [Oath administered to the participants.]

25 MR. MOY: Thank you. You may be seated.

1 CHAIRPERSON HILL: Mr. Moy, you need a bible
2 or something. You know, like put your hand on
3 something, I think. No?

4 MR. MOY: It's all in good faith.

5 CHAIRPERSON HILL: Actually, that's -- a book
6 or something. Right. I don't know. Mr. May is like
7 going, no, you can't say anything about anything.
8 Okay.

9 MR. MAY: They can touch his monitor and --
10 because that's where --

11 CHAIRPERSON HILL: Right. Okay. That's
12 great. Yeah.

13 MR. MAY: -- that's an e-book.

14 CHAIRPERSON HILL: That's right. Let's see,
15 the D.C. Zoning Regs. We can bring the whole book out
16 there. That would be great. Okay.

17 Well, thanks for being here. And I say that
18 because like, you were here at the very beginning
19 then, so you heard all -- you got the whole Australia
20 Embassy and State Department, and okay.

21 So I'm going to give you each three minutes,
22 okay? You know now that this application is going to
23 be a lot different than it was before, and you'll have
24 an opportunity again to come down when that happens
25 again. And so, you know, I'm just going to -- and if

1 you could please introduce yourselves from my right to
2 left first.

3 Actually, you know what? Why don't you just
4 introduce yourself as you go into your testimony?
5 Okay? And you just have to kind of -- I'm going to
6 tell you when you have three minutes up, because I
7 have a watch with the second hand. So please, go
8 ahead.

9 MS. BAIN: Thank you.

10 CHAIRPERSON HILL: You need to push the button
11 on the microphone and speak into the microphone there.

12 MS. BAIN: There?

13 CHAIRPERSON HILL: Yeah, just move it over
14 there.

15 MS. BAIN: Thank you very much. Chairman
16 Hill, Vice Chairman Hart --

17 CHAIRPERSON HILL: And what's your name,
18 first? I'm sorry?

19 MS. BAIN: -- board members White and board
20 member May. My name is Quynh Ni Bain. I am a long-
21 time resident of the District of Columbia. I've lived
22 in this city for about 21 years. And in the last 17
23 years I have lived at 213 3rd Street Southeast, zip
24 code 20003. My house is one of the adjacent houses,
25 Square No. 762, Lot 827, that will be adversely

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1 affected by any construction of a residential flat or
2 building in the proposed lot of the applicant's.

3 Previously, I submitted written testimony by
4 e-mail to Mr. Moy, and I understand that that
5 testimony has been admitted into the record as Exhibit
6 48. I would like to use my three minutes to follow up
7 with an expression of concern about the way in which
8 the applicants have approached the process of getting
9 their neighbors' approval for the project.

10 Again, I affirm the concerns that I had stated
11 in my written testimony at Exhibit 48. I'm here this
12 morning, not only to provide moral support to my next-
13 door neighbors, who you will hear from in a moment,
14 but I also would like to state for the record that I
15 did not and would not agree to the proposed
16 construction along with any requested exceptions or
17 variances.

18 And the reason that I objected, or would not
19 agree to any proposed construction is because I was
20 never notified of the proposed construction plan as it
21 was presented to you previously. I learned about it
22 through the letter that the city sent to me on May 30,
23 2017, advising me that there would be a hearing on
24 July 26th at 9:30 in this room. I attended that
25 hearing to -- with the purpose of expressing my

1 opposition to the requested seven variances and
2 exemptions.

3 After I attended that hearing I received very
4 nasty, vicious e-mails from the applicants, attacking
5 me, attacking my integrity, attacking my voracity, and
6 attacking my presence at the hearing on July 26th.

7 In those e-mails I was accused of lying about
8 the fact that I did not give consent -- or that I did
9 give consent. I was accused -- it was suggested that
10 the applicants had asked me to give my consent to the
11 proposed construction and that I had.

12 When I said that I did not, and that the first
13 I've heard of this was through the city's, the BZA's
14 letter of May 30, 2017, the applicants further
15 attacked me by e-mail by stating that I unreasonably
16 withheld consent or unreasonably refused to meet with
17 them to discuss the proposed construction.

18 I'm just here this morning to state for the
19 record that the applicants never approached me about
20 the requested variances and exemptions. They never
21 showed me the building plans. They never asked me to
22 provide letters of support. They didn't even notify
23 me of what they were about to do or that they were
24 seeking approval. So that --

25 CHAIRPERSON HILL: Okay.

1 MS. BAIN: -- is the reason that I'm here.
2 Going forward, I would maintain the same objections
3 that I had in my letter, based on concerns with the
4 antiquated sewer system that cannot be updated by the
5 city.

6 We're still, in the back of my house, there's
7 a CSO that was built in the 1800s, and even if you put
8 a green roof on the property construction site, that
9 would not alleviate the flooding problem that we have
10 experienced on 3rd Street.

11 CHAIRPERSON HILL: Okay.

12 MS. BAIN: In heavy rain. In addition, I
13 still have the safety concerns.

14 CHAIRPERSON HILL: Okay. Okay. All right.
15 Thank you.

16 MS. BAIN: Thank you.

17 CHAIRPERSON HILL: Next, please?

18 MS. CAMPANO: Good morning, committee members.

19 My name is Marianne Campano, and my husband, Clay
20 Chilcoat and I are grateful for the opportunity to
21 express our concerns in opposition to the plans for
22 building in the alley directly behind our home.

23 We are the owners of 211 3rd Street Southeast,
24 and the three to four-foot by 31-foot walkway directly
25 behind our house that also provides an easement to

1 homes 213 and 215 3rd Street Southeast.

2 The proposed structure will greatly affect our
3 right to air and light. Our home is relatively dark
4 with few exterior windows, only on the front and rear
5 of the house. A building behind our home will block
6 natural light and make our already dark home darker,
7 especially if the five-foot setback law is waived.

8 Any building behind our home will create a
9 narrow alley. If the Board grants an exception to the
10 five-foot setback law, we will be left with an
11 extremely narrow alley of only three to four feet,
12 posing a significant safety concern. Essentially,
13 someone could turn the corner, hold out their hands,
14 and trap me along this narrow alley.

15 It's also important to have ingress and egress
16 for emergencies such as fires.

17 I also have concerns about the plumbing. Part
18 of our plumbing still goes to the existing water and
19 septic that goes into the alley and under the subject
20 lot. The construction will disrupt existing water and
21 sewage lines. Also, the addition of two more units
22 could be a significant burden to an antiquated sewer
23 system.

24 We've also had some issues with standing water
25 after storms, and an adjacent large roof area will

1 decrease the pervious area, and I fear this will only
2 exacerbate the standing water issue.

3 The patio, our back-yard patio, is my favorite
4 space in the home. It's beautiful with the magnolia
5 tree in the rear corner, and the very precious view of
6 the Library of Congress. The tree is quite large, at
7 least 70 inches in circumference, with a large canopy
8 and root system extending under the subject lot. Not
9 only will a two-story building block my wonderful
10 view, but I fear building will damage, if not kill the
11 magnolia tree.

12 I also have concerns about parking. Our
13 neighborhood is already extremely congested, and two
14 apartments, although I understand that's been changed
15 now, will only further crowd the area, but any
16 residence will further crowd the area and limit
17 parking.

18 The subject and their employees currently use
19 the parking lot. Additional housing on this lot will
20 not only eliminate this much-needed parking space, but
21 will further congest the area with two more housing
22 units.

23 Thank you very much for allowing me to express
24 my concerns on this matter.

25 CHAIRPERSON HILL: Thank you. Thank you for

1 doing three minutes. That was great. Thanks. It was
2 very concise. Next, please?

3 MS. FRIEDMAN: Sure. Hello. My name is
4 Lauren Friedman. I am another neighbor at 215 3rd
5 Street Southeast. We only moved in about a month ago,
6 so very new neighbors.

7 And my husband will, I think, speak more to
8 our prepared statements, but I just wanted to also
9 mention that I have observed the -- during rain
10 storms, the water going down the alleyway, which is
11 right next to our home, and I can only imagine what it
12 would look like with less space for the water to be
13 running down that alleyway.

14 And yeah, I think that's --

15 CHAIRPERSON HILL: Go ahead and just give us
16 your name again?

17 MR. COLEMAN: Thank you. Oh, sorry, go ahead.
18 My name is Thomas Coleman. I'm a resident at 215 3rd
19 Street Southeast.

20 Good morning, Board of Zoning Adjustment
21 members. Thank you for giving me the opportunity to
22 present testimony today. I'm presenting this
23 testimony on behalf of myself and my wife, Lauren
24 Friedman, as joint owners of 215 3rd Street Southeast.

25 In short, the applicants seek approximate

1 seven special exceptions to zoning requirements listed
2 in Title 11 of the DCMR in order to convert a parking
3 area behind my house into a two-story apartment
4 building, now a one-story. Recently, allies have
5 become the new development frontier for pop-ups.
6 However, what does this case mean for our specific
7 neighborhood and neighborhoods around the city?

8 One of my biggest concerns is exacerbating
9 traffic congestion. In short, the special exception
10 at issue will convert a parking facility to a two-
11 level residence. Crowding will result. There will be
12 more Uber drop-offs, Amazon deliveries, and generally
13 more traffic congestion. Moreover, traffic congestion
14 has been an issue plaguing this neighborhood for
15 decades, having been considered by the BZA more than
16 50 years ago.

17 Fifty-two years ago, this Board considered
18 whether to permit continued operations of the parking
19 lot 828, the exact lot at issue today, finding as
20 follows: "We further find this Lot 828 is reasonably
21 necessary and convenient to other uses in the
22 vicinity, as it will provide off-street parking
23 accommodations for persons utilizing the commercial
24 frontage of Pennsylvania Avenue, thereby relieving to
25 some extent, on-street parking on these residential

1 streets nearby."

2 I ask that you maintain the Board's view of
3 these needs in the neighborhood as the Board
4 articulated more than 50 years ago, to relieve
5 congestion and mitigate traffic impacts on the
6 adjacent properties to this lot, I ask you to deny the
7 special exception because it would not be in harmony
8 with the general purpose and intent of the zoning
9 regulations to reduce traffic congestion.

10 In addition, there would be significant light
11 and air impacts on an easement between 211, 213, and
12 215 3rd Street Southeast. Currently 211 3rd Street
13 owns this land and we have an easement to use this
14 land for passage and to keep our trash on it. In
15 addition to trash pick-up and drop-off congestion, the
16 construction would turn this land into a dark crevice
17 wedged between our three properties and the
18 development. Rats are already at present in this area
19 as the Public of Works found, and I attached the DPW
20 finding, two rat burrows in the alley as of August
21 2017. In fact, the burden of proof specifically
22 points out in the argument for exemption for rear yard
23 minimums that such unmonitored gap increase potential
24 rodent, health, and crime concerns. The rat problem
25 will likely only become worse in our enclosed alley

1 easement walkway if it were to become an unmonitored
2 gap.

3 As a factual matter, however, the applicants
4 are entitled to develop their property consistent with
5 existing zoning applicable to their property. Today,
6 they seek special exceptions and bear the burden of
7 proof for these. However, as a precedential matter,
8 if allowed this case would bless similar vertical
9 construction projects. If that is the finding of this
10 Board, then I look forward to submitting our roof deck
11 garage construction application in the near future.

12 And the only thing I would add is that our
13 house actually exploded in 1979. We weren't living
14 there at the time. And there is an NTSP report. I
15 can send that to Mr. May if you find it relevant.
16 Utilities are a concern in our area. We do not have
17 gas because of that.

18 CHAIRPERSON HILL: Okay. No, that's okay. I
19 don't think we need that report, but thank you.

20 All right. Does anyone have any questions for
21 the witnesses? Sure.

22 MR. MAY: Okay. So, I appreciate your coming
23 down here and providing this initial feedback in the
24 presence of the applicant or the applicant's agent,
25 because I think that some of the things that you have

1 to say should have some bearing on how they
2 reconfigure their project as they shift it from a two-
3 unit to a single unit.

4 I think you should be aware, though, that some
5 of the concerns that you're raising are not really
6 zoning concerns, and I think that, you know, I mean,
7 the adequacy of the sewer system in the area, I mean,
8 those are things that are typically addressed in the
9 building permitting process, not in what we do under
10 zoning.

11 Now, some of the other concerns having to do
12 with light and air and such, that are affected by the
13 relief that's being requested, the relief from the
14 five-foot setback requirement, and so on, I mean,
15 those are really I think relevant.

16 I am a little confused because everybody seems
17 to bring up the water issue, that storm water is a
18 problem. But this is a paved parking lot right now.
19 And if it were replaced with a green roof, wouldn't
20 that actually make it better? Anybody can answer
21 that.

22 MS. BAIN: If I may?

23 MR. MAY: Yes, please. Pull the microphone
24 close to you because --

25 MS. BAIN: Yes. Thank you.

1 MR. MAY: -- I can't hear a word.

2 MS. BAIN: I'm glad you raised that question
3 because the parking lot was actually a pervious
4 surface area until two years ago when the applicants
5 bought that lot. And for the previous 50 years or
6 more, and this is brought out in Mr. Coleman's
7 testimony, the BZA had approved the use of that lot
8 only for parking purposes. And until two years ago,
9 there was a pervious surface on that lot. It had
10 gravel and stone and a couple of other materials on it
11 that allowed water to filter down directly into the
12 sewer system underneath that lot.

13 MR. MAY: Well, no, it doesn't connect to the
14 sewer system. It would connect just into the soil.

15 MS. BAIN: Well, actually there's no soil
16 under that lot. It's --

17 MR. MAY: So what is there?

18 MS. BAIN: Sewer pipes.

19 MR. MAY: There has to be some soil in there.

20 MS. BAIN: Well, the paving occurred --

21 MR. MAY: Because generally speaking, you
22 know, pervious surfaces like that don't feed directly
23 into sewer pipes. Sewer pipes are closed systems.

24 MS. BAIN: I checked the city's consolidated
25 sewer system map.

1 MR. MAY: Yeah.

2 MS. BAIN: And the lot sits in top of a
3 drainage point for the old sewer system. And as I
4 understand it, there's no plans right now to enlarge
5 that system for the adjacent -- immediately adjacent
6 area. So, that's why we have concerns about flooding
7 even though we live on the top of a hill.

8 And because we've seen it, we've lived it, and
9 this is the point --

10 MR. MAY: Okay. So now let me just --

11 MS. BAIN: So, they paved it --

12 MR. MAY: I think this is all helpful
13 information but --

14 MS. BAIN: They paved it a year and a half
15 ago.

16 MR. MAY: Uh-huh.

17 MS. BAIN: I don't know if they were required
18 to get a permit, but --

19 MR. MAY: Yeah, they would have.

20 MS. BAIN: They would have. But I didn't see
21 a permit. And in any event, in any case, it was paved
22 only a year and a half ago, and in the last year and a
23 half I've noticed flooding problems on 3rd Street
24 becoming worse.

25 MR. MAY: Okay. Can you tell me what those

1 flooding problems actually are? I mean, what is a
2 flooding problem to you? Is it water backing up into
3 homes, or is it simply large puddles in the street?
4 What is it?

5 MS. BAIN: It's not large puddles in the
6 street. There are no lips on the sidewalk that allow
7 for storm water to drain into the subsurface. So
8 water just accumulates on 3rd Street, and it goes as
9 high as the sidewalks when there's heavy rain.

10 MR. MAY: So it gets up to the curb in a
11 regular rain storm?

12 MS. BAIN: Goes up to the curb. Yes.

13 MR. MAY: Okay. All right. Well, I mean,
14 these are all valid concerns. I'm not sure how much
15 of it affects zoning again, because if they're
16 proposing to put in a green roof it might actually
17 improve things, because what you were describing
18 before into the previous circumstance, even with the
19 gravel and the pipe, et cetera, underneath there, it
20 could actually get better with a green roof and I
21 think that's the burden on the applicant to try to
22 demonstrate that it actually would.

23 And they would, you know, it probably would
24 behoove them to consult with the Department of Energy
25 and Environment because they understand what's going

1 on in the subsurface as well and they can make
2 recommendations that will actually improve conditions.

3 As far as water just running out the alley
4 into the street, that's actually common among alleys.

5 Alleys are, you know, are sloped like this, and they
6 go out to the street. They're not like streets.
7 Streets are sloped like this, and they go to the
8 gutters. And you know, it's all supposed to work that
9 way. It's when you have, you know, sometimes there's
10 a drain in the middle of an alley or something like
11 that. I don't know if you have that here or not, but
12 it's not uncommon to see water shedding, pouring down
13 the center of an alley, out to the street.

14 If it can't get, you know, into the sewer
15 system from the street, then there's a bigger problem
16 that should be addressed.

17 MS. BAIN: And that's what I'm saying.

18 MR. MAY: It's probably not going to be
19 addressed by this project one way or another, whether
20 it was restored to a gravel surface or whether it was
21 a green roof. But these are all good considerations
22 and I think that you know, again, it would be helpful
23 for the applicant to discuss the issue with D.C. Water
24 and D.C. Department of Energy and the Environment, and
25 of course with their neighbors. That would be good.

1 MS. BAIN: I understand your comment about
2 flowing water. Here's my concern with the green roof.
3 The lot is being built on no more than 31 by 32 feet.
4 That's a very small lot. Where is their condenser,
5 the HVAC system, going to go? It has to go on the
6 roof if they're proposing to build all the way out to
7 the property lines.

8 MR. MAY: Uh-huh.

9 MS. BAIN: How is that going to work with a
10 green roof? And green roofs, as I understand it,
11 doesn't solve or alleviate the problem very much.

12 MR. MAY: Uh-huh. I mean, it is possible to
13 put a condenser on a roof where there's a green roof.
14 I mean, it means that you'd have four or five square
15 feet that's not green. But you know, the overall
16 rating of the green roof is going to be determined
17 based on soil depth and things like that. They might
18 have to tweak that.

19 You know, all these things are things that I
20 think can be addressed and conceivably make, you know,
21 improve the overall circumstance with regard to water.
22 It just kind of depends on how they approach the
23 design.

24 I do have one other comment, which is I think
25 you had also said that you were never notified of the

1 project, but you said that you received a notice in
2 May.

3 MS. BAIN: From the BZA, advising me --

4 MR. MAY: Right. So, you were never notified
5 by the applicant.

6 MS. BAIN: Right.

7 MR. MAY: Right. Okay. And that's one of the
8 reasons why you get those letters, and why properties
9 get posted.

10 MS. BAIN: Yes.

11 MR. MAY: There are multiple forms of
12 notification. We certainly want applicants to reach
13 out to affected neighbors and make sure that they
14 brief people on their projects. That's the good
15 neighbor approach that we would certainly support.
16 But we send those letters just to make sure that
17 people do get notice, and you did.

18 MS. BAIN: Yes. And the process that you have
19 in place absolutely works. The reason I brought that
20 up is because there have been representations, as I
21 understand it, made to the ANC commissioner that all
22 of the neighbors have agreed or approved.

23 MR. MAY: Right.

24 MS. BAIN: And that surely is not true.

25 MR. MAY: Well, and I think one of the hurdles

1 that this applicant has to address are some of the
2 comments that you made earlier about their treatment
3 or their messages to you in the aftermath of the July
4 hearing. Some of that showed up in other
5 correspondence that we saw in the record, so I have
6 concerns about exactly what we're hearing from the
7 applicant, and I think that they will need to make a
8 very strong case in order to get any relief on this
9 project, if that becomes necessary. So, I do have one
10 question for the applicant, if I could.

11 You referred to Blue Star as the architect.
12 Is it actually an architecture firm? I didn't think
13 they were. I don't see any indication in their
14 submissions that they're architects.

15 MS. ERWIN: We have an architect that works
16 with us. He's the one who stamped and signed the --

17 MR. MAY: Okay. You have a licensed architect
18 working for you.

19 MS. ERWIN: Yes, that's correct.

20 MR. MAY: Yeah. But you're actually a
21 builder?

22 MS. ERWIN: A D.C. and we do -- it's design
23 build.

24 MR. MAY: Right. Okay.

25 MS. ERWIN: Yup.

1 MR. MAY: Yeah, I just wanted to clarify that
2 because I was momentarily confused.

3 MS. ERWIN: Yes.

4 MR. MAY: All right. I think that answers my
5 questions. Thank you.

6 CHAIRPERSON HILL: Okay, great. I have some
7 questions. So, yeah. So, you understand they're
8 going to change their application now and something
9 new is going to happen.

10 So did you guys, did any of you go to the ANC
11 meeting when they first went through this? And do you
12 understand how the ANC process works and all that?

13 MS. BAIN: We understand.

14 CHAIRPERSON HILL: That's okay. That's okay.
15 So, there's -- that's all right. So, just to let you
16 know, again --

17 MS. FRIEDMAN: I went to the meeting last
18 night.

19 CHAIRPERSON HILL: Sure.

20 MS. FRIEDMAN: But they were not, but --

21 CHAIRPERSON HILL: Okay. That's fine. So, as
22 I understand now again, Ms. Erwin, you guys are going
23 to have to go back to the ANC, correct, with the new
24 project?

25 MS. ERWIN: Most likely, yes.

1 CHAIRPERSON HILL: Yeah.

2 MS. ERWIN: Usually, they require, if we're
3 requesting additional relief to go back, but since
4 we're reducing the scope of the application, they
5 probably would not require us to come back.

6 CHAIRPERSON HILL: Okay. So, I would like to
7 know what the ANC has to say about the new
8 application. I mean, you got the approval from the
9 last application. I assume you probably will get the
10 approval for the new application. I don't know. But
11 it would be good for the Board to have something that
12 provides clarity that the ANC is still on board with
13 the new application. Okay?

14 MS. ERWIN: Yes.

15 CHAIRPERSON HILL: So, that's something that I
16 would like to see, and I would say the Board would
17 also like to see it. Hold on one second.

18 And then so, what that means is that, you know
19 -- and what Ms. Erwin is saying, which is possible,
20 and I don't know exactly, that whether or not this
21 does again come before the ANC is unclear, right? But
22 you will be able to reach out to your ANC commissioner
23 within the single-member district, whoever that may
24 be. And then notify them of your issues and voice
25 your concerns.

1 In the future, again, like you know, what
2 happens is projects come before the ANC and that's
3 when the community has the best chance of discussing
4 with their commissioners, their concerns about a
5 particular project. And then that information turns
6 into a report that we get one way or the other that
7 then we turn -- so, I'm just letting you know that
8 there is a -- and I'm sorry that you missed this
9 meeting then, okay, you know, because there would have
10 been -- you would have had an opportunity to have gone
11 to that meeting to voice your concerns with the ANC.

12 You have a question or a comment?

13 MS. FRIEDMAN: I just wanted to point out that
14 the ANC had a clarification letter that they sent
15 after the original letter. I don't know if it's, I
16 think, Exhibit 50, that their previous letter, you
17 know, saying that they were supporting the project.
18 It was actually just for the alley way and not for the
19 project itself.

20 MR. COLEMAN: For the naming.

21 MS. FRIEDMAN: For the naming of the alley
22 way. Yeah.

23 MS. BAIN: So, that was the only thing that
24 the ANC --

25 CHAIRPERSON HILL: Okay.

1 MS. BAIN: -- approved --

2 CHAIRPERSON HILL: So, hold on one second.
3 Hold on one second. Hold on one second. I'm sorry.
4 Ms. Erwin?

5 MS. ERWIN: I'm sorry. I want to go ahead and
6 clarify. It was actually for the use variance. So we
7 went to a meeting with zoning at DCRA and were told we
8 did not need a use variance for the two-unit. And so,
9 when we presented to the ANC, we said that it was by-
10 right. Were then informed after we applied, that we
11 did require a use variance.

12 So I contacted the ANC, let them know what was
13 going on, and that's why they offered the
14 clarification letter. We wanted to make sure we were
15 on the up and up with them, that they were informed on
16 everything that was going on.

17 CHAIRPERSON HILL: Okay. All right. Hold on.
18 Hold on. No, I'm sorry. Just hold on.

19 So, okay, great. So then you'll have a chance
20 to -- I mean, this is all happening again, is what I'm
21 getting at, right? We haven't even see what their
22 final design is now. You know, they had a whole bunch
23 of different variances, and we weren't even going to
24 try to do this today because the application wasn't
25 ready for us. We don't have a report from the Office

1 of Planning, and now we're going to have some further
2 clarification from the ANC.

3 So what I'm just trying to get at is, you guys
4 will have an opportunity to really see what the
5 project is again and weigh in on it. Just to further
6 provide clarification from what Mr. May mentioned is
7 that -- and by the way, just to let you know like, I
8 know the Board here is very happy to hear from the
9 neighbors, very happy for people to come forward and
10 voice their concerns.

11 Some of the things that people voice are just
12 not within our purview. So that's just something to
13 keep in mind. We're really only about zoning as it
14 applies to Title 11 or like, you know, whatever the
15 different light and air issues are. And so, I'm just
16 kind of providing that clarification to you guys, that
17 this is going to happen again. Okay?

18 Yes, you have a question?

19 MS. BAIN: Yes, if I may?

20 CHAIRPERSON HILL: Can you push on the --

21 MS. BAIN: Sure. If I may comment on the use?

22 It is represented that there's no need to get a use
23 variance for the one-story construction. I would
24 refer the commission back to -- the Board, back to Mr.
25 Coleman's statement which points out that 50 years ago

1 the Board upheld a decision --

2 CHAIRPERSON HILL: Okay, I understand.

3 MS. BAIN: -- to use the lot only for parking
4 purposes.

5 CHAIRPERSON HILL: I understand. And the
6 applicant will have an opportunity to apply their
7 application, and the Office of Planning will have an
8 opportunity to respond to their application. And
9 that's kind of the feedback that we'll get, and
10 whether or not that comes up in the Office of
11 Planning's report there here now, and so they might be
12 able to touch on that historical commentary.

13 And actually, just to point out something,
14 like 50 years is a long time ago. Okay? And so,
15 things change over 50 years. I mean, you know, I
16 mean, you were maybe here 50 years ago, right? I
17 wasn't here.

18 So, but just to clarify, we'll all have a
19 chance to come back here again and submit -- please do
20 submit your information into the record and we'll come
21 back again.

22 Okay. Does the Board have any other questions
23 with anybody? Okay.

24 So I did support, I did opposition, and
25 really, thank you for coming down. And as far as the

1 applicant, Ms. Erwin, again, you know, I don't know
2 any particulars, and I don't really want to hopefully
3 have any other discussion about, you know,
4 accusations. And however that communication went to
5 begin with, wherever it went array, I would obviously
6 do your best to make sure it doesn't happen again.
7 And do your best to work with the people here so that
8 you can obviously get at least a couple of their
9 support, right? So that's my advice to them.

10 So, that being the case, I don't know what we
11 do here, Mr. Moy. So, we're going to wait until this
12 comes forward before us again, or how do we -- we
13 don't reschedule this or anything, correct?

14 We do?

15 MR. MOY: Yeah, you would. I've been
16 listening and it appears to me that based on the
17 discussion that the applicant would need to go return
18 back to the full ANC. And I just did a quick check
19 when the next ANC, the full ANC meeting is, and it's
20 October 10th. So, I'm hoping that maybe the applicant
21 can prepare the revised plans and whatever relief that
22 they're going to be moving forward with to be able to
23 go back to the ANC.

24 CHAIRPERSON HILL: Yeah, yeah, that's great.

25 MR. MOY: On double 10, if that is the case.

1 CHAIRPERSON HILL: Sure. And then whenever
2 Mr. May is back with us, that would be helpful
3 because --

4 MR. MOY: That will be November 1st.

5 CHAIRPERSON HILL: November 1st? Okay. So
6 then, we're going to do this again. You guys are
7 getting dates right now. You don't have to worry
8 about it. So, November 1st, we're back here. October
9 10th, you have your ANC meeting. And so, you know,
10 everybody will get to see each other together in the
11 evening. And so, meaning you four and Ms. Erwin, and
12 the applicant.

13 And so try, you know, it's disappointing, it
14 is, that there are two sides to the situation.
15 However, just try to do your best to present in a calm
16 manner, your points of view.

17 So, okay. I'm sorry. Mr. May?

18 MR. MAY: I just want to make one observation.
19 So, it is possible that if you request the
20 presentation of the ANC, they may elect not to have
21 that presentation because they, you know, this is not
22 as you said before, no worse than what they previously
23 approved. This is where your feedback plays a role.
24 So you probably want to reach out to your ANC
25 commissioner to make sure they're aware that you have

1 concerns about this, just to make sure that if you
2 know, if it's appropriate, if the ANC decides -- the
3 ANC should make its decision about whether to consider
4 the case, not just on how the application has changed,
5 but what the neighbors' concerns are.

6 CHAIRPERSON HILL: So, to clarify what they're
7 saying, to clarify what Mr. May is saying, is that
8 it's possible the ANC will just approve it and not
9 have a presentation again because they're asking for
10 less relief than they previously comments on.

11 Ms. Campano.

12 MS. CAMPANO: Oh, I just wanted to note that I
13 did contact the ANC after the July 26th hearing. And
14 then the ball just got dropped, but I sent them my
15 concerns and --

16 CHAIRPERSON HILL: Okay. Well, I just --

17 MS. CAMPANO: -- we were supposed to meet.
18 But they were --

19 CHAIRPERSON HILL: I just try to follow --

20 MS. CAMPANO: -- on vacation and --

21 CHAIRPERSON HILL: Just try to follow up.
22 August is a tough month for everybody.

23 MS. CAMPANO: Yeah.

24 CHAIRPERSON HILL: Okay?

25 MS. CAMPANO: Okay.

1 CHAIRPERSON HILL: All right. Okay, great.
2 All right. Then we'll see you guys the next time, all
3 right? And we're going to take a quick break, thank
4 you.

5 MR. MOY: Mr. Chair, before you --

6 CHAIRPERSON HILL: Oh, yeah. Sorry, Mr. Moy.

7 MR. MOY: So, we'll continue the hearing
8 November 1st. Does the Board have any wish when the
9 materials should be filed into the record, as it was
10 the Office of Planning's --

11 CHAIRPERSON HILL: I mean, we need everything
12 a week before, I guess. You know, I mean, you know.
13 And so whatever ends up happening, if we don't have it
14 a week before, then we're going to have to push this
15 back off again until the next time Mr. May is with us.
16 And so, because you know, he has now heard enough of
17 this to be helpful. Okay?

18 MR. MOY: Okay.

19 CHAIRPERSON HILL: Okay. Thank you. We're
20 taking a quick break. Thank you.

21 [Off the record from 12:42 p.m. to 12:51 p.m.]

22 CHAIRPERSON HILL: Whenever you are ready.

23 MR. MOY: Ready, Mr. Chairman, for the Board
24 to reconvene. If the parties can come to the table to
25 application No. 19549 of Bradley Greenfield. This is

1 a request for special exceptions under Subtitle E,
2 Section 205.5; from the rear yard requirements,
3 Subtitle E, Section 205.4; and under Subtitle E,
4 Section 5201, lot occupancy requirements of Subtitle
5 E, Section 304.1; and nonconforming structure
6 requirements of Subtitle C, Section 202. This would
7 construct a two-story rear addition to an existing
8 one-family dwelling, RF-1 Zone, 1330 Maryland Avenue
9 Northeast, Square 1027, Lot 36.

10 CHAIRPERSON HILL: All right. Good afternoon.
11 If you could please introduce yourselves from my
12 right to left?

13 You need to push the microphone and speak into
14 it.

15 MR. BOYETTE: Neither of us have been sworn
16 in.

17 CHAIRPERSON HILL: Oh, okay. Well, there you
18 go. So, first, we'll swear you in. Mr. Moy, if you
19 could do that, please?

20 Yeah, and anyone else, if you haven't been
21 sworn in and you plan to testify, please stand and
22 take the oath. Thank you.

23 [Oath administered to the participants.]

24 CHAIRPERSON HILL: Okay, great. Thank you.
25 So if you could please introduce yourselves?

1 MR. BOYETTE: Joe Boyette, the architect.

2 MR. GREENFIELD: Brad Greenfield, the
3 homeowner.

4 CHAIRPERSON HILL: Okay. All right. Mr.
5 Greenfield, or Boyette, I don't know who is going to
6 present to us but after basically reviewing the
7 record, I don't have a lot of specific questions.
8 We'll see how things go in terms of your presentation.

9 I guess the revised plans, as I understand it, were
10 the August 30th submission, and I believe that's
11 accurate.

12 I suppose if you could go through again, the
13 project and the relief that you're requesting, as well
14 as how you're meeting the standard for us to grant
15 that relief, and then I guess if you could speak to
16 the outreach you've provided to the community,
17 including the ANC. And I'm going to go ahead and put
18 10 minutes on the clock, so we've got until 1:00
19 there. That's easy for me to do the math. And so you
20 can start whenever you'd like.

21 MR. BOYETTE: So, the proposal is a rear
22 addition that would extend 15 feet, eight inches
23 beyond the existing rear wall of the home. And it
24 would essentially align with the rear wall of the
25 condominium building to the west. So, we're not going

1 out beyond that; beyond that building.

2 The orientation of the building is such that
3 because Maryland Avenue sort of runs this way, that
4 there still will be a decent amount of southern
5 exposure in the rear yard of the adjacent home. We're
6 essentially creating the same condition that they --
7 they will have the same condition that Brad and his
8 family have on their lot now, with the condominium to
9 the west. If you follow me.

10 Currently on the site, there is a large
11 existing rear deck that was there when Brad and Tracy
12 purchased their home. So their current lot occupancy
13 is 70, almost 73 percent. And so in putting this
14 addition on, they're going to reduce their lot
15 occupancy to below the 70-foot threshold. This will
16 make the setback, which currently is 15 feet, would
17 also bring that within the allowed setback, so it
18 would be 21.2 feet.

19 So the setback would come off of -- there's
20 actually another residence on the other side of the
21 alley, 1335 Linden Court, an alley residence. So,
22 they would be pulling back from the façade of that
23 building, an additional five to six feet.

24 The relief we're asking for is the 10-foot
25 setback, as well as the lot occupancy requirement.

1 But we are again reducing the current lot occupancy
2 from above 70 percent to below 70 percent.

3 Okay. Does the Board have any questions for
4 the applicant? Okay. I'm going to turn to the Office
5 of Planning.

6 MS. MYERS: Good afternoon. Crystal Myers for
7 the Office of Planning. The Office of Planning is
8 recommending approval of this case and stands on the
9 record of the staff report.

10 CHAIRPERSON HILL: Okay. And does anybody
11 have any questions for the Office of Planning?

12 [No audible response.]

13 CHAIRPERSON HILL: Okay. All right. Is there
14 anyone here from the ANC?

15 [No audible response.]

16 CHAIRPERSON HILL: Is there anyone here
17 wishing to speak in support?

18 [No audible response.]

19 CHAIRPERSON HILL: Is there anyone here
20 wishing to speak in opposition?

21 [No audible response.]

22 CHAIRPERSON HILL: Okay. All right. So then,
23 I'm going to turn back to the applicant. Do you have
24 anything additional you'd like to add?

25 MR. BOYETTE: I just want to add that we --

1 Brad reached out to the neighbor to the east, and
2 received approval. The neighbor on the alley
3 dwelling, and received approval. And then in the
4 condominium building, three out of the -- one of the
5 units is vacant, and two out of the other three gave
6 approval in writing. The other one gave verbal
7 approval but never gave Brad an approval letter.

8 CHAIRPERSON HILL: Okay.

9 MR. BOYETTE: But he spoke with her.

10 CHAIRPERSON HILL: All right. Does the Board
11 have any further questions for the applicant?

12 [No audible response.]

13 CHAIRPERSON HILL: All right. I'm going to go
14 ahead and close the hearing. Is the Board ready to
15 deliberate?

16 MR. HART: And, Mr. Chairman, having reviewed
17 the record for this case, I think it's a fairly
18 straight forward case. I approve -- I appreciate the
19 fact that you have now kind of given us some
20 information, additional information, in your testimony
21 regarding the reaching out to the adjacent neighbors.
22 That's very helpful for us to hear. Also noting that
23 the ANC 6A is -- recommends approval. The Office of
24 Planning also recommends approval. And DDOT had no
25 objection to the case. As well as the letters in

1 support from the adjacent residents as well.

2 I think all this bodes well for the project.

3 I would not have any opposition in -- I would be in
4 support of the application as read by the secretary.

5 And if I make a motion -- would like to make a motion
6 to approve Application No. 19549 as read by the
7 secretary.

8 CHAIRPERSON HILL: Second. Motion has been
9 made and seconded.

10 [Vote taken.]

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

12 MR. MOY: Staff would record the vote as four,
13 to zero, to one. This is on the motion of Vice Chair
14 Hart to approve the application for the relief
15 requested. Seconded the motion, Chairman Hill. Also
16 in support, Mr. Peter May and Ms. Lesyllee White. We
17 have a board seat vacant. Motion carries, sir.

18 CHAIRPERSON HILL: Thank you, Mr. Moy.
19 Summary order?

20 MR. MOY: Thank you.

21 CHAIRPERSON HILL: Thank you. Thank you,
22 gentlemen.

23 MR. MOY: All right, Mr. Chairman. Next up is
24 Application No. 19492 of Henry M. Hunt, as amended for
25 variance relief from the lot occupancy requirements,

1 Subtitle E, Section 304.1, and special exceptions
2 under Subtitle E, Section 5201; from the rear yard
3 requirements of Subtitle E, Section 306.1; from the
4 parking requirements, Subtitle C, Section 701.5, to
5 construct a one-story rear addition with roof deck to
6 an existing one-family dwelling, RF-1 Zone, 1529 8th
7 Street Northwest, Square 421, Lot 60.

8 CHAIRPERSON HILL: I'll give you a second.

9 [Pause.]

10 CHAIRPERSON HILL: No, that's all right. I
11 mean, I don't know how to get you help. Well, first,
12 why don't you introduce yourselves?

13 MR. HUNT: Henry Hunt, sole homeowner, 1529
14 8th Street.

15 MS. WORSLEY: Gayll Worsley, architect.

16 CHAIRPERSON HILL: Okay. Ms. Worsley, I guess
17 you're going to be presenting to us.

18 MS. WORSLEY: Correct.

19 CHAIRPERSON HILL: And, Mr. Moy, is there any
20 way we can help Ms. Worsley, because I think we're
21 going to need a presentation?

22 MR. MOY: Oh, yes.

23 [Pause.]

24 MS. WORSLEY: I have it on another disc, so
25 I'm going to see if it will let me do that.

1 [Pause.]

2 CHAIRPERSON HILL: Okay, great. Thank you.

3 So, Ms. Worsley, Worsley?

4 MS. WORSLEY: Yes, Worsley.

5 CHAIRPERSON HILL: Okay. I'm sorry?

6 MS. WORSLEY: Worsley.

7 CHAIRPERSON HILL: Worsley.

8 MS. WORSLEY: Uh-huh.

9 CHAIRPERSON HILL: Oh, okay. Thank you.

10 Let's see. So, I guess, have you -- you haven't
11 presented before us before, correct?

12 MS. WORSLEY: No, we didn't.

13 CHAIRPERSON HILL: Okay. So, as you know,
14 we're going to go ahead and give you time to present
15 your case, and as to why you need the relief you're
16 requesting.

17 MS. WORSLEY: Okay.

18 CHAIRPERSON HILL: And the variance relief is
19 a pretty different test to meet, just to kind of like
20 set that up and you know the standards in which we
21 need to go through in terms of evaluating the variance
22 relief. And the Office of Planning is currently
23 opposed to that relief.

24 So if you want to -- but they are, and they
25 have been in support of the rear yard relief. And so,

1 while you're going through your presentation again,
2 telling us about the project, but in specifics I would
3 focus on the variance relief, and the issues as to why
4 you're meeting the criteria. And hold on, someone was
5 about to crack me.

6 And so, but that would be my suggestion as
7 well as I was going to put some time on the clock.
8 But before I do that, did the Office of Planning have
9 a comment?

10 MS. BROWN-ROBERTS: Yes. Yes, Mr. Chairman.
11 Good morning. For the record, Maxine Brown-Roberts
12 from the Office of Planning.

13 On Monday we were notified by DCRA that the
14 rear yard is actually a variance. And I conveyed that
15 information to the applicant so they're aware of that.

16 CHAIRPERSON HILL: Okay. So it's a variance
17 now, and are you still -- so you're now in denial also
18 of the rear yard?

19 MS. BROWN-ROBERTS: Yes. Yes.

20 CHAIRPERSON HILL: Okay. All right. So, you
21 can have a crack at both of them, apparently, it
22 sounds like. So, I'll go ahead and give you, you
23 know, 10 minutes to start. And really, you know, it
24 is a bit of an uphill climb for you right now. So,
25 you know, if you need to take more time than that, go

1 ahead, but please, do your best to make your case.

2 And you can start whenever you'd like.

3 MS. WORSLEY: Okay. I'm going to let Mr.
4 Henry start, and then I will jump in with some of the
5 specifics.

6 CHAIRPERSON HILL: Okay.

7 MS. WORSLEY: Okay?

8 MR. HUNT: Sure. Thank you for your time.
9 This is what they?

10 MS. WORSLEY: Yes.

11 MR. HUNT: Okay. I pretty much, I've lived
12 there, I purchased the property in 2007. I've lived
13 there since 2008. Since then and now there's been two
14 nine-story buildings built. One on the other side of
15 the alley, and one a half a block to the south.

16 Since that time, I've thought about what I
17 could do in the back yard, and what I came up with was
18 to build a sunroom or an addition to the back area
19 there that covers the Jacuzzi pool and also offers a
20 deck on top of that in order to increase my sunlight.

21 From this first picture you can't see the -- across
22 the alley, but you can imagine a nine-story building
23 there, what it does for the sunlight in the morning.

24 Other than that, just three phases. Wanted to
25 improve the property, wanted to reduce the noise, and

1 also wanted to increase my privacy.

2 I do live in the city. I choose to live in
3 the city. I appreciate the city. I understand what
4 that means, but ever since this has happened I've just
5 wanted to see if I could do a little bit more with
6 that space that I don't use right now. There's a beer
7 garden a block, a half a block to the north, that
8 brings a lot of noise, a lot of walking traffic. And
9 like I said, the two nine-story buildings have first-
10 floor retail around, all the way around, so I was
11 looking for more relief.

12 CHAIRPERSON HILL: Now, have you guys
13 presented before the ANC yet?

14 MR. HUNT: Yes.

15 MS. WORSLEY: Yes, we did.

16 CHAIRPERSON HILL: Okay.

17 MS. WORSLEY: I believe it was in May, we
18 presented, and they supported the project.

19 CHAIRPERSON HILL: I don't think we have
20 anything from the ANC that shows support.

21 MS. WORSLEY: Okay. I had asked Mr., I think
22 it was Pedro, to e-mail a copy.

23 CHAIRPERSON HILL: Uh-huh. Okay.

24 MS. WORSLEY: Yeah.

25 CHAIRPERSON HILL: Okay. Well, we don't have

1 anything currently.

2 And so, and also, as far as the presentation
3 goes, again, and I appreciate it. I'm just trying to
4 focus like, you know, focusing your presentation on as
5 to how you're meeting the standard. I mean, I
6 understand you might want to do something, but it's,
7 you know. Okay. All right.

8 MS. WORSLEY: Right.

9 CHAIRPERSON HILL: So, why is this unique and
10 why is it that, you know, this has to happen in order
11 for this property to be utilized.

12 MS. WORSLEY: Right. So, as Mr. Hunt
13 explained, this is really based on the lack of
14 privacy. We don't have a particular hardship, other
15 than that the lot is less than the 1,800 square feet
16 for an RF-1 Zone, which if we did, then we would be
17 requesting a 74.7 percent lot occupancy as opposed to
18 a 79 percent lot occupancy. And in essence, you know,
19 that is our one true hardship for the case.

20 Outside of that, for the special exceptions,
21 we are dealing more with the desire to encase the
22 existing deck that's there, and not cause any
23 particular due hardship to our neighbors. I think
24 we're only nine feet past the adjacent neighbor that
25 you see on the right. But I will go through the

1 slides. Let's see. Sorry.

2 So, this is the building that Mr. Hunt
3 mentioned. This is the back. This is what he gets
4 every day. And prior to the construction, he was
5 dealing more with two to three-story scale buildings.

6 This is the current deck, the footprint of it,
7 with the hot tub. Again, more pictures of his lack of
8 privacy at the rear.

9 This is the alley, and just the -- it's turned
10 it into from probably what was more like an average
11 used alley, to a much more -- to a much busier alley,
12 based on the residents and the retail that's on the
13 ground level.

14 You can see, based on the site plans, that
15 we're not changing the existing footprint. And I
16 think --

17 MR. HART: Can you hit control+L on your, on
18 the -- it will just make the entire screen --

19 MS. WORSLEY: Oh, sure.

20 MR. HART: Thank you.

21 MS. WORSLEY: Yup. So, we're not -- you know,
22 we're not changing the actual lot coverage. Outside
23 of the fact that the deck is not over four feet at the
24 moment. So our proposition is mainly just to
25 incorporate, encapsulate that deck and give Mr. Henry

1 a bit more privacy.

2 Outside of that, we don't have any you know --
3 our lot is not in particular detrimental shape, or we
4 don't have any slope that we're dealing with. And I
5 understand that those are somethings that you might
6 consider as hardships under the variance test. Our
7 sole hardship is that we are under 1,800 square feet.
8 But I'll walk through the rest of the slides.

9 We wouldn't be visible, very visible from the
10 rear, outside of the stair enclosure. The materials
11 will be very in keeping with some of the other rear
12 yard additions. We'll keep it quite simple. We're
13 not trying to make it very obtrusive. It is only one
14 story.

15 This is the floorplan. Stair. Basically the
16 side-by-side footprint comparison, and then going
17 forth with the notifications.

18 And Mr. Henry has spoken with one neighbor
19 outside of -- the other neighbor doesn't appear to
20 live there, so he's not -- hasn't been able to make
21 direct contact with him.

22 MR. HUNT: I think that's it. Any questions?

23 MS. WHITE: What kind of feedback did you get
24 from your neighbor?

25 MR. HUNT: On the --

1 MS. WHITE: The one neighbor that she
2 mentioned.

3 MR. HUNT: Yeah. I believe we sent the
4 letter.

5 MS. WORSLEY: Yes.

6 MR. HUNT: That we -- it was approval. The
7 Woodrow family on the south side.

8 CHAIRPERSON HILL: Okay. I'm just having
9 trouble pulling up an exhibit, so that's -- I'm just
10 going to turn to the Office of Planning first and then
11 come back to the Board.

12 Office of Planning, if you wouldn't mind
13 please?

14 MS. BROWN-ROBERTS: Yes. Okay. So for the
15 lot occupancy that existing is at 55.8 percent, and
16 that would be -- the addition would increase it to 78
17 percent.

18 The applicant has stated that the addition is
19 to protect his privacy, however he hasn't demonstrated
20 the nexus between the privacy and the lot occupancy.
21 And I had also requested that if it could be
22 demonstrated that a smaller deck would, you know,
23 could lessen the amount, the amount of relief that's
24 required. I haven't seen any -- they haven't
25 addressed that to me.

1 And so, they haven't demonstrated that there
2 is an exceptional situation for them that is resulting
3 in this practical difficulty.

4 And then the same thing would apply to the
5 rear yard, because the resultant nonconforming rear
6 yard is because of the increase in the lot occupancy.

7 We also addressed in our report, that the
8 setback that the addition seems to be more than 10
9 feet past the adjacent dwelling. It was not quite
10 clear to us and so that is something that we'd like
11 the applicant to clarify, just to make sure that the
12 addition isn't beyond the 10 feet of the neighboring
13 property.

14 And then we also identified that they needed
15 the relief from Section Subtitle C, Section 202.2,
16 which is an expansion of a nonconforming structure.

17 CHAIRPERSON HILL: Okay. But you're not in
18 support of that anyway, the C-202.2?

19 MS. BROWN-ROBERTS: Well, they didn't address
20 it, so --

21 CHAIRPERSON HILL: I see. Okay.

22 MS. BROWN-ROBERTS: Yeah.

23 CHAIRPERSON HILL: So, they would need to add
24 C-202.2 to their application.

25 MS. BROWN-ROBERTS: Yes, and that's a special

1 exception. And I think, you know, that's something
2 that we could support if they had the -- if they
3 addressed the other things.

4 CHAIRPERSON HILL: Okay. All right. Okay.
5 Does the Board have any questions for the Office of
6 Planning? No? Okay.

7 Does the applicant have any questions of the
8 Office of Planning?

9 MS. WORSLEY: I suppose the question would be,
10 if we had the ability to reduce it and we used
11 assumed, you know, the hardship of not having 1,800
12 square feet, is there some wiggle room to gain a bit
13 more in terms of the reducing the footprint of the
14 addition?

15 MS. BROWN-ROBERTS: Well, anything over 70
16 percent is going to be a variance.

17 MS. WORSLEY: Okay.

18 MS. BROWN-ROBERTS: And so, you would still
19 have to demonstrate, you know, your practical
20 difficulty there.

21 MS. WORSLEY: Okay. Very good. Thank you.

22 CHAIRPERSON HILL: Okay.

23 MS. BROWN-ROBERTS: And then --

24 CHAIRPERSON HILL: Sorry. Please, go ahead.

25 MS. BROWN-ROBERTS: -- the nexus has to be

1 made between you know, your practical difficulty and
2 the issues that he says he is -- that's a problem.
3 You know? Would that stop the noise that he talks
4 about? So, those are the concerns that that nexus has
5 to be made.

6 CHAIRPERSON HILL: Okay. So, I'm a little
7 unclear. Your 1,800-square foot argument is what?
8 Can you clarify that again for me?

9 MS. WORSLEY: So if the lot were 1,800 square
10 feet, you know, a typical RF-1 standard lot size --

11 CHAIRPERSON HILL: Typical how? Just typical?

12 MS. WORSLEY: The requirement for RF-1 --

13 CHAIRPERSON HILL: Oh.

14 MS. WORSLEY: -- minimum lot size is 1,800
15 square feet. We're at 1,703. So if I work the
16 numbers backwards, we're at 74. -- if we had 1,800
17 square feet we would be requesting 74.7 percent lot
18 occupancy as opposed to 78 or 79.

19 CHAIRPERSON HILL: Would still be a variance.

20 MS. WORSLEY: Which would still be a variance.

21 CHAIRPERSON HILL: Which would still be a
22 variance. Right.

23 MS. WORSLEY: But if we were able to use that
24 as a hardship going forward to reduce the addition,
25 then perhaps we wouldn't be -- I think I had figured

1 out that we would end up reducing the addition to
2 about 13 and a half feet in depth.

3 CHAIRPERSON HILL: Okay. Okay. I understand,
4 okay.

5 MS. WORSLEY: Yeah.

6 CHAIRPERSON HILL: So, just, and I'll let the
7 Board speak up for a second. I mean, like, I think
8 you are not there, and you know, I mean, again, the
9 variance test is really something that is very clearly
10 laid out. Like, you know. And because of the you
11 know, because of the lot itself, it has to lead to a
12 practical difficulty that you can't use that lot in
13 the way that would enable us to grant a variance, and
14 then also that would be not a detriment to the public
15 good or the intent of the zoning regulations.

16 So it is a difficult burden. And so, I
17 suggest that, you know, and I'll let my colleagues
18 speak up, but going back and working with the Office
19 of Planning and seeing if there is some way that they
20 might be able to help you understand your project in a
21 way that maybe you can get some of what you want.

22 I would also request that, you know, the
23 letter from the ANC gets submitted into the record.
24 But I would suggest that we hear -- you know, we would
25 put this back on for a hearing date, later, after

1 you've had a chance to go back and work with the
2 Office of Planning to see how you might want to change
3 your application. And then also, the Office of
4 Planning had made note that you would be in need,
5 also, of C-202.2, so you would add that to your
6 application.

7 Does the Board have any other thoughts or
8 questions for the applicant?

9 MR. MAY: So, let me just say, I completely am
10 sympathetic to the situation that you're in. I recall
11 the Zoning Commission hearings which we voted to
12 support that building that's behind you. And one of
13 the things that I thought was really remarkable about
14 that hearing was that there was nobody from your block
15 there to object to it. I mean, you know, it's a nine-
16 story building backing up to rowhouses. There was
17 nobody there to say, you know, that they had a problem
18 with it.

19 And so, and it was not an easy case. In fact,
20 I'm pretty sure I voted against it at least, you know,
21 I think I voted against it on its preliminary and
22 final approval. And there were subsequent votes
23 tweaking it. I can't remember where I voted on those.

24 And that was one of the concerns I had about
25 that project, that it was too much to put a nine-story

1 building up against rowhouses.

2 Now, I think the zoning would have allowed 60
3 or 70 anyway, so I'm not sure that would have solved
4 your problem, but I mean, there really was nobody
5 there. I can't remember exactly when this happened,
6 but I think it was after you had moved in. But maybe,
7 you know, right after you moved in. If you say you
8 moved in in 2007, I think the case was probably in
9 2008.

10 MR. HUNT: Yeah, it changed. It changed a few
11 times.

12 MR. MAY: Yeah.

13 MR. HUNT: And not to cut you off --

14 MR. MAY: No, that's all right.

15 MR. HUNT: -- midstream. But just to be
16 clear, there were many ANC meetings about the
17 development.

18 MR. MAY: Yeah.

19 MR. HUNT: I think that even changed to J
20 something G.

21 MR. MAY: Yeah.

22 MR. HUNT: Ultimately, we just assumed the
23 money fell through or whatever, and maybe we were a
24 little --

25 MR. MAY: Yeah.

1 MR. HUNT: -- uneducated on that process. But
2 we did, everybody was there at the ANC.

3 MR. MAY: Yeah.

4 MR. HUNT: Some of the folks on the corner had
5 a bigger problem. But if I misspoke, I want that
6 building there.

7 MR. MAY: Okay.

8 MR. HUNT: I'm happy that building is there.

9 MR. MAY: No, but I mean, I understand the
10 impacts of it. I mean, it really does have a bad
11 impact on the light --

12 MR. HUNT: Right. And just, this would be the
13 fix for me, personally but --

14 MR. MAY: -- that you get. Yeah.

15 MR. HUNT: But for the block, for the
16 neighborhood, it's great.

17 MR. MAY: Right. Okay. Well, that's good.
18 I'm glad you're supportive of the project overall. I
19 would have been more supportive of it if it was a
20 little shorter and a little better design. But that's
21 neither here nor there.

22 MR. HUNT: It's better than what was there.

23 MR. MAY: Yeah. Yeah, it was very bad, what
24 was there. Right. At the time anyway.

25 So, but I do think that there are solutions

1 that you could look at that might fit within the 70
2 percent. Did you look at how far back you could go
3 with an addition and stay within 70 percent?

4 MS. WORSLEY: Yes. I believe it's about 13
5 and a half feet.

6 MR. MAY: About 13. So, you can get a 13-and-
7 a-half-foot room there?

8 MS. WORSLEY: Uh-huh.

9 MR. MAY: I mean, see what you can do with a
10 13-and-a-half-foot room. And there are things that
11 you could do with trellises and whatnot, that might
12 help with the privacy factor and so on. I just think,
13 I think there's a way to solve this problem and get
14 you at least an improvement in the privacy. I don't
15 know that you can do that much about you know, the
16 alley traffic and pollution and things like that, that
17 come with it. Because those are some of the concerns
18 that I recall from the record.

19 But I'm hopeful that you can actually come up
20 with a good solution.

21 MR. HUNT: And Gayll has told me, and she
22 understands the law, and she's told me that, in
23 layman's term, basically, the room is too big. So,
24 you know, the folks think the room is too big because
25 of density laws, and she's educated on me on that, and

1 I can appreciate all of it.

2 But with the stairs, the second form of egress
3 coming out the back, where the HVAC is, where the
4 Jacuzzi tub is, the room just wouldn't really do me
5 any good at that size. And maybe that's, you know,
6 the wrong term. But --

7 MR. MAY: Again, I think there are ways to
8 solve that. I understand that there's, you know,
9 expense associated with doing things like moving the
10 HVC unit. But you know, there's a lot of expense
11 associated with building an addition that size too.

12 MR. HUNT: Sure.

13 MR. MAY: So, what you might save on cutting
14 it from 22 feet to 13 feet, might make it workable to
15 do some of that relocation.

16 Also, if you need the, you know, that
17 stairway, I'm not sure that that's subject to the 70
18 percent lot limitation.

19 Ms. Brown-Roberts?

20 MS. BROWN-ROBERTS: It is.

21 MR. MAY: It is?

22 MS. BROWN-ROBERTS: Yes.

23 MR. MAY: Okay.

24 MS. BROWN-ROBERTS: There are some stairs, it
25 depends, if it's just a landing --

1 MR. MAY: Yeah.

2 MS. BROWN-ROBERTS: -- then it's not. But if
3 it's a larger thing then --

4 MR. MAY: Oh. Okay. So there might be a way
5 to --

6 MS. BROWN-ROBERTS: So we can work -- yes.

7 MR. MAY: -- configure a stair that's outside
8 the 70 percent.

9 MS. WORSLEY: Okay.

10 MR. MAY: So I would look carefully at that,
11 because I do think that there's a way to get you some
12 room back there. And plus, you could probably keep
13 the, you know, the rest of the 22 feet as a deck if
14 it's only two feet off the ground, right?

15 MS. WORSLEY: Correct.

16 MR. MAY: Right. Okay.

17 MR. HART: Yeah, along with Commissioner May's
18 comments and Chairman Hill's comments, I think that
19 the -- and you kind of heard that it is a very hard --
20 it is a very high bar to have to do a variance for a
21 project like this because it is a fairly -- generally
22 speaking, fairly small project. And it is -- if you
23 could -- as Commissioner May said, if you could find a
24 way that it was within the actual percent, the 70
25 percent mark, that would help you out because you

1 wouldn't have to go through as much process, and
2 actually it would -- you would get what you wanted and
3 not have to, you know, come back before us and go
4 through all of this, because I think it is difficult
5 for us to be able to support a variance for the
6 rationale that you've stated so far. There isn't
7 enough there to be able to say, okay, I get it. You
8 know, that makes sense to me and I think that you
9 know, that relief would be warranted.

10 I mean, you look at the other neighbors, the
11 other lots on this street, and they're all about the
12 same. And so it then becomes, well, how is this
13 particular site different than all of them, and it
14 just you know, begs to be more difficult. And I think
15 that if you could find a way to configure this so that
16 it's within that 70 percent, it would be -- much more
17 beneficial to you in just terms of, you know, having
18 to go through this process. So, that's it. Thanks.

19 MS. WHITE: And I'll just weigh in, too, just
20 echoing what my colleagues just said. You know, we
21 were trying to be helpful because I can definitely
22 sympathize for the, you know, kind of the lack of
23 privacy issue there. I'm pro-development but you
24 know, you always want to preserve certain things in
25 the area as well. But I would just encourage you to

1 work very closely with the good folks at OP to figure
2 out a solution because when you get them on board, as
3 well as an ANC, it does increase the changes of
4 approval. So, I'd look forward to having you guys
5 back.

6 CHAIRPERSON HILL: Okay, so I guess what I
7 would suggest is you've gotten more feedback here, and
8 you've gotten some good feedback, I think, from
9 Commissioner May. And obviously, if you don't have to
10 come back here, that's better.

11 But if you do come back then I would go ahead
12 and say that if you could go ahead and try to work
13 with Ms. Brown-Roberts to see what they, the Office of
14 Planning, might be able to recommend. And
15 understanding, again, just the high bar that again is
16 a variance, and what we need to do in order to grant
17 that variance. And so, you can still continue to go
18 down that road, but I don't think based upon what
19 you've given us so far, you can see that it's not
20 something that we would be approving at this point.

21 So, what I would suggest perhaps, is dependent
22 upon if you have -- you know, whatever your schedule,
23 you think you know -- Mr. May is back on November 1st,
24 and so that might be a time that you would have enough
25 time to speak with the Office of Planning, get the ANC

1 to submit their letter to us, and then see where you
2 are.

3 MS. WORSLEY: Okay.

4 CHAIRPERSON HILL: Okay?

5 MS. WORSLEY: Acceptable?

6 MR. HUNT: Sure. Just a general question. I
7 don't want to hold anybody up. Besides my rights,
8 would there be any other reason to come back without
9 their approval? I'm just saying, in general, like
10 would you only --

11 CHAIRPERSON HILL: No, no, no. If you --

12 MR. HUNT: -- approve this if they were --

13 CHAIRPERSON HILL: Well, if you came back, if
14 you came back and you still didn't have the Office of
15 Planning's approval, but you presented a stronger case
16 than you have now --

17 MR. HUNT: Just, there would be a reason.

18 CHAIRPERSON HILL: -- in terms of a variance,
19 I mean, if that was the case that you presented just
20 now, I think you're probably, you would get a no. You
21 know? But if you came back and had different
22 reasonings, or a stronger presentation as to why you
23 passed those tests, I mean, the three prongs of the
24 variance test, you can go and read them. And you
25 know, you have to create -- you know, your house

1 obviously exists fine the way -- I mean, you're in
2 there now, right? And so, how is it different from
3 the house next door or the house next door. I mean,
4 you know, the uniqueness and the nexus between that
5 uniqueness and the practical difficulty with what you
6 can do, that's kind of what you're trying to do.

7 And then the third prong was that it's not --
8 it doesn't harm the zoning code. Right? Or the
9 nature of the zoning code.

10 But the Office of Planning can help you with
11 that in terms of the specificity. So, yes, you could
12 come back. If it's the same argument, probably you're
13 not going to do very well. But if you come back with
14 a different argument, even if they say no, that's
15 still your right. I mean, you can -- you know, we
16 take the Office of Zoning, their feedback, and then we
17 determine what we think as a board.

18 Did that answer your question?

19 MR. HUNT: Yeah. For the most part, yeah.

20 CHAIRPERSON HILL: Okay. Okay.

21 MR. HUNT: I mean, I don't particularly know
22 what can change, but she'll educate me on --

23 CHAIRPERSON HILL: Yeah. I think --

24 MR. HUNT: -- (simultaneous speech).

25 CHAIRPERSON HILL: It sounds like -- your

1 architect is nodding her head a lot. So, it sounds
2 like there might be some things that she thinks she
3 might be able to do, to where you will be able to move
4 forward, just not exactly in this same design.

5 MR. HART: And one other addition, Mr.
6 Chairman. Mr. Hunt, we are required to give the
7 Office of Planning's report great weight.

8 MR. HUNT: Sure.

9 MR. HART: As well as the ANC report. And
10 that's why we were looking for the ANC report so that
11 we could understand what their position was on this.
12 And it's helpful for us as we are making our -- doing
13 our deliberations, to come up with whatever we come up
14 with. But if we don't have that, or if they say no,
15 then we are taking that into consideration.

16 So you are more than welcome to come back and
17 present an updated case, and updated drawings.
18 Whatever that is. But I just didn't think it made
19 sense to -- and the chairman had said so, we didn't
20 think it made sense to proceed right now because it's
21 not good for you right now. So, it's better to at
22 least reconvene, think about it, make some changes or
23 change the way that you're thinking about -- that
24 you're describing it, and how it meets the three
25 prongs of the variance test. And then, we hear it

1 again.

2 MR. HUNT: I understand. I was just trying to
3 save everybody's time. It's been about a year and a
4 half, the process, totally. And I didn't want to set
5 something for November 10th until we got the approval,
6 if that's the key factor.

7 CHAIRPERSON HILL: Sure. No. You'll see. I
8 mean, you'll find out what happens between now and
9 then and November 1st, and you can make a
10 determination as to whether or not you're going to
11 come back to us or not. Okay?

12 So it's November 1st, right, Mr. -- so,
13 November 1st is when Mr. May is back here again. So,
14 we either will or won't see on November 1st. Okay?
15 So, is the Board -- anything else? I'm sorry, Mr.
16 May? I mean, Mr. Moy.

17 MR. MOY: You know, just a quick anecdote. In
18 Chinese, my name is pronounced May.

19 CHAIRPERSON HILL: Oh, great. That's not
20 going to help me at all.

21 MR. MOY: Well, I thought I'd throw that out
22 there.

23 Anyways, Mr. Chairman, I was going to suggest,
24 all right, if I work backwards from November 1st,
25 continued hearing. If the applicant can make revised

1 filings by October 18th, including the -- I'm assuming
2 there may be a revised certification as well. And
3 then provide an opportunity for the Office of Planning
4 to provide a supplemental, based on the changes by
5 October 25th.

6 CHAIRPERSON HILL: Ms. Brown-Roberts, is that
7 okay?

8 MS. BROWN-ROBERTS: Yes.

9 CHAIRPERSON HILL: Okay, great. All right.
10 So then, do we need anything else, Mr. Moy?

11 MR. MOY: No, sir.

12 CHAIRPERSON HILL: Okay. All right. Thank
13 you, guys.

14 MS. WORSLEY: Thank you so much.

15 CHAIRPERSON HILL: Good luck.

16 Mr. Moy, is there anything else before the
17 Board?

18 MR. MOY: Not from the staff today, sir.

19 CHAIRPERSON HILL: Okay. Then we stand
20 adjourned. Thank you.

21 [Whereupon, at 1:31 p.m., the public hearing
22 and meeting were adjourned.]

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CERTIFICATE OF TRANSCRIPTIONIST

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