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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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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 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.

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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

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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