

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

DECEMBER 6, 2017

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, NW, Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT COMMISSIONERS PRESENT:

FREDERICK L. HILL, Chairperson
LESYLLEE M. WHITE, Board Member
CARLTON HART, Board Member (NCPC)

ZONING COMMISSION COMMISSIONER PRESENT:

ROBERT MILLER, Vice Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

CHRISTOPHER COHEN, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
BRANDICE ELLIOT
ANNE FOTHERGILL
STEPHEN MORDFIN
CRYSTAL MYERS
KAREN THOMAS

The transcript constitutes the minutes from the
Public Hearing held on December 6, 2017.

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

(9:36 a.m.)

CHAIRPERSON HILL: Good morning. The hearing will please come to order. We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street. This is the December 6 public hearing of the Board of Zoning Adjustments, The District of Columbia.

My name is Fred Hill, chairperson. Joining me today is Carlton Hart, vice chair; Lesyllee White, board member; and representing the Zoning Commission is Robert Miller.

Copies of today's hearing's agenda are available to you and located on the wall bin next to the door. Please be advised that this proceeding is being recorded by a court reporter. It is also webcast live.

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

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

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

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1 in by the secretary.

2 Also, each witness must fill out two witness
3 cards. These cards are located on the table near the door
4 and on the witness table.

5 Upon coming forward to speak to the Board, please
6 give both cards to the reporter standing to the table or my
7 right.

8 If you wish to file written testimony or
9 additional supporting documents today, please submit one
10 original and 12 copies to the secretary for distribution.

11 If you do not have the requisite number of copies,
12 you can reproduce copies on an office printer in the Office
13 of Zoning located across the hall.

14 The order of procedure is for special exceptions,
15 variances, and appeals, is also listed in the bin as you walk
16 into the room.

17 The record will be closed at the conclusion of
18 each case except for any material specifically requested by
19 the Board.

20 The Board and the staff will specify at the end
21 of the hearing exactly what is expected and the date when the
22 persons must submit the evidence to the Office of Zoning.
23 After the record is closed, no other information shall be
24 accepted by the Board.

25 The District of Columbia Administrative Procedures

1 Act requires that a public hearing on each case be held in
2 the open before the public pursuant to Section 405(b) and 406
3 of that act.

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

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

18 Preliminary matters are those which relate to
19 whether a case will or should be heard today, such as a
20 request for a postponement, continuance, or withdrawal, or
21 whether proper and adequate notice of the hearing has been
22 given.

23 If you're not prepared to go forward with the case
24 today or if you believe that the Board should not proceed,
25 now is the time to raise such matter.

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

2 MR. MOY: Good morning, Mr. Chairman, members of
3 the Board.

4 We do have a few, but staff would suggest that
5 those matters are addressed when I call the case. Apart from
6 that, if I may, as to case applications on today's docket --
7 or, rather, those that have been rescheduled and postponed,
8 there are three applications.

9 The first is 19618 of Gillette Wing has been
10 postponed/rescheduled to December 13th, 2017. Application
11 No. 19622 of Mark Rivetti postponed to January 10th, 2018.
12 And 19629 of Timothy and Charlotte Lawrence rescheduled to
13 February 21st, 2018.

14 And that's it from the staff, Mr. Chair.

15 CHAIRPERSON HILL: Okay. Great. Thank you.

16 If anyone is here to testify, if you'd please
17 stand and take the oath of office administered by the
18 secretary to my left.

19 MR. MOY: Good morning. Do you solemnly swear or
20 affirm that the testimony you are about to present in this
21 proceeding is the truth, the whole truth and nothing but the
22 truth?

23 THE WITNESSES: I do.

24 MR. MOY: Ladies and gentlemen, you may consider
25 yourselves under oath.

1 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.
2 Moy.

3 Just for everyone's knowledge, notice, or
4 whatever, that we are going to follow the order on the agenda
5 except for a couple of things.

6 Application No. 19616, there was an issue
7 concerning someone that was going to provide testimony. So,
8 we're pushing that to the end of the day. So, it's going to
9 be the last case.

10 And then, also, if anyone is here for 19633, which
11 is VI 3629 T Street, we're going to keep it there in the
12 order.

13 There was a lot of people I think that were going
14 to be here to give testimony, so we thought about moving it
15 up. But at the same time, now, there's been a lot of people
16 that have called. And so if we moved it up, maybe we're
17 going to miss some people. So we're going to keep it where
18 it is on the agenda. So if you're here for that case, it's
19 going to be where it is, which is second to last.

20 Mr. Moy, I guess you want to go ahead and call our
21 first meeting case?

22 MR. MOY: Thank you, Mr. Chairman.

23 So, in the Board's meeting session there is a
24 preliminary matter to Application No. 19659 of The Federation
25 of State Medical Boards.

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1 There was a request for advanced consideration of
2 a party status request. And that is -- there are two filings
3 to that request. And that's in your case records under
4 Exhibit, I'm going to say, 27A and Exhibit 86A. So that's
5 one action for the Board to address.

6 And of course there's a second action where the
7 Applicant has made a motion to postpone their scheduled
8 hearing. And that's under Exhibit 90. So there's two
9 actions before the Board.

10 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.
11 Moy.

12 Is the Board ready to deliberate?

13 Okay. Is the person asking for party status, are
14 they here? Oh, okay. Whoever is asking for party status,
15 if you could please come forward.

16 (Pause.)

17 CHAIRPERSON HILL: Good morning. If you could
18 please just introduce yourselves, sir, from my right to left?
19 You need to push the button and speak into the microphone
20 when the light comes on.

21 MR. SUKENIK: My name is John Sukenik. I am
22 representing the Sheridan-Kalorama Neighborhood Council.

23 CHAIRPERSON HILL: If you could introduce
24 yourself? I'm sorry.

25 MS. HAYS: I'm Donna Hays and I represent the

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1 Sheridan-Kalorama Historical Association.

2 MS. MAZO: Hi. Good morning. Samantha Mazo of
3 the law firm of Cozen O'Connor. Our firm is counsel to both
4 party status request applicants. So we are counsel both to
5 the Sheridan-Kalorama Neighborhood Council, which is separate
6 and distinct from the Sheridan-Kalorama Historical
7 Association.

8 CHAIRPERSON HILL: Okay. Great.

9 If you all wouldn't mind -- or maybe, Ms. Mazo,
10 if you just wouldn't mind just clarifying to the Board why
11 party status should be given?

12 MS. MAZO: Sure. I've got -- I'm going to make
13 three brief points and then actually both Mr. Sukenik on
14 behalf of the Sheridan-Kalorama Council, and the
15 representative of the Sheridan-Kalorama Historical
16 Association have brief, prepared remarks that they would like
17 to provide, if that is acceptable to the Board.

18 CHAIRPERSON HILL: We just basically want to hear
19 why that we should grant you guys the party status. And then
20 as far as testimony goes, we can go ahead and take that when
21 the Applicant is here and when we hear the case.

22 MS. MAZO: Okay. Perfect. Okay.

23 Well, really there are three distinct reasons.
24 The first reason why party status should be granted is that
25 the Applicant has not filed any opposition to the party

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1 status.

2 The party status opposition was supposed to be
3 filed, pursuant to Subtitle Y 404.8, needs to be served seven
4 days following the date upon which it has been served. That
5 has not happened. And the failure to do that shall be deemed
6 signifying no objection to the request for party status.
7 That's number one.

8 Number two, in the case of these two parties, they
9 are both very longstanding representatives of different
10 aspects of the Sheridan-Kalorama neighborhood.

11 The Sheridan-Kalorama Neighborhood Council, their
12 role is really to defend the residential nature of that
13 neighborhood.

14 And they have been successful in that on many
15 occasions in trying to convert the neighborhood back from
16 really what it was, kind of an embassy enclave, to now a
17 neighborhood that is thriving with families.

18 My understanding is that there are 20 families on
19 Bancroft, the property along Leroy Street. Where this
20 particular property is, is actually 75 percent single-family
21 residential. And the Sheridan-Kalorama Neighborhood Council
22 has been incredibly effective and has kind of led the charge
23 on that.

24 And then the Sheridan-Kalorama Historical
25 Association, they have a different role. Their role is

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1 really to preserve the historic district, which has been
2 denoted both by the DC -- by the Historic Preservation Office
3 and HPRB, and also by the Department of the Interior, as
4 being a separate and distinct historic district.

5 These issues are separate and distinct in terms
6 of this case. There are questions that we will get into that
7 are related to the impact on the residential neighborhood
8 that this particular project could have, as well as separate
9 questions about the impact on the historic -- the
10 preservation of the historic district.

11 And finally, I would just note that there have
12 been recent cases in which the Board has granted party status
13 to both of these parties separately recognizing their
14 separate and distinct roles.

15 And I would kind of point the Board to 17466,
16 which was the case of Pauline Nye (phonetic). And in that
17 case, the Board did specifically grant party status to both.

18 CHAIRPERSON HILL: Okay. It was just pointed out
19 to me, Ms. Mazo, so I guess in the record it states that, I
20 guess, Meridith Moldenhauer is representing the two parties.

21 Are you now going to represent them or together
22 are you representing them?

23 MS. MAZO: Right. I mean, Meridith's name is
24 there as a representative of our law firm.

25 CHAIRPERSON HILL: Okay.

1 MS. MAZO: And so it will be me representing them.
2 At, you know, at some point down the line if Meridith
3 represents one or the other, I'm not --

4 CHAIRPERSON HILL: Okay.

5 MS. MAZO: -- we haven't made that determination.

6 CHAIRPERSON HILL: Okay. All right. I don't know
7 if we need to put something on the record for that or --
8 okay. All right.

9 Okay. All right. And you're representing both
10 parties?

11 MS. MAZO: Correct.

12 CHAIRPERSON HILL: Okay. Does the Board have any
13 thoughts? I'm fine with granting party status.

14 VICE CHAIR MILLER: I just had one question. I
15 mean, I realize that the -- the separate interest of each
16 Sheridan-Kalorama entity.

17 So you want to have two parties, you don't want
18 to consolidate into one party and have both -- the interests
19 of both organizations asked at the same time just for
20 efficiency purposes?

21 You would object to that?

22 MS. MAZO: It's not been my clients' -- my separate
23 clients' intent. And I think the other thing I would note
24 is that there actually is an efficiency here simply by the
25 granting of these two parties. Because as you've seen the

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1 record, this is a highly unpopular case in the neighborhood.

2 And so, you know, both entities, both SK -- the
3 neighborhood council and the historic association, believe
4 that they can efficiently represent their neighbors'
5 interests as opposed to a situation which may or may not
6 occur, I don't know, in which other neighbors try to file for
7 party status and it becomes a little bit more unruly.

8 So I believe having these two parties separate and
9 asking their own questions will hopefully be in the best
10 interest of board efficiency.

11 VICE CHAIR MILLER: I'm satisfied with that.

12 CHAIRPERSON HILL: Okay.

13 VICE CHAIR MILLER: My only other question was I
14 see -- I think a representative of the Applicant is here.
15 And since you represented that they didn't have an objection,
16 I just wanted to maybe ask is that the case that the
17 Applicant does not object to the party status request?

18 MR. SULLIVAN: That's correct.

19 CHAIRPERSON HILL: Could you introduce yourself,
20 sir?

21 MR. SULLIVAN: I'm sorry. Yes. My name is Marty
22 Sullivan with the law firm of Sullivan & Barros on behalf of
23 The Federation of State Medical Boards, the Applicant, and
24 we don't have an objection.

25 I would just point out two things. One, on the

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1 historic district, we're not proposing any changes to the
2 building as part of this application.

3 And for advanced party status, I would suggest
4 that the Applicant -- there be some process where the
5 Applicant's served with notice that there would -- that this
6 will take place, the advanced party status request.

7 I'm not really sure where the -- where this
8 process springs from, the advanced request, but we didn't
9 receive any notice of it.

10 We did happen to find out about it and that's why
11 we --

12 CHAIRPERSON HILL: So, Mr. Sullivan, I'm sorry,
13 you're suggesting that there is something that should be sent
14 to the Applicant in terms of advanced party status and you
15 didn't get anything?

16 MR. SULLIVAN: Right. If we hadn't checked up on
17 it, we wouldn't have known that this was being heard.

18 CHAIRPERSON HILL: Mr. Moy, I'm sorry to -- so
19 there's not -- so the Applicant does not get any notice about
20 advanced party status?

21 MR. MOY: Well, I'll wait for our counsel to weigh
22 in also. It's my understanding that these motions are also
23 served on parties.

24 CHAIRPERSON HILL: Okay.

25 MR. MOY: And the Applicant is certainly a -- is

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1 a party.

2 COMMISSIONER HART: Mr. Chairman.

3 CHAIRPERSON HILL: Yes. Sure.

4 COMMISSIONER HART: Yeah. In Exhibit 86, and I'm
5 just looking -- just reading through the letter that the
6 opposition party status submitted, and they do certify on
7 November 15th, it served a copy of the party status request
8 in opposition via email to the following: Marty Sullivan,
9 Sullivan & Barros, DC Office of Planning.

10 CHAIRPERSON HILL: Okay. All right.

11 MR. SULLIVAN: No, we were served. I'm not
12 saying we weren't served.

13 CHAIRPERSON HILL: So, I'm sorry, what are you
14 saying?

15 MR. SULLIVAN: We didn't know what date that would
16 be or if it was accepted. That's all.

17 CHAIRPERSON HILL: Okay. All right.

18 MR. SULLIVAN: It's a minor point.

19 CHAIRPERSON HILL: That's okay. Well, I'm curious
20 also, as well. Thanks for bringing that up. You should know
21 when it is. And so -- okay. But other than that, you don't
22 have any objections.

23 MR. SULLIVAN: Other than that, we don't have any
24 objections.

25 CHAIRPERSON HILL: Okay. All right. Okay.

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1 Ms. Mazo, unless the Board has any -- do you have
2 a comment?

3 COMMISSIONER HART: Just one quick comment.

4 If we could have an advanced list of the folks
5 that are going to be witnesses in the -- I thought I remember
6 seeing something about may call witnesses or whatever.

7 I don't mind having a list of witnesses and then
8 you -- that are going to testify and then some of them don't
9 come, but it's hard when it's, you know, we're not sure if
10 it's going to be 10 or 20 or 30 people that come.

11 So it's helpful for us to understand what that is.
12 If you could submit that in advance, I'd appreciate it.

13 MS. MAZO: No, no, absolutely. And we can
14 absolutely, you know, it is certainly our -- my two entities'
15 intent to file some sort of pre-hearing statement in advance
16 of the hearing.

17 But to that end, Board Member Hart, we will
18 identify those folks who will speak on behalf of these two
19 parties' status.

20 There may be individuals who feel the need to come
21 down and to testify. I mean, as I have stated, and the
22 record shows, there's a lot of angst in the neighborhood over
23 this particular issue.

24 And so there may very well -- and so while we will
25 absolutely provide that information for these two groups for

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1 the neighborhood council and the historic association,
2 whether neighbors -- separate neighbors want to come down,
3 I'm not sure we have the ability to --

4 COMMISSIONER HART: I fully understood that, Ms.
5 Mazo.

6 What I was responding to was in Exhibit 28, party
7 witness information, a list of witnesses who will testify on
8 the party's behalf.

9 And the response was "SKNC reserves the right to
10 add witnesses at the time of public hearing." And I'm just
11 asking if you could actually provide that to us in advance.
12 That's all.

13 MS. MAZO: We will. Thank you.

14 CHAIRPERSON HILL: Okay. Great. All right.

15 So, again, unless the Board has any other further
16 thoughts, I think I would be fine with approving party status
17 as put forward. Okay. So, Mr. Moy, we're going to approve
18 the party status.

19 And then there's one other issue, I guess, in
20 terms of postponement. And I didn't know that we're going
21 to get the Applicant's attorney here, but, Mr. Sullivan, we
22 have your letter.

23 Can you tell us again why you want the
24 postponement?

25 MR. SULLIVAN: Just based on the reaction that we

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1 got from the ANC and from the Office of Planning, we would
2 like additional time to address concerns.

3 CHAIRPERSON HILL: Okay. All right.

4 And you had made a, you know, a request to do it
5 on January 31st?

6 MR. SULLIVAN: That's correct.

7 CHAIRPERSON HILL: Okay.

8 MR. SULLIVAN: Yes.

9 CHAIRPERSON HILL: Mr. Moy, does that day work?

10 MR. MOY: Yes. All day.

11 CHAIRPERSON HILL: Okay. All right. I certainly
12 hope it's not an all-day situation.

13 Mr. Sullivan, I hope you can -- I hope you get
14 some good luck with your situation. As Ms. Mazo has
15 mentioned a few times, "there's a lot of angst," and so we'll
16 see how much angst shows up. We're going to go ahead and
17 postpone your case until the 31st. All right.

18 Does the Board have any thoughts? Okay. Great.
19 Okay. Thank you all very much. And I've mentioned this
20 before, but I'm still sick. So if I kind of lapse in and out
21 of things, I'm going to blame the illness instead of my age.

22 (Pause.)

23 CHAIRPERSON HILL: Mr. Moy, I know you just kind
24 of were telling me you want to go ahead and call the first
25 meeting case and you have a couple of issues you want to kind

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1 of talk through.

2 MR. MOY: Okay. Just wanted to, for my own
3 edification, I may have missed your earlier introduction
4 statement, but I believe that the listed first case
5 application for the day, you moved toward the end of the
6 docket. That's Application No. 19616 of Thomas Jefferson
7 Real Estate, LLC; is that correct?

8 CHAIRPERSON HILL: Yeah. There was, I thought,
9 some issues concerning a possible witness. And so we moved
10 it to the end.

11 MR. MOY: Yes. So I just wanted to be crystal
12 clear on that before we moved forward.

13 Also, I believe whether the Board would entertain
14 addressing a first-case hearing prior to 19617, which would
15 be 19634 of Jonathan and Kate Grabill. And if so, I'll read
16 that caption for the --

17 CHAIRPERSON HILL: Sure. Yeah. I think I was
18 noticing there was a baby in the audience and so I didn't
19 realize that the baby -- you get to get bumped up. So I
20 would suggest you all bring babies and then -- so let's go
21 ahead and hear the baby case.

22 MR. MOY: All right. Thank you very much, Mr.
23 Chairman.

24 So again for the transcript, that would be Case
25 Application No. 19634 of Jonathan and Kate Grabill. Caption

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1 advertised for special exceptions under Subtitle E Section
2 5201 from the lot occupancy requirements Subtitle E Section
3 304.1, side yard setback requirement Subtitle E Section
4 307.3, and from the nonconforming structure requirements
5 Subtitle C Section 202.2.

6 This would construct a new three-story rear
7 addition to an existing one-family dwelling, RF-1 Zone, 517
8 7th Street, S.E., Square 877, Lot 854.

9 CHAIRPERSON HILL: Okay. Good morning. If you
10 could please introduce yourself?

11 MR. GRABILL: Good morning, everyone. My name is
12 Jonathan Grabill. My wife Kate and, of course, little Austin
13 is out in the hallway. I'm presenting on behalf of our home
14 over on 517 7th Street, S.E.

15 And just first and foremost, happy holidays,
16 everybody. Thanks for hearing us and I appreciate the
17 consideration with letting us kind of move around here a
18 little bit.

19 CHAIRPERSON HILL: No. No. You're welcome. I
20 was actually not kidding about bringing babies. We've had
21 babies come here before, but this is -- you got bumped up.
22 You were last and so --

23 MR. GRABILL: Well, you know, we were, you know,
24 supposed to go two weeks ago. So in some ways I guess this
25 is -- it's kind of nice.

1 CHAIRPERSON HILL: All right. Okay.

2 So before you start, I guess I don't have any
3 particular questions about, you know, we've all read the
4 record.

5 MR. GRABILL: Uh-huh.

6 CHAIRPERSON HILL: I would like to hear a little
7 bit about what you are trying to do and how you're meeting
8 the standard in which we can grant or deny the application.

9 I'm going to go ahead and put ten minutes on the
10 clock, Mr. Moy, just so we know where we are. And you can
11 go ahead and begin whenever you like.

12 MR. GRABILL: Okay. Again, thanks for hearing our
13 case.

14 So the very interesting predicament that we found
15 ourselves in is that we have a home that's being categorized
16 -- it's in a weird, bizarro space between being a
17 semidetached home and being a row home.

18 Because we have a shared space, a walkway in
19 between us and the neighbors, there's a five-foot setback on
20 the northern side of the home.

21 I don't know if you guys have pictures in front
22 of you, you've seen everything, you've reviewed it, so,
23 otherwise I have paper printouts --

24 COMMISSIONER HART: Exhibit 7.

25 MR. GRABILL: Right. So you can see that the

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1 north side of the house has a side yard. And if you look
2 closely, there's like a two-inch portion there on the
3 northwest corner of the house that has what would be
4 considered a side yard based on the layout of the home.

5 We presented back here in April. I don't know if
6 you guys have the records to show that, but we've already
7 gone through the whole historic portion of it and now -- at
8 first thought we were good with the zoning portion, but now
9 we're back.

10 So the plans have not changed other than
11 concessions that we've made with working with the system and
12 then -- or working with all of our representatives that we
13 talked to, but essentially we're recreating or remodeling the
14 back of the house, squaring it off, improving the landscape,
15 improving the light and air for the neighbors, and improving
16 the layout of the home.

17 So as it sat, we weren't going to exceed the six
18 percent. But based on some of the numbers, we got feedback
19 from DCRA, they said we're going to be 1.67 percent over.
20 So we had to come up and ask for a variance on that, but we
21 are going to build within the current footprint, just go
22 straight up with it. So we're not infringing on anyone's --
23 any neighbor space, but we do want to just kind of go up.

24 And under the categorization, we have found that
25 the third story on the back of the house is going to be

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1 considered, quote/unquote, "new construction" because it
2 doesn't currently exist. So it will be new construction.

3 And under the code, it says we need to have a
4 certain setback under the categorization of the home and
5 that's where the gray area comes.

6 So, you know, my wife and I come and ask for a
7 variance to be considered for that side yard building up, and
8 then the new construction for the exception so that we can
9 move -- instead of having a room on the back of the house
10 that's only basically five feet wide, it can be, you know,
11 the width of the house, but under the dormer situation that
12 the Historic Board -- or Historic Preservation Office has
13 allowed us to make it look like. And you can see that in the
14 renderings.

15 COMMISSIONER HART: Mr. Grabill.

16 MR. GRABILL: Yes, sir.

17 COMMISSIONER HART: Speaking of the HPRB, the
18 Historic Preservation Review Board --

19 MR. GRABILL: Uh-huh.

20 COMMISSIONER HART: -- I see that there's a letter
21 from the ANC to the HPRB.

22 MR. GRABILL: Right.

23 COMMISSIONER HART: And typically we actually get
24 a letter from the ANC directly to the BZA addressing some of
25 the, you know, the BZA concerns --

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1 MR. GRABILL: Uh-huh.

2 COMMISSIONER HART: -- which are zoning regulation
3 concerns. We don't actually have a letter from the ANC to
4 the --

5 MR. GRABILL: Okay. I have both of them.

6 COMMISSIONER HART: If you could give a copy of
7 the --

8 MR. GRABILL: Sure.

9 COMMISSIONER HART: -- letter from the ANC to the
10 BZA, to the secretary, that would be great.

11 MR. GRABILL: Okay.

12 COMMISSIONER HART: That's fine.

13 MR. GRABILL: So we --

14 CHAIRPERSON HILL: You have to speak into the
15 microphone when you talk.

16 MR. GRABILL: So we, like I said, we went through
17 the whole historical review session first and then came back
18 and did the -- and had unanimous votes. And then went
19 through the secondary portion, the zoning part, and got
20 unanimous votes.

21 So we not only got full endorsement from our ANC
22 in February, but also in October, so -- without a single
23 opposition point.

24 COMMISSIONER HART: I greatly appreciate it. It's
25 -- sometimes it's just that --

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1 MR. GRABILL: Sure.

2 COMMISSIONER HART: -- you know, we're just trying
3 to make sure that we are --

4 MR. GRABILL: Absolutely.

5 COMMISSIONER HART: -- getting the information
6 that we --

7 MR. GRABILL: Absolutely.

8 COMMISSIONER HART: I didn't think there was going
9 to be an issue with them, but, you know, we always have to
10 ask --

11 MR. GRABILL: Of course.

12 COMMISSIONER HART: -- because we never know for
13 sure.

14 MR. GRABILL: Uh-huh.

15 COMMISSIONER HART: Appreciate it.

16 MR. GRABILL: So I guess continuing on, you know,
17 the back of the house you see and it's a little bit
18 disjointed. We want to make sure that looks a little bit --
19 or it's more functional and more usable because we have a son
20 now and so we want to have, you know, a nice place for him
21 to grow up and live and play.

22 So I've kind of addressed the light, air, and
23 space. And on that note, I can still say that all of our
24 neighbors are still in support. All three.

25 We have a funny, weird situation where we have

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1 three abutting neighbors; one on the north, two on the south
2 side. They actually have a little bit of an L backyard.

3 So we have three connecting, adjoining neighbors.
4 So all three have supported the effort ever since the
5 beginning, and they are still supporting it today. And
6 that's that.

7 CHAIRPERSON HILL: Okay.

8 MR. GRABILL: So I think that's --

9 CHAIRPERSON HILL: Okay.

10 MR. GRABILL: I mean, aside from the fact --

11 CHAIRPERSON HILL: Yeah.

12 MR. GRABILL: Whatever questions you have, I --

13 CHAIRPERSON HILL: Does the Board have any
14 questions for the Applicant? No?

15 Okay. How long have you been there?

16 MR. GRABILL: We have been working the process
17 since November of last year.

18 CHAIRPERSON HILL: No. How long have you been in
19 the house?

20 MR. GRABILL: We closed in January.

21 CHAIRPERSON HILL: Okay. It's such a cute house.

22 MR. GRABILL: It's a great house. Great area.

23 CHAIRPERSON HILL: Such a cute, little house.

24 Okay. All right. Can we hear from the Office of
25 Planning, please?

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1 MS. ELLIOT: Good morning, members of the Board.
2 I am Brandice Elliot representing the Office of Planning.

3 As noted in our report, we are recommending
4 approval. And just to clarify, it's not a variance as
5 mentioned. It is a special exception. The lot occupancy is
6 -- the criteria is a lot different and you went a lot easier
7 on yourself with the special exception route. So I'm just
8 clarifying that. Since the lot occupancy is less than 70
9 percent, we've reviewed it under the special exception
10 criteria.

11 Overall, we think that the proposal is actually
12 an improvement on the current situation. And according to
13 our analysis, may actually have -- it may reduce the impacts
14 on some of the adjacent neighbors.

15 So we'll rest on the record with that and I'm
16 happy to answer any questions you may have.

17 CHAIRPERSON HILL: Okay. Great. Thank you.

18 Does the Board have any questions for the Office
19 of Planning?

20 COMMISSIONER WHITE: I think this is a very
21 straightforward case. They seem to have checked all the
22 boxes and met the criteria --

23 CHAIRPERSON HILL: Okay.

24 COMMISSIONER WHITE: -- for lot occupancy, side
25 yard, and also for the nonconforming structure.

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1 CHAIRPERSON HILL: Okay. All right.

2 Does the Applicant have any questions for the
3 Office of Planning?

4 MR. GRABILL: No. I just want to thank you for
5 your time.

6 CHAIRPERSON HILL: Okay. Is there anyone here
7 from the ANC?

8 Is there anyone here wishing to speak in support?

9 Is there anyone here wishing to speak in
10 opposition?

11 All right. Do you have anything else you'd like
12 to add?

13 MR. GRABILL: Not at this time.

14 CHAIRPERSON HILL: Okay. I'm going to go ahead
15 and close the hearing.

16 Is the Board ready to deliberate? Okay. All
17 right. Great. I mean, based upon what we have seen in the
18 record and then the testimony that was provided, as well as
19 the report from the Office of Planning, I thought that the
20 Office of Planning did a nice job in terms of their analysis
21 to how we can grant the special exception. So I don't really
22 have any issues with this application.

23 Does anyone have any other thoughts?

24 COMMISSIONER HART: No, I don't. I think that the
25 Applicant has provided the information regarding the ANC

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1 report. And that was, you know, again it was more of a
2 formality than an actual issue.

3 So I -- and you've submitted it, so it's fine.
4 And so I support the application as is and I think that the
5 Office of Planning has sufficiently described how they meet
6 the -- and the Applicant has sufficiently described how they
7 meet the criteria for the special exception relief.

8 CHAIRPERSON HILL: Okay. Do you think it's a cute
9 house?

10 COMMISSIONER HART: Yeah. Sure.

11 CHAIRPERSON HILL: Okay. All right. Just
12 curious. I mean, it's a cute house.

13 COMMISSIONER WHITE: You know, in addition to
14 that, I think the fact that he's got support from the
15 adjacent neighbors and they have communicated and they're
16 comfortable with the changes that are being requested, so I
17 think in addition to all the other things that you've
18 mentioned, that also gives me comfort that this is something
19 that I could support as well.

20 CHAIRPERSON HILL: Okay. Commissioner Miller, do
21 you have anything?

22 VICE CHAIR MILLER: I would concur with my
23 colleagues, including the very cute house.

24 CHAIRPERSON HILL: Thank you. I appreciate that.
25 All right. Okay.

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1 Go ahead and make a motion then to approve
2 Application No. 19634 as read by the secretary and ask for
3 a second.

4 COMMISSIONER WHITE: Second.

5 CHAIRPERSON HILL: Motion made and seconded.

6 All those in favor?

7 THE WITNESSES: Aye.

8 CHAIRPERSON HILL: All those opposed?

9 The motion passes, Mr. Moy.

10 MR. MOY: Staff would record the vote as four to
11 zero to one. This is on the motion, CHAIRPERSON HILL, to
12 approve the application for the special exceptions requested.

13 Seconded the motion, Ms. White. Also in support,
14 Mr. Robert Miller and Vice Chair Hart. We have a board seat
15 vacant.

16 Motion carries, sir.

17 CHAIRPERSON HILL: Thank you. Summary order?

18 MR. MOY: Thank you.

19 CHAIRPERSON HILL: Thank you. Thank you very
20 much.

21 (Pause.)

22 MR. MOY: All right, Mr. Chairman. With the
23 exception of that one case, we're back to the top of the
24 batting order. So that would be Application No. 19617 of
25 Aaron Cobet. That's C-O-B-E-T. All right.

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1 Caption advertised was special exception under
2 Subtitle E Section 5201 from the rear yard requirement
3 Subtitle E section 205.4. This would construct a two-story
4 rear addition to an existing one-family dwelling, RF-1 Zone
5 at 753 Morton Street, N.W., Square 2894, Lot 49.

6 CHAIRPERSON HILL: All right. Great.

7 Is the Applicant here? Okay. Great. Please.
8 Let's see. Yeah, if you could please introduce yourself.

9 MR. WARD: Myron Ward. 601 8th Street, N.E.,
10 Capitol Hill. I'm the architect representing the case.

11 CHAIRPERSON HILL: Great. Is it Ward?

12 MR. WARD: Ward, yes.

13 CHAIRPERSON HILL: Okay. Great.

14 MR. COBET: Aaron Cobet, the owner.

15 CHAIRPERSON HILL: Okay. Great. Either one of
16 you have a baby with you? No? All right.

17 Let's see. Who's going to be presenting to us?
18 Okay. Great. So, Mr. Ward, I don't have anything particular
19 to ask for in terms of your presentation.

20 I suppose if you could just kind of again tell us
21 about the project and what you're trying to do and how you
22 meet the criteria for us to grant the request.

23 And I am going to put, again, ten minutes on the
24 clock, Mr. Moy, just so we know where we are.

25 Does the Board have anything specific they'd like

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1 to hear other than that? Okay. All right.

2 And so, Mr. Ward, you can begin whenever you like.

3 MR. WARD: Good morning. Thank you for hearing
4 the case. As stated, the Applicant requests special
5 exception to allow a rear extension of a residential building
6 more than ten feet beyond the rear wall of an adjacent
7 residential structure.

8 First, we would like to thank the Office of Zoning
9 for their assistance in helping us to file the correct
10 information to get here. And we'd also like to thank ANC 1-A
11 Commissioner Kent Boese, and Office of Planning case manager
12 Stephen Mordfin, for their assistance and for filing letters
13 in support of the project.

14 Mr. Cobet has owned the residence since 2003. And
15 during this time has been an active participant in community
16 affairs.

17 The residence is a two-story, single-family row
18 house that has not had a significant upgrade for many years.
19 The kitchen is small and outdated and structurally in need
20 of repair.

21 As such, Mr. Cobet hopes to add a modest addition
22 to his house that would allow him to build a modern, better-
23 functioning kitchen on the first floor.

24 On the second floor he plans to expand a bedroom
25 and add a bath to create a bedroom/bath suite that would be

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1 useful for long-term visitors, including his 88-year-old
2 mother. At the same time, existing structural problems would
3 be corrected.

4 From the beginning of planning, Mr. Cobet has been
5 aware of community and planning issues, including building
6 in a scale and type suitable to the neighborhood.

7 He's aware of the role of rooflines, building
8 height, setbacks and rear yard requirements in maintaining
9 the feel of the community. As such, a modest two-story
10 addition extending 12 feet beyond the rear of the existing
11 house was planned.

12 Accordingly, the Applicant is requesting special
13 exception relief to 11 E DCMR 205.5, which briefly reads
14 "additions must not extend more than 10 feet beyond the
15 furthest rear wall of any principal adjoining building."

16 I'm going to go on, if you like. I'm pretty much
17 reading the letter from the Office of Planning. The
18 Applicant is seeking special exception relief under Subtitle
19 E Chapter 5201. The project meets THE requirements for
20 relief under this section in the following ways:

21 The light and air available to neighboring
22 properties is not adversely affected. The existing structure
23 on the property extends slightly more than 20 feet from the
24 rear wall of the row house to the west, 17 feet of which is
25 set back 4.3 feet from a common lot line because of an open

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1 court on the subject property.

2 The continuation of the open court would allow
3 more light and air into this property reducing the impact the
4 proposed addition would have on the property.

5 The proposed addition would extend 3.75 feet back
6 from the rear wall of the house to the east minimally
7 affecting the property.

8 The privacy of use and enjoyment of the
9 neighboring property shall not be adversely affected. The
10 addition will have no windows or doors on side walls. All
11 new openings are north facing and are on the rear wall.

12 The existing 4.3-foot side yard setback on the
13 west side of the property is maintained, increasing the level
14 of privacy for the neighbor to that side.

15 The property shall not substantially visually
16 intrude upon the character, scale, and pattern of houses
17 along the subject street fronting.

18 The building addition will be two stories,
19 consistent with the existing structure and with most of the
20 other row houses within the same block on Morton Street. It
21 will be faced with HardiePlank lap siding similar in
22 appearance to many of the other row houses' rear facades
23 along the same side of the alley from which it is visible.

24 The combination of the sliding glass kitchen door
25 on the first floor and double-hung windows on the second

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1 floor, will lend a residential appearance to the proposed
2 construction making it generally compatible with the other
3 row houses along the same alley.

4 The Applicant has submitted plans, photographs,
5 and elevation drawings sufficient to represent the
6 relationship of the proposed addition to adjacent buildings
7 and public spaces.

8 The Board of Zoning Adjustment may approve lot
9 occupancy of all new and existing structures on the lot to
10 a maximum of 70 percent. The proposed lot occupancy after
11 construction is 37 percent.

12 The proposed addition would not result in the
13 introduction or expansion of the nonconforming use. DDOT
14 stated no objection to the application.

15 The Applicant has been engaged with the community.
16 He early on contacted the office of ANC-1 chairman Kent Boese
17 to inform him of intentions to seek a special exception.

18 Numerous emails were exchanged. The Applicant met
19 with Mr. Boese at a block party and discussed the project.
20 The plans were discussed with various neighbors.

21 The Applicant informed neighbors that he would be
22 presenting to the ANC-A meeting, the project was presented
23 and accepted at an ANC-A meeting, and adjoining property
24 owners to the east and west submitted letters to the file in
25 support of the application.

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1 All information has been submitted to the case
2 file and is part of the record. And we'll stop.

3 CHAIRPERSON HILL: All right. Thanks, Mr. Ward.

4 Does the Board have any questions for the
5 Applicant? Commissioner Miller.

6 VICE CHAIR MILLER: Thank you, Mr. Chairman.
7 Thank you for your presentation.

8 And I see that, as you referenced, the ANC-1A did
9 unanimously approve the application and found no adverse
10 impact on the neighbors or communities.

11 I just wanted to ask, did you have a specific
12 outreach to your adjacent neighbors and was there any
13 feedback from them?

14 MR. WARD: Yes. There was quite a bit of
15 outreach, actually. The Applicant sent letters to notify
16 people that we would be presenting at ANC-1A hearing.

17 He -- we have letters of support from neighbors
18 on each side, which I had overlooked to bring up. But, yeah,
19 there was quite a bit of --

20 CHAIRPERSON HILL: Okay. Great. I'm actually
21 curious -- in the record, you submitted a bunch of
22 photographs along with your architectural drawings. There's
23 a property that looks like you submitted that is built out
24 farther back past some other ones.

25 Is that across the alley from you, Mr. Cobet?

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1 MR. WARD: It's to the side.

2 CHAIRPERSON HILL: Oh, that's the one immediately
3 adjacent?

4 MR. WARD: They're in the block.

5 CHAIRPERSON HILL: Can you just lean forward into
6 the microphone?

7 MR. WARD: They're not immediately adjacent, but
8 they're in the block.

9 CHAIRPERSON HILL: Okay.

10 MR. WARD: If you look out this -- to the side,
11 you would see --

12 CHAIRPERSON HILL: Okay. I was just curious.
13 Okay. Great.

14 All right. Does the Board have any further
15 questions of the Applicant? Okay.

16 I'm going to turn to the Office of Planning.

17 MR. MORDFIN: Good morning. I'm Stephen Mordfin
18 and the Office of Planning supports this application as it
19 finds it to be in conformance with the criteria necessary for
20 the granting of this special exception and; therefore,
21 recommend approval of the application. Thank you.

22 CHAIRPERSON HILL: Does the Board have any
23 questions for the Office of Planning? Mr. Mordfin, I have
24 a question again.

25 So in terms of the analysis because, you know,

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1 there oftentimes is -- this is just again -- every time this
2 is kind of coming up as we're going beyond the ten feet.

3 Can you just provide a little bit more clarity as
4 to how you determined -- how the Office of Planning thought
5 that this met the criteria?

6 MR. MORDFIN: Well, in this case, the properties
7 on either side, one currently extends further back than the
8 subject property, and the other one is significantly -- it's
9 a smaller building, but most of -- for most of that distance
10 it's set back from -- with an open court facing the rear
11 alley. And that kind of sets it back from that property.

12 Additionally, the owners of the properties on
13 either side submitted letters to the file indicating their
14 support of it, which contributes to our analysis that this
15 is not going to adversely affect them. So that was why we
16 recommended approval of this case.

17 CHAIRPERSON HILL: Okay. All right.

18 Anyone else? No? Okay. Thank you.

19 All right. Do you have any questions for the
20 Office of Planning? No? Okay. All right. Okay.

21 Is the ANC here?

22 Is there anyone here wishing to speak in support?

23 Is there anyone here wishing to speak in
24 opposition?

25 All right. Mr. Ward, are you through? Do you

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1 have anything else that you'd like to add? If you can just
2 speak into the microphone again, I'm sorry.

3 MR. WARD: I'm finished.

4 CHAIRPERSON HILL: Okay. Great. Thank you. All
5 right. I'm going to go ahead and close the hearing.

6 Is the Board ready to deliberate? Okay. Based
7 on the record and the testimony that was provided by the
8 Applicant, I don't have any questions about it.

9 I mean, I was kind of interested in hearing from
10 the Office of Planning in terms of how they -- actually, I
11 do have a question for the Office of Planning.

12 There were some things as we were looking through
13 the record, like 202 is not something that they need relief
14 from, the nonconformity or --

15 MR. MORDFIN: Oh, if it's a nonconforming
16 structure?

17 Currently -- well, currently it is not a
18 nonconforming structure. It conforms with the criteria --

19 CHAIRPERSON HILL: Okay.

20 MR. MORDFIN: -- for the RF-1 Zone. The only
21 thing that it doesn't conform to is it is currently more than
22 ten feet back from the property on the side, but it conforms
23 for height, lot occupancy and --

24 CHAIRPERSON HILL: Okay.

25 MR. MORDFIN: -- rear yard.

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1 CHAIRPERSON HILL: I was just curious as to how
2 that -- okay. Great. Thank you. So, again, I was curious
3 about that question. But then other than that, I didn't have
4 any concerns in terms of the application meeting the
5 criteria.

6 Does the Board have anything else they'd like to
7 add?

8 COMMISSIONER WHITE: No. I agree with you, Mr.
9 Chairman. I think this was a very clean case and the
10 architect was very effective in terms of going through the
11 tasks for meeting the special exception criteria for rear
12 addition.

13 And, again, it's always good to hear Office of
14 Planning's feedback on why the additional feet beyond the ten
15 feet was something that they could get behind, but, again,
16 with adjoining owner support, that is always very helpful
17 when you don't have strong opposition from your immediate
18 neighbors. And it seems like they've both submitted very
19 nice letters in the record supporting your plans.

20 CHAIRPERSON HILL: Okay. Great. Thank you.

21 Then I'm going to make a motion to approve
22 Application No. 19617 as read by the secretary and ask for
23 a second.

24 COMMISSIONER HART: Second.

25 CHAIRPERSON HILL: Motion made and seconded.

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1 All those in favor?

2 THE WITNESSES: Aye.

3 CHAIRPERSON HILL: All those opposed?

4 The motion passes, Mr. Moy.

5 MR. MOY: Staff would record the vote as four to
6 zero to one. This is on the motion of Chairman Hill to
7 approve the application for the special exception request.

8 Second the motion, Vice Chair Hart. Also support,
9 Mr. Robert Miller and Ms. White. We have a board seat
10 vacant. The motion carries.

11 CHAIRPERSON HILL: Okay. Great. Thank you.

12 Summary order, Mr. Moy?

13 MR. MOY: Thank you.

14 CHAIRPERSON HILL: Okay. We're going to take a
15 quick break.

16 MR. WARD: I just wanted to say thank you.

17 CHAIRPERSON HILL: Oh, thank you. Thank you.
18 It's kind of you to say. Thank you so much. It's always
19 good when you win. Bye-bye.

20 (Whereupon, the above-entitled matter went off the
21 record at 10:25 a.m. and resumed at 10:33 a.m.)

22 CHAIRPERSON HILL: All right, Mr. Moy, whenever
23 you are ready.

24 MR. MOY: Thank you, Mr. Chairman. Let me fix
25 this. I looked up at the clock and it says 2:30 a.m. and I

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1 thought that couldn't be right.

2 So, I believe the next case application is
3 Application Number 19621 of Richard Hilton, captured and
4 advertised for special exception under Subtitle D, 5201.3.

5 This is from the non-conforming structure
6 requirements as Subtitle C, Section 202.2 to construct a
7 fourth-story rear addition to an existing one-family
8 dwelling, R1B Zone at premises 2318 California Street NW,
9 Square 2519, Lot 284.

10 CHAIRPERSON HILL: Okay, good morning. If you
11 please speak into the microphone, turn it on, and introduce
12 yourselves?

13 MR. HILTON: I'm Richard Hilton, I'm the owner of
14 the property.

15 MR. BELTRAN: Good morning, my name is Francisco
16 Beltran and I'm the architect representing Eric Hilton.

17 CHAIRPERSON HILL: Okay, Mr. Beltran, are you
18 going to be presenting to us?

19 MR. BELTRAN: Yes.

20 CHAIRPERSON HILL: Okay, great. I don't really
21 have a lot of immediate thoughts in terms of specifics. If
22 you want to just tell us a little bit about the project and
23 how you're meeting the criteria for us to grant the relief
24 requested?

25 I guess the only one comment, and this was in a

1 previous case also, the letter seems to be coming to the HRB,
2 meaning the Historic Preservation Review Board as opposed to
3 the BZA. In terms of talking with the Office of the
4 Attorney General, it seems like that's fine but if you could
5 speak to that in terms of your outreach to the ANC and what
6 happened with them, but other than that, you can begin
7 whenever you like.

8 Mr. Moy will put ten minutes on the clock again
9 for us, just so we know where we are, and you can start
10 whenever you like.

11 MR. BELTRAN: Thank you very much. What we're
12 looking to do is to extend an existing finished attic space
13 to allow for a staircase, a centrally-located staircase, to
14 access the attic level.

15 Currently, it's being accessed through a ladder,
16 wall ladder. So, the extension of the attic will allow the
17 resident to actually have a view into their rear yard. It
18 is not going to affect our two meters.

19 Both buildings on each side extend further back
20 into the properties than ours does, and our proposed addition
21 will not extend past theirs.

22 It will not affect the privacy of our neighbors,
23 so we are not proposing any windows looking into the adjacent
24 buildings. It does not block sunlight into the adjacent
25 houses. We do have an eight-foot side or spaces between the

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1 two buildings so no light or air is being blocked.

2 All views from our proposed attic space are,
3 again, to the rear private yard. There is a nice line of
4 trees that block the views to the neighbors behind us. As
5 far as outreach, we've sent countless emails and letters to
6 residents.

7 I personally walked the neighborhood and knocked
8 on each door, provided them with a letter of what we were
9 intending to do, as well as photographs and drawings.

10 We presented to the ANC, we received their
11 support, as well as HPRB. We've also received the support
12 of the Sheridan-Kalorama Trust, as well as the, I'm
13 forgetting, L'Enfant Trust as well.

14 I'm not sure if you need anything else.

15 COMMISSIONER WHITE: Could you talk a little bit
16 about feedback that you've gotten from the adjacent
17 neighbors? I was looking for, again, information in the
18 record about that.

19 MR. BELTRAN: We didn't receive any letters back
20 from them but each neighbor that we spoke with we actually
21 met twice on site. We invited neighbors to come in for an
22 informal meeting with ANC Members. No one showed any
23 concerns.

24 There were a couple of suggestions that we
25 incorporate into the design. Those suggestions were made by

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1 both the ANC Members and the L'Enfant Trust.

2 COMMISSIONER WHITE: What were some of those
3 suggestions? I'm just curious.

4 MR. BELTRAN: Reducing the amount of glass at the
5 fourth level. So, we had the entire facade on the back on
6 the fourth level was glass and steel.

7 So, what we did is we reduced the two end bands
8 of windows and we replaced them with brick so that it would
9 be a little bit more uniform as far as the elevation's
10 concerned.

11 But other than that, that was pretty much it.

12 COMMISSIONER WHITE: Okay.

13 CHAIRPERSON HILL: Okay, anyone else have any
14 questions for the Applicant? Okay, I'm going to turn to the
15 Office of Planning.

16 MS. FOTHERGILL: Good morning, for the record I'm
17 Anne Fothergill with the Office of Planning, and we recommend
18 approval of this request as meeting the criteria of Subtitle
19 D, Section 5201.3.

20 And I just wanted to note that we did confirm with
21 the Zoning Administrator's Office that this is the relief
22 that is appropriate for this, since they're expanding the
23 non-conforming fourth story.

24 But they don't need specific relief related to the
25 fourth story. It's just expansion of a non-conformity. And

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1 I'm happy to take any questions.

2 CHAIRPERSON HILL: Great, thank you. Does the
3 board have any questions for the Office of Planning? Okay,
4 does the Applicant have any questions for the Office of
5 Planning?

6 MR. BELTRAN: No.

7 CHAIRPERSON HILL: Okay, let's see, is there
8 anyone from the ANC who would wish to speak in support? Is
9 there anyone here that would wish to speak in opposition?

10 All right, do you have anything else that you
11 would like to add at all?

12 MR. BELTRAN: No, sir.

13 CHAIRPERSON HILL: Okay, I'm going to go ahead and
14 close the Hearing. Is the Board ready to deliberate? Okay,
15 I can start.

16 Based on the information that was provided in the
17 record, as well as the information that was provided during
18 testimony and the report of the Office of Planning, I would
19 agree with the Office of Planning in terms of their analysis
20 and I would be in favor of granting the relief requested.

21 I didn't really particularly have any issues or
22 concerns. Does the Board have anything else they'd like to
23 add?

24 COMMISSIONER WHITE: I agree with you Mr.
25 Chairman. I think this was clearly something that was

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1 supported by both the ANC.

2 I didn't see the written document from the
3 adjacent neighbors but I'm comfortable that you've done your
4 due diligence in communicating your plans with the neighbors,
5 the adjacent neighbors, as well as neighbors in the general
6 area.

7 So, with the Office of Planning's support, I
8 didn't have any more comments to add.

9 CHAIRPERSON HILL: Okay, good. Then I'm going to
10 go ahead and make a motion to approve the application of the
11 19621, as read by the Secretary, and ask for a second.

12 COMMISSIONER HART: Second.

13 CHAIRPERSON HILL: Motion made and seconded.

14 All those in favor?

15 (Chorus of aye.)

16 All those opposed? Motion passed.

17 MR. MOY: Staff would record the vote is four to
18 zero to one for the motion proposed by Chairman Hill to
19 approve the application for the relief being requested, and
20 seconded the motion by Vice Chair Hart.

21 Also in support is Robert Miller, Ms. Lesyllee
22 White. We have a Board seat vacant. The motion carries.

23 CHAIRPERSON HILL: Thank you all very much. It's
24 also a lovely house.

25 MR. MOY: The next case application before the

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1 Board is Application Number 19628 of Creative Grounds D.C.
2 If I can get the parties to the table?

3 This was application captured and advertised for
4 -- excuse me -- special exception under the use provision,
5 Subtitle U, Section 254.14.

6 This would permit a corner store containing an art
7 gallery and accessory-prepared food, a shop, in the RF1 Zone,
8 1822 North Capital Street NW, Square 3106, Lot 84.

9 CHAIRPERSON HILL: All right, good morning, if you
10 could please introduce yourselves?

11 MS. SIUM: Good morning, my name is Asmara Sium.

12 MR. BLACKBURN: Good morning, my name is Kenn
13 Blackburn.

14 MS. SIUM: And we're the owners of Creative
15 Grounds D.C. It's a hybrid art and coffee space, located in
16 the Bloomingdale neighborhood of Washington D.C.

17 CHAIRPERSON HILL: Okay, just one second, I'm
18 sorry. Can you say your name again?

19 MS. SIUM: Asmara Sium.

20 CHAIRPERSON HILL: How do you spell your last
21 name?

22 MS. SIUM: S-I-U-M.

23 CHAIRPERSON HILL: Okay, before you start, so you
24 all got sworn in, right?

25 MS. SIUM: Sworn in?

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1 CHAIRPERSON HILL: Yes. You didn't get sworn in?
2 All right, so if you wouldn't mind standing to take the oath.
3 It's going to be administered by the secretary to the left
4 here.

5 And if anybody else hasn't been sworn in, if you
6 want to stand and take the oath? Okay, great.

7 MR. MOY: Do you solemnly swear or affirm that the
8 testimony you are about to present in this proceeding is the
9 truth, the whole truth, and nothing but the truth?

10 (Witnesses sworn.)

11 MR. MOY: Thank you, you may be seated.

12 CHAIRPERSON HILL: I know, we have to do that.
13 That means you can't lie I guess. Okay, let's see, so we all
14 have read the record and understand what you're trying to do.

15 If you can kind of tell us a little bit more
16 specifically about what you're trying to do, and then also
17 how you're meeting the standard for us to approve the relief
18 requested?

19 There was some question that I had in terms of the
20 special events that you guys are trying to do, in terms of
21 how frequently they are happening.

22 I'm curious of that, and then how you might be
23 trying to mitigate some of the concerns that we read in the
24 record about the special events and how that might affect the
25 neighborhood.

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1 So, if you can just kind of speak to that issue?
2 Does anyone have any other specifics they would like to hear
3 from them?

4 Okay, so I'm going to put ten minutes on the clock
5 just so I know where we are, and you can begin whenever you
6 like.

7 MS. SIUM: Okay very good, so Creative Grounds is
8 intended to be a welcoming community space for teaching,
9 producing, and showcasing art, while serving ethically-
10 sourced coffee from the local vendors in the area.

11 And so what we anticipate doing is offering a
12 number of art-related or themed classes for children and
13 adults that will happen throughout the week.

14 And in the evening, we would like to open the
15 space for exhibitions, for events with civic associations,
16 the ANC, and anyone who, essentially, is engaged in the
17 creative economy in D.C.

18 And with respect to the special events, what we
19 anticipate as a special event is if we invite an author to
20 come to the space for a book signing and a reading.

21 We are not considering the children's art classes,
22 the adult workshops, children's birthday parties, or our
23 Author Salon Series as a special event.

24 It's really when we anticipate having larger
25 numbers of individuals in the space. And essentially, I

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1 think that's how we envision it.

2 In terms of mitigating the potential for noise and
3 traffic, Creative Grounds is within walking distance of the
4 Rhode Island and Shaw metro rail with multiple metro routes,
5 car-sharing spaces, the Capital bike-share stations, and so
6 we anticipate that there will be a negligible impact on
7 traffic, simply because there are so many other means for
8 travel.

9 And the neighborhood itself is fairly walkable,
10 and so foot traffic to the area will at best be minimal, but
11 I think that it was also help to benefit the businesses in
12 the area.

13 With regard to trash, all parts of the lot will
14 be kept free of litter and debris.

15 Commercial trash pick-up will occur a minimum of
16 twice per week and we will always have two Staff Members
17 available at every event so that we ensure that the patio
18 space and the sidewalks along Seaton and Capital are kept
19 clean and free of trash.

20 At the end of every event, we'll survey the entire
21 lot and we'll make sure that we provide trash cans at every
22 entry and exit point, and the larger receptacles will be
23 placed near the coffee bar.

24 And finally, with respect to noise, the art
25 programs, workshops, special events, they will all be

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1 ticketed, inhibiting large unanticipated traffic and
2 visitors.

3 And since all the programs, activities, and
4 special events will require advanced payment, registration,
5 and/or membership, we are able to ensure controlled
6 audiences.

7 At times, we hope to provide digital tours and
8 audio guides when necessary, which we think will aid in the
9 noise control within the space.

10 We will also provide things like pens and paper
11 to encourage patrons to make notes and leave it with the
12 Staff or during designated times at events.

13 We will also invest in informational materials
14 that we think will keep patrons informed and also aid in
15 noise reduction. The Staff will also kindly remind visitors
16 to maintain a respectful volume.

17 We will also ensure that the gathering of people
18 outside of the premises that occur prior to or during, pre-
19 exhibition or events, or for, I don't know, smoke breaks,
20 post-event socializing, should not disturb the peace or the
21 quiet of the community.

22 And actually, as noted in the recommendations by
23 the Office of Planning, the street design along North Capital
24 is not easily accessible so events at Creative Grounds will
25 not likely disturb -- well, will likely serve neighboring

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1 residents for the most part, and will not likely create
2 adverse conditions, even if we were to consider a capacity
3 of 60.

4 So, we anticipate that the vast majority of our
5 patrons in that case will walk or take public transportation
6 to the site.

7 And just to be clear, all of our programs and
8 events will be supervised by a minimum of two Staff Members,
9 again, with a keen eye towards cleanliness, noise, positive
10 visitor experience.

11 And we've gotten the support of the condo owners
12 that live above the space, as well as our residential
13 neighbors and the ANC, and the Bloomingdale Civic
14 Association.

15 And everyone's aware of the number of the types
16 of events that we plan to host.

17 COMMISSIONER WHITE: So, you answered my question.
18 I was going to ask you to provide a little bit more detail
19 regarding how the neighbors feel about it, specifically the
20 neighbors that are going to be living in that building.

21 And from what I gather, it sounds like you've
22 gotten some positive feedback. Any concerns at all raised?

23 MS. SIUM: No, not as yet. So, after having
24 spoken with the Office of Planning with regard to the special
25 events, we drafted a letter noting some of the events that

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1 we anticipate happening throughout the year.

2 And with the exception of emails wishing us good
3 luck and they can't wait, we've not had any concerns.

4 CHAIRPERSON HILL: Okay, great, and so I do have
5 a couple of questions I will kind of get to in a little bit,
6 but you are aware of in terms of the ANC, they're stipulation
7 or concern was just two special events per week?

8 MS. SIUM: No, I was not aware of that.

9 CHAIRPERSON HILL: Okay, well, that's what they
10 pointed out I thought.

11 MS. SIUM: Two special events per week?

12 CHAIRPERSON HILL: Yes, it's not in their -- so,
13 the conditions, you're aware of the conditions that they've
14 put forward?

15 MS. SIUM: I'm not familiar with that --

16 (Simultaneous Speaking.)

17 CHAIRPERSON HILL: All right, that's okay. So,
18 some of the conditions that or I should say the Office of
19 Planning actually asked about, sorry --

20 MS. SIUM: I'm familiar with that, yes.

21 CHAIRPERSON HILL: You're familiar with that?

22 MS. SIUM: Yes, it's at the ANC now.

23 CHAIRPERSON HILL: And I'm going to go over them
24 actually just real quick. They're a little bit lengthy but
25 if you could just say yes after this that you agree with

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1 these?

2 Hours of operation for the coffee bar shall not
3 exceed 7:00 a.m. to 7:00 p.m.?

4 MS. SIUM: Yes.

5 CHAIRPERSON HILL: Art exhibitions shall end no
6 later than 10:00 p.m. Mondays through Thursday, and 11:00
7 p.m. Friday through Sunday?

8 MS. SIUM: Yes.

9 CHAIRPERSON HILL: All programs shall be
10 supervised by a minimum of two Staff Members?

11 MS. SIUM: Yes.

12 CHAIRPERSON HILL: A maximum of 30 indoor seats
13 shall be provided?

14 MS. SIUM: Yes.

15 CHAIRPERSON HILL: I'm a little confused about
16 this one but you can say yes or no. Prepared food delivery
17 shall not exceed one delivery per day?

18 MS. SIUM: Yes.

19 CHAIRPERSON HILL: Coffee bar supplies shall be
20 delivered up to twice per week?

21 MS. SIUM: Yes.

22 CHAIRPERSON HILL: All deliveries shall be
23 facilitated through the front door and occur between the
24 hours of 7:00 a.m. to 7:00 p.m.?

25 MS. SIUM: Yes.

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1 CHAIRPERSON HILL: All parts of the lot shall be
2 kept free of litter and debris and commercial trash pick-up
3 shall occur a minimum of twice per week?

4 MS. SIUM: Yes.

5 CHAIRPERSON HILL: There shall be no on-site
6 cooking of food or installation of grease traps?

7 MS. SIUM: Yes.

8 CHAIRPERSON HILL: There shall be no sale of
9 alcoholic beverages for on-site consumption?

10 MS. SIUM: Yes.

11 CHAIRPERSON HILL: All right, I'm going to turn
12 to the Office of Planning now that I've read through your
13 conditions.

14 MS. ELLIOT: Thank you, good morning again. Board
15 Members, I'm Brandice Elliot for the Office of Planning.

16 The corner-store regulations are actually fairly
17 new and I think this is the first time we're actually using
18 them for a proposed corner-store.

19 This site was previously the site of the Seaton
20 corner-store and it's actually been vacant for a while.

21 So, the neighborhood is used to having a corner-
22 store there, and they actually all seem quite excited to have
23 this new proposed corner-store.

24 The proposed corner-store meets the intent of the
25 new regulations, and in fact, OP is very supportive of the

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1 uses that have been proposed for this.

2 The only issue that we had was the number of
3 indoor seats that the Applicant has proposed.

4 While we were redrafting our report and were sort
5 of in the last week before filing it, I believe the
6 application actually notes that a maximum of 30 indoor seats
7 would be provided.

8 And before filing our report, the Applicant
9 indicated that they would like additional seats so that they
10 would have enough seats for the special events that they
11 intend to have, up to 110.

12 And so that sort of raised a red flag with Office
13 of Planning just because the intent of the corner-store
14 regulations is to ensure that they have minimal impact on the
15 residential character of the neighborhood.

16 And so our concern was if up to 110 people are on
17 the site a few times a week, that could have a negative
18 impact. And we weren't sure that it would be meeting the
19 intent of the corner-store regulations at that point.

20 So, we've actually continued having discussions
21 and the Applicant has provided, and I think that the Board
22 has a floor plan showing what 50 seats look like on the
23 ground floor.

24 And I think based on this drawing, we would
25 actually agree that up to 62 seats, allowing for three

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1 additional tables of 4 seats that aren't shown on the drawing
2 would actually be appropriate for the space on a daily basis,
3 not for special events, but just daily, particularly since
4 the Applicant intends to have workshops and classes and
5 things of that nature that would draw a little bit larger of
6 a crowd.

7 We're okay with that, provided that the ANC is
8 also supportive, and it sounds like that may be the case.
9 And I believe that the ANC Member is actually here, so they
10 may be able to address that.

11 One of the other things that we talked about is
12 whether these special events, the frequency of the special
13 events, and the number of proposed seats, how many times what
14 is an appropriate number per month?

15 And again, this corner-store is a little unique
16 because it does have such significant support. I was just
17 looking, one of the petitions that was submitted has 173
18 signatures on it, and we're not going to argue with that.

19 Also, the ANC seems to have been quite supportive
20 up to this point, so we would be willing to allow up to 110
21 seats provided that the ANC's okay with this.

22 And as a separate condition that reads the indoor
23 seating may be increased to up to 110 seats so many times per
24 month, as agreed upon with the ANC for special events.

25 And our main concern is just to ensure that the

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1 residential character is not adversely impacted by the
2 activities that will be occurring at the corner-store.

3 OP is certainly supportive of their mission, and
4 the desire to provide education to the community, and of
5 course, the workshops and the art gallery, and the exposure
6 to artists.

7 So, I think that given with the new information
8 provided by the Applicant and potentially an additional
9 condition to address increased seating for special events,
10 that OP would be supportive of increasing the number of
11 seats.

12 But if you want to talk about that further, I'm
13 happy to answer any questions you have.

14 CHAIRPERSON HILL: Okay, great, thank you.

15 So, Ms. Elliot, the one thing, again, the maximum
16 of 62 indoor seats for daily activities, that's kind of where
17 you guys are in terms of --

18 MS. ELLIOT: Yes, I think the problem that we had
19 is it was hard to envision the number of seats that would be
20 in 950 square feet.

21 The Applicant provided us with the footprint this
22 morning showing what 50 seats looked like. It looks to be
23 perfectly acceptable.

24 I know that there is an intent to have classes and
25 workshops and the additional seating may be required for

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1 those uses, and the Applicant has provided a plan for
2 controlling noise and traffic and disturbances to the
3 residents.

4 So, we are supportive of increasing the number of
5 seats to 62 because given this floor plan, it looks like they
6 could probably fit up to three more tables in there quite
7 comfortably.

8 CHAIRPERSON HILL: Okay, and did you guys submit
9 this into the record? I guess we'll put it in there, the
10 diagram. Okay, so I guess now we'll put that in the record.
11 We all have copies of it.

12 Okay, and we'll talk through -- that's great that
13 somebody's here from the ANC. I think there's somebody from
14 the ANC here? Okay, great. So, we'll talk through the
15 special events thing.

16 The one question I had for the Office of Planning
17 in terms of how stringent you feel about this once particular
18 condition, it says prepared food delivery shall not exceed
19 one delivery per day.

20 I'm a little uncomfortable with it just because
21 it's kind of like, first of all, I don't understand how you
22 necessarily police that, and then it's like somebody delivers
23 something and then you forget something and then you have to
24 deliver something again. It seems like then they would be
25 in violation?

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1 MS. ELLIOT: So, the purpose of the conditions,
2 which is to sort of limit the amount of disturbance to the
3 residential community, certainly, if the Board feels
4 differently, we don't have to have that.

5 It was included in the application, so we just
6 included it in the conditions. But if you feel strongly,
7 we're totally comfortable.

8 CHAIRPERSON HILL: Okay, great. I'm going to
9 strike that unless the Board has any other thoughts about
10 that one?

11 COMMISSIONER HART: Just a quick question, with
12 regard to this food delivery, do you have them at other
13 corner-stores? I mean is this something that you normally
14 do?

15 MS. ELLIOT: So, this is the first corner-store
16 to come in under the special exception regulations. I
17 think, in general, we've seen them as use variances and I'm
18 not sure that we have had that condition -- although, I'm not
19 positive -- for those uses.

20 COMMISSIONER HART: Yes, it's fine, I was more
21 trying to understand if it was a, well, we typically do this
22 so we're just putting it here?

23 Or this is because this is kind of the first time
24 that we're looking at it, or one of the first times, that
25 it's still being kind of felt out or determined at this

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1 point?

2 MS. ELLIOT: I think in this case, because there
3 is such so much support for this, it wouldn't be such a
4 concern. I think in other cases, it could come up in the
5 future, where the neighborhoods do want the number of
6 deliveries restricted.

7 We address these on a case-by-case basis, but I
8 think in this case, because the ANC and the community is on
9 board with this particular project, we're okay not limiting
10 the number of deliveries.

11 CHAIRPERSON HILL: Okay, so number six, then,
12 you're also fine with that going away? Okay. All right,
13 does anyone else have questions for the Office of Planning?
14 Does the Applicant have any questions for the Office of
15 Planning? Okay, is there someone from the ANC, could you
16 please come forward? Good morning, if you just speak into
17 the microphone? Did you get sworn in also?

18 You did not. Okay, that's all right. Mr. Moy,
19 if you could please swear in the Commissioner?

20 MR. MOY: With pleasure.

21 Do you solemnly swear or affirm that the testimony
22 you are about to present in this proceeding is the truth, the
23 whole truth, and nothing but the truth? Thank you.

24 CHAIRPERSON HILL: Okay, great. Commissioner, if
25 you could just introduce yourself?

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1 MS. HOLIDAY: Yes, my name is Bertha Holiday.

2 CHAIRPERSON HILL: You need to push the button
3 there.

4 MS. HOLIDAY: Okay. My name is Bertha Holiday.

5 I am the ANC Commissioner for ANC 5E07 and that
6 is the single-member district in which Creative Grounds is
7 located, and in which these two wonderful people live and are
8 my neighbors.

9 CHAIRPERSON HILL: Oh, wow, that's great, even the
10 neighbors. Oh, wow, fantastic. Okay, great, so you're
11 really going to be interested in what's going on there
12 obviously.

13 Well, Commissioner, thanks for coming down. It's
14 always helpful to hear from the ANC, particularly the SMD.

15 So, in terms of the -- well, one of the concerns
16 that seemed to be talked about was the number of special
17 events, and the Office of Planning had just talked about 110
18 people for a special event.

19 Did you have anything from your constituents or
20 any thoughts about the number of special events that they
21 might do per week, per month?

22 MS. HOLIDAY: No, the proposal for special events
23 was really fleshed out after the ANC had voted support for
24 Creative Grounds.

25 So, it's correct to say there was some mention of

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1 special events in the original application, but the notion
2 of 110 seats and the frequency and the details were not
3 fleshed out until after the ANC had voted support.

4 CHAIRPERSON HILL: Okay, does the Board have any
5 questions for the Commissioner?

6 COMMISSIONER WHITE: Well, I mean, the one
7 question is the numbers that were communicated a few minutes
8 ago by OP and Board Members as far as special events, 110
9 seats, and just on a daily basis kind of like 62 odd seats.

10 Do you have an opinion about that? Do you think
11 that's too restrictive? Do you think it's something that
12 you're flexible on?

13 MS. HOLIDAY: Well, we are a growing community and
14 a changing community, the Bloomingdale neighborhood is. And
15 we've in the past 15 years, really had a lot of new
16 businesses come in.

17 Most of those, however, have been restaurants and
18 bars, so I think that is the source of the great support that
19 the community has for Creative Grounds.

20 Because it represents something that an artistic
21 focus that the community has not had in the past, and it also
22 represents a gathering place and activities appropriate for
23 not only adults, but for our growing child population.

24 You know, I cannot talk on behalf of the ANC. The
25 ANC has not considered this, the whole thing in terms of

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1 numbers of special events and size of special events. I
2 think they would be supportive but I cannot speak on behalf
3 of the ANC.

4 My primary concern would be in terms of, my
5 primary personal concern, would be in terms of the support
6 of the residents in the condos. What are they, eight condos?

7 MS. SIUM: Above us? Above us there are three.

8 CHAIRPERSON HILL: I'm sorry, you have to speak
9 into the microphone

10 MS. HOLIDAY: It's a condo building.

11 CHAIRPERSON HILL: Right, you said above us
12 there's three condos?

13 MS. SIUM: There are three condos above us.

14 CHAIRPERSON HILL: Okay, great, thank you.

15 MS. HOLIDAY: Yes, they are concerned in terms of
16 how they feel and I think that's something that can fairly
17 easily be determined, but they haven't done that as of yet.
18 The ANC has not done that.

19 CHAIRPERSON HILL: Okay.

20 MS. HOLIDAY: I requested that information.

21 CHAIRPERSON HILL: Okay, anybody else? No, okay.
22 Oh sorry.

23 COMMISSIONER HART: At the ANC Meeting, you said
24 you didn't discuss any of it, or you didn't discuss the
25 details?

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1 MS. HOLIDAY: The details were not part of the
2 original proposal --

3 CHAIRPERSON HILL: Okay, did you have --

4 MS. HOLIDAY: -- or the application.

5 CHAIRPERSON HILL: Did you have any discussion
6 about the fact that there might be events that happen, not
7 in detail on necessarily when or how many people we're
8 talking about, but there might be some sort of --

9 MS. HOLIDAY: Yes, that was included in the
10 original application.

11 CHAIRPERSON HILL: And by the way, thank you for
12 coming down. I know it's hard sometimes for folks to take
13 time out of their day to be able to come be with us, so it's
14 very much appreciated.

15 Okay, all right, thank you very much, Commissioner
16 Holiday. Is anyone here wishing to speak in support?
17 Support? Okay, please, come forward.

18 You can just go ahead and sit there if you like.
19 Did you get sworn in also? Okay, great. If you could just
20 introduce yourself and your home address?

21 And then also, Mr. Moy, if you could put three
22 minutes on the clock? Thank you. You'll have three minutes
23 to present testimony.

24 MS. ROBINSON: Great. My name is Marnee Robinson,
25 I live at 200 Rhode Island Avenue in Northeast. Thank you

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1 for your consideration today, for this special exemption for
2 this business.

3 As a resident in the neighborhood in Ward 5, I
4 totally support this project. As a Board Member of North
5 Capital Main Street, we totally endorsed this project. It's
6 a burgeoning corridor right now.

7 We have been under-utilized for a very long time,
8 and businesses like this that will be a corner-stone, and
9 kind of stepping out of the grocery stores kind of business
10 model is welcomed.

11 And addressing the issue about parking, traffic,
12 there's 30,000 cars that go on North Capital every day, so
13 110 people coming to a special event at night, where the
14 majority of them probably would be walking, I think would be
15 a minimal impact on the neighborhood.

16 As a Small Business Technical Assistance Counselor
17 for Creative Grounds, I am 100 percent behind this project
18 because we need entrepreneurs who are willing to take a risk
19 and invest in the neighborhood and the wellbeing of the
20 community. And it's going to bring a vibrancy to the
21 neighborhood that we haven't seen yet, and so I'm 100 percent
22 behind it.

23 CHAIRPERSON HILL: Okay, great. Thanks, Ms.
24 Robinson. Does anyone have any questions for the witness?
25 Okay. Do you live nearby?

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1 MS. ROBISON I do.

2 CHAIRPERSON HILL: So, you'll be frequenting then?

3 MS. ROBISON I will.

4 CHAIRPERSON HILL: That's great.

5 MS. ROBISON Yes, we're looking forward to it so
6 any consideration to moving this process along would be
7 greatly appreciated.

8 CHAIRPERSON HILL: You'll get a special hello, I'm
9 sure, when you walk through the door. All right, no
10 questions for you. Okay, is there anyone here wishing to
11 speak in opposition? Okay, great.

12 All right, Mr. Moy, I just want to make sure, so
13 this is going to go into the record, the diagram that was
14 submitted to us? Okay, great.

15 All right, okay, thank you, Ms. Robinson. Do you
16 guys have anything else you'd like to add?

17 MS. SIUM: Well, actually, yes. So, as a point
18 of clarification, the 62 is not -- so, for instance, the
19 day-to-day, we anticipate roughly about 30 people attending
20 and that's use through the coffee bar itself and then the
21 smaller classes for the children.

22 The 62 to 110 is really -- we're not talking about
23 this happening every weekend for events. We're talking about
24 maybe once or twice a month.

25 So, I just want to stress that it sounds like a

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1 large number but this is not something we intend on doing
2 every weekend. Thank you.

3 COMMISSIONER WHITE: But you're comfortable with
4 incorporating those benchmark numbers in, let's say if we
5 approved it, in an order just indicating that you would have
6 up to 62 seats in your establishment and then 110 seats as
7 a max for special events?

8 MS. SIUM: Yes.

9 COMMISSIONER WHITE: okay.

10 CHAIRPERSON HILL: Okay, great. Anyone else? Mr.
11 Miller, you haven't said anything today, right? So, please
12 go ahead.

13 VICE CHAIR MILLER: Thank you, Mr. Chairman, and
14 thank you for your presentation and for your creativity in
15 using the corner-store regulations.

16 Having sat through hours and hours of Zoning
17 Commission Hearings about this corner-store regulation, I can
18 tell you that this was not envisioned as the corner-store but
19 this was a very creative and community-engaged use of a
20 corner-store.

21 And I commend you for that.

22 Were the three condo owners above the space among
23 the 173 who signed the petition?

24 MS. SIUM: Yes, and in the application itself,
25 they submitted their own letter of petition just from the

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1 Condo Association.

2 VICE CHAIR MILLER: Okay, I didn't realize that
3 was them.

4 MS. SIUM: We've had a number of petitions that
5 just circulate throughout the neighborhood.

6 We've had an e-petition, paper petitions, and then
7 the actual requirements from the BZA for the application.
8 And they've signed all three of them.

9 VICE CHAIR MILLER: Okay, well, thank you very
10 much and good luck.

11 CHAIRPERSON HILL: Yes, I echo the comments of
12 Commissioner Miller. We all really appreciate people that
13 are coming forward as entrepreneurs and starting things
14 within the community.

15 I'm going to clarify some of the conditions
16 before, because now they've gotten a little confusing to me
17 so I'm going to read through them again.

18 But before I do that, does anyone have any more
19 questions for the Applicant? Okay, sure, Commissioner
20 Holiday?

21 MS. HOLIDAY: Can I ask a question?

22 CHAIRPERSON HILL: Sure.

23 MS. HOLIDAY: I'm familiar with ABRA licenses and
24 how they work in terms of occupancy.

25 Do you all use the same procedure in terms of a

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1 certificate of occupancy that is the final numbers basically
2 determined by the Fire Department?

3 CHAIRPERSON HILL: I don't know how it works with
4 ABRA. We're going to put some numbers in here in terms of
5 our conditions, in terms of how they would meet or what
6 they're holding themselves to.

7 And those conditions at this point seem to be 62
8 indoor 62 seats for daily activities, 110 seats for special
9 events, which would happen twice a week. So, those are the
10 limiting factors.

11 MS. HOLIDAY: So, it doesn't go to the Fire
12 Department?

13 CHAIRPERSON HILL: It doesn't go to the Fire
14 Department, no.

15 MS. HOLIDAY: For occupancy?

16 CHAIRPERSON HILL: No, I don't believe so.

17 MS. HOLIDAY: I mean, the way it works for liquor
18 license is the Board makes a direct recommendation in terms
19 of occupancy.

20 MR. COHEN: It doesn't go to the Fire Department.

21 What happens is the Board issues an order that
22 states its expectations as to how the Applicant of the
23 development will comply with the zoning regs, and then DCRA,
24 when they issue a CFO they will ensure that these conditions
25 are enforced.

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1 Commissioner, is that good?

2 MS. HOLIDAY: Okay.

3 CHAIRPERSON HILL: No, I'm just making sure your
4 question got answered.

5 MS. HOLIDAY: Well, yes, I guess so.

6 CHAIRPERSON HILL: Okay. I guess it was pretty
7 good for me.

8 Okay, all right, so then, the conditions, I'm just
9 clarifying them, and you can say yes again if you wouldn't
10 mind, and I'll do it as quickly as possible, but hours of the
11 operation for the coffee bar shall not exceed 7:00 a.m. to
12 7:00 p.m.?

13 MS. SIUM: Yes.

14 CHAIRPERSON HILL: Art exhibitions shall end no
15 later than 10:00 p.m. Monday through Thursday, and 11:00 p.m.
16 Friday through Sunday?

17 MS. SIUM: Yes.

18 CHAIRPERSON HILL: All programs shall be
19 supervised by a minimum of two Staff Members?

20 MS. SIUM: Yes.

21 CHAIRPERSON HILL: A maximum of 62 indoor seats
22 will be provided for daily activities?

23 MS. SIUM: Yes.

24 CHAIRPERSON HILL: All deliveries shall be
25 facilitated through the front door and occur between the

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1 hours of 7:00 a.m. and 7:00 p.m.?

2 MS. SIUM: Yes.

3 CHAIRPERSON HILL: Indoor seating may be increased
4 up to 110 seats for special events, up to two special events
5 per week?

6 MS. SIUM: Yes.

7 CHAIRPERSON HILL: All parts of the lot shall be
8 kept free of litter and debris, and commercial trash pickup
9 shall occur a minimum of twice per week?

10 MS. SIUM: Yes.

11 CHAIRPERSON HILL: There will be no on-site
12 cooking of food or installation of grease traps?

13 MS. SIUM: Yes.

14 CHAIRPERSON HILL: There shall be no sale of
15 alcoholic beverages for on-site consumption?

16 MS. SIUM: Yes.

17 CHAIRPERSON HILL: I really love this job. This
18 would be great if my wife could just do that every single
19 time, be like, yes.

20 Okay, let's see, is there anything else you guys
21 want to add? All right, I'm going to go ahead and close the
22 Hearing. Is the Board ready to deliberate? Okay, I can
23 start.

24 Again, based upon all the information that was put
25 forward in the record, including all of the extensive

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1 testimony that we've heard today, I would be in agreement
2 with the Office of Planning's report, in terms of how this
3 special exception is being met.

4 I think it's interesting that, again, this is the
5 first with the corner-store that we're seeing, and I'm glad
6 that Commissioner Miller could see the fruits of the Board
7 of the Zoning Commission's labor in terms of what they have
8 put forward.

9 So, I don't have any particular issues. Does
10 anyone have anything else they would like to add?

11 COMMISSIONER WHITE: No issues obviously, but I'd
12 just like to say that I'm very proud to see this type of
13 business popping up.

14 It seems like you've got great support from the
15 ANC and the neighborhood groups as well as the people in the
16 neighborhood.

17 So, I think with the OP's feedback, as well as
18 looking at the record, the plans that you've submitted and
19 the conditions that you've agreed to, I certainly can get
20 behind this concept in this application from Creative
21 Grounds.

22 CHAIRPERSON HILL: Okay, great. Mr. Hart?

23 COMMISSIONER HART: Just one quick thing, and I
24 guess the ANC Commissioner asked a question about whether or
25 not the Fire Department would be involved in it, and the Fire

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1 Department would be involved as part of the DCRA kind of
2 discussion.

3 So, to get their CFO, they'd have to have some
4 buy-in and approval from the Fire Department.

5 So, it's not like they're not going to be going
6 to them, it's just we are setting up some maximums and the
7 Fire Department might end up saying, well, you know what,
8 we've decided that might be a little less, but that's their
9 decision.

10 That's not something that we are going to be
11 talking about. But we're just making sure that there's some
12 sort of cap or limit that's there. So, I just wanted to kind
13 of clarify that.

14 And I actually would agree with my colleagues.
15 I think that this seems like a really exciting concept and
16 I wish you all well.

17 I think you've met the criteria they've set up in
18 the zoning regulations and would be supportive of the
19 application as written, and thank you all for coming, for the
20 amount of questions that we've given you as well as the
21 Office of Planning.

22 So, I'd be supportive of the application as well.

23 CHAIRPERSON HILL: Okay, I will make a motion to
24 approve Application Number 19623 as captioned by the
25 secretary and ask for a second? Motion made and seconded.

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1 All those in favor?

2 (Chorus of aye.)

3 CHAIRPERSON HILL: All those opposed? The motion
4 passes. Mr. Moy?

5 MR. MOY: The Staff would record the vote is zero
6 to one.

7 This is on the motion of Chairman Hill to approve
8 the application for the request for the relief being
9 requested, along with the conditions as cited by the Chair.

10 Seconding the motion, Mr. Robert Miller; also in
11 support, Ms. Lesyllee White, Vice Chair Hart. We have a
12 Board seat vacant.

13 CHAIRPERSON HILL: Great, can we have a summary,
14 Mr. Moy?

15 MR. MOY: Thank you, sir.

16 CHAIRPERSON HILL: Thank you all very much, good
17 luck.

18 MR. MOY: The next application before the Board
19 is application number 19624 of Kerameddine, K-E-R-A-M-E-D-D-
20 I-N-E, Dris, D-R-I-S, captioned and advertised for special
21 exception, Subtitle E, Section 5203, for the rooftop
22 architectural element requirement, Subtitle E, Section
23 206.1A.

24 This would construct a new mansard roof on an
25 existing flat, RF1 Zone, 1317S Street NW, Square 3107, Lot

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1 800.

2 CHAIRPERSON HILL: Okay, could the Applicant
3 please come forward? If you could please introduce
4 yourselves?

5 MR. CROSS: My name is Michael Cross, I'm the
6 architect representing the case.

7 MS. BACHER: I'm Emily Bacher, also architect for
8 the client.

9 CHAIRPERSON HILL: Okay, you guys both got sworn
10 in? All right, whoever is going to present, please go ahead
11 and do so. I don't know if the Board had any particular
12 questions they'd like to hear from you.

13 The only thing I'm curious of, again, is the ANC
14 and how you went through them, because I don't think the
15 report came in or I didn't see it last time I looked.

16 You guys know if the report came in or not? So,
17 the Commissioner is here, I guess, so that's great. You get
18 to participate in two cases, that's great.

19 So, if you could just please kind of go through
20 the project and what you're trying to do, and how you're
21 meeting the criteria for us to grant the relief requested.

22 And I'm going to put ten minutes on the clock, Mr.
23 Moy, just so we know where we are. And you can begin
24 whenever you like.

25 MS. BACHER: Thank you. Good morning, thank you

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1 for reading this case. We are, our client, the Applicant,
2 is seeking relief under E206.1 to modify existing
3 architectural rooftop elements.

4 Our client's looking to do a matter of right
5 third-story addition on the property, and to make that
6 addition more compatible with the existing neighborhood,
7 we're proposing to raise and restore the existing roof turret
8 and introduce a small balcony below it, as well as a small
9 mansard roof adjacent to the turret.

10 We have presented before the Bloomingdale Civic
11 Association, as well as the ANC; that's applicable here,
12 which is 5E.

13 We've received support from both of them with the
14 proviso that we restore the rooftop turret so that it is --
15 it's currently kind of a truncated pyramid. They'd like to
16 have us restore it to the full pyramid.

17 So, I've revised our submission to include that
18 full pyramid as the neighbors requested.

19 Otherwise, that's all the application is, so we'll
20 stand by record and I'm happy to answer any questions that
21 you might have.

22 CHAIRPERSON HILL: Okay, great, a three-minute
23 presentation, that's great. Okay, does the Board have any
24 questions for the Applicant?

25 Okay, I think the design's really nice, and could

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1 you go back to the -- yes, just leave it there, that would
2 be great. Anything from the Office of Planning?

3 MS. MYERS: Hello, Crystal Myers with the Office
4 of Planning. The Office of Planning is recommending approval
5 of the space and stands in the record of the Staff report.

6 CHAIRPERSON HILL: Okay, does anyone have any
7 questions for the Office of Planning? Okay, does the
8 Applicant have any questions for the Office of Planning?

9 Right, is there anything from the ANC? Would you like
10 to come forward? If you would please just introduce yourself
11 for the record? I need you to push the button, sorry.

12 MS. HOLIDAY: My name is -- Bertha Holiday, I'm
13 the ANC 5E07 Commissioner. I live at 49 T Street Northwest.

14 CHAIRPERSON HILL: Commissioner Holiday, are you
15 the SMD for this as well?

16 MS. HOLIDAY: I am.

17 CHAIRPERSON HILL: Wow, a lot of stuff going on
18 at SMD.

19 MS. HOLIDAY: Yes.

20 CHAIRPERSON HILL: That's great. Would you like
21 to provide us with your testimony concerning the ANC?

22 MS. HOLIDAY: Yes, this is what I hand-delivered.
23 Today is Wednesday so it was Monday that I hand-delivered it
24 down here. But let me read it very quickly.

25 In terms of material substance, it says ANC 5E

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1 concludes that the application meets building standards for
2 special exception. See attached memorandum.

3 The recommendation, the ANC voted to support the
4 application for special exception. The vote was eight aye,
5 zero nays, zero abstentions. The memorandum reads as
6 follows, directed to the D.C. Board of Zoning adjustment.

7 On November 21, 2017, the owner of the subject
8 property, Mr. Dris and his architect, appeared before a duly-
9 called public meeting of Advisory Neighborhood Commission 5E
10 with quorum present.

11 The previous evening, Mr. Dris and architect had
12 presented at the monthly meeting of the Bloomingdale Civic
13 Association, whose membership voted to support Mr. Dris's
14 application with the proviso that, at minimum, the front half
15 of the property's original pyramidal turret be restored.

16 The recommendation of the BCA was shared with ANC
17 5E by the ANC 5E07 SMD Commissioner paragraph.

18 It is ANC 5E's understanding that major property
19 changes proposed by the Applicant include a) extend the depth
20 of the subject role house property by eight feet resulting
21 in 58 percent occupancy, b) add a third floor to the property
22 for uses of master suite and laundry room, resulting in a
23 building height of 35 feet, c) modify the architectural roof
24 elements, resulting in a mansard roof with master bedroom
25 balcony, d) build a third-floor front building -- that's a

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1 mistake.

2 Build a third-floor front balcony with a hip roof
3 above, that's correct, and recreate a rooftop deck that
4 should not be visible from the front of the property.

5 In addition, owner has contacted neighbors who
6 have voiced no opposition to owner's building proposals, and
7 one has agreed to allow the owner to extend that neighbor's
8 chimney above the proposed third-floor addition.

9 Recommendation, based on the above information, ANC 5E at its
10 November 21st, 2017 Public Meeting by a vote of eight ayes
11 and zero nays.

12 Supports, Mr. Dris's zoning exception application
13 with the proviso that he seek to incorporate at minimum the
14 front half of a pyramidal roof above or in place of the
15 proposed hip roof covering the third-floor front balcony.

16 This addition will significantly increase the
17 building's architectural integrity and its compatibility with
18 the neighboring properties.

19 CHAIRPERSON HILL: Okay, great. Does the Board
20 have any questions for the Commissioner? Okay, all right,
21 great, thank you, Commissioner Holiday.

22 You're not here for anything else, are you?

23 MS. HOLIDAY: No.

24 CHAIRPERSON HILL: Okay, all right, let's see, is
25 there anyone here wishing to speak in support? Is there

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1 anyone here wishing to speak in opposition?

2 All right, I'm going to turn back to the
3 Applicant. Do you have anything else you would like to add?

4 MS. BACHER: Not at this time, no.

5 CHAIRPERSON HILL: Okay, great. Does the Board
6 have any final questions or comments?

7 COMMISSIONER HART: I do actually, Mr. Chairman.

8 Just out of curiosity, there is an item -- what
9 is this? -- Exhibit 35, which is the architectural drawing
10 set, or revised architectural drawing set, Page 9 I guess,
11 maybe it's Page 9 or maybe it's Page 7.

12 But there's an item above the, I guess it's an
13 interior stairway, new roof monitor. Can you describe what
14 that is? Because it looks like it's a sloped roof. Is that
15 a skylight?

16 MR. CROSS: Yes, a roof monitor is a form of
17 skylight, where the window does not face the sky but it's set
18 off to the side, it allows for more natural diffuse light to
19 enter the property without direct thermal gains and increased
20 insulation.

21 COMMISSIONER HART: And so what I'm seeing in the
22 plan is the -- well, actually, you tell me what I'm seeing
23 in the plans, on Page 7 of that. It's your BZA 07 I think.

24 MR. CROSS: Yes, Page 7 shows a roof-plan that is
25 of the rooftop deck that Ms. Holiday described as being set

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1 back so it's not visible from the street.

2 Adjacent to that, there is a roof monitor
3 structure which you see in both Sheet 07 as well as the Sheet
4 10 section.

5 It is just a few feet above the roof there over
6 what is the current staircase of the home.

7 COMMISSIONER HART: And so in the plan, you can
8 actually see the stairs, is that what I'm looking at? That's
9 what I'm trying to figure out. Is it that there's glass on
10 top? Because it looks like there's glass on the, what
11 is that? I don't know what side that is.

12 On the elevation that you have or the section that
13 you have, you can see windows that are there, but then you
14 can see windows on the top.

15 That's the part where I was confused. I couldn't
16 figure out what was on top.

17 MR. CROSS: I understand your confusion now.
18 Unfortunately, it's a graphical error. The software is
19 cutting at three feet above that level and happens to cut
20 below the roof.

21 If you refer to BZA Sheet 10, the section shows
22 that the roof occurs just above the guardrail at that level.
23 And it is solid.

24 COMMISSIONER HART: So, it's a solid piece. That
25 was the part that I couldn't understand because I thought the

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1 windows were coming off to the side, but they didn't look
2 like they were coming from the top.

3 And I was like, well, how does that structure
4 work? And I was just trying to understand it fully. I knew
5 what a monitor was, I just didn't know how that particular
6 one worked. But I understand that, thanks.

7 CHAIRPERSON HILL: Okay, the Applicant's not here.
8 You guys are just representing the owner. Did you guys just
9 go to the ANC Meeting?

10 Did the Applicant go to the ANC Meeting?

11 MS. BACHER: The Applicant wasn't able to make it
12 to the ANC Meeting but he and his wife were at the
13 Bloomingdale Civic Association Meeting with us.

14 CHAIRPERSON HILL: I was just curious. This is
15 great. He's not even showing up and you guys are doing your
16 work. Okay, all right, anything else you would like to add?

17 MS. BACHER: Not at this time.

18 CHAIRPERSON HILL: Okay. I'm going to go ahead
19 and close the Hearing. Is the Board ready to deliberate?
20 Okay, I can start.

21 Again, after reviewing the record and Hearing the
22 testimony as well as the report from the Office of Planning,
23 I would agree with the Office of Planning's analysis in terms
24 of how they're meeting the criteria for us to approve the
25 special exception, and I don't have any issues or concerns.

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1 Does the Board have anything they'd like to add?

2 COMMISSIONER HART: Just one, Mr. Chairman, and
3 that's just thanking the Applicant for the clarity on the
4 revised, what is it, section that shows the actual height of
5 the building.

6 It was a little bit unclear originally, and I
7 appreciate that information that they provided within the
8 last couple of days. So, thanks.

9 CHAIRPERSON HILL: Okay, great, I also thought it
10 was a very interesting design. Does anyone else have any
11 comments?

12 COMMISSIONER WHITE: No, I'd just like to thank
13 Ms. Holiday for showing up today again, for your testimony
14 for your second Hearing.

15 I think that adds a lot of value in terms of what
16 the neighborhood feels and what the ANC's opinion is in terms
17 of this particular design.

18 So, I always find that very helpful to know what
19 the neighbors are thinking and how they feel about the
20 proposed development.

21 So, other than that, I would be supportive based
22 upon the fact that the Applicant appears to have met the
23 criteria for special exception.

24 VICE CHAIR MILLER: Thank you, Mr. Chairman.

25 Yes, I would concur with my colleagues, and thank you

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1 for your presentation and thank you to the Commissioner for
2 your presentation.

3 And I agree that the Applicant met the special
4 exception criteria and I appreciate the Applicant's
5 responsiveness to the ANC's request that the pyramidal roof
6 be restored and it's an attractive design.

7 CHAIRPERSON HILL: Okay, great, thank you. So,
8 I'll go ahead and make a motion to approve Application Number
9 19624 as captioned and read by the secretary.

10 Can I ask for a second? The motion is made and
11 seconded. All those in favor?

12 (Chorus of aye.)

13 CHAIRPERSON HILL: All those opposed? The motion
14 passes. Mr. Moy?

15 MR. MOY: Staff would record the vote is four to
16 zero to one. This is on the motion of Chairman Hill to
17 approve the application for the relief being requested.

18 Seconding the motion, Ms. Lesyllee White; also in
19 support, Mr. Robert Miller, Vice Chair Hart. We have one
20 Board seat vacant. The motion carries.

21 CHAIRPERSON HILL: Thank you. Summary order?

22 MR. MOY: Yes, sir, thank you.

23 CHAIRPERSON HILL: Thank you. Thank you all very
24 much.

25 (Whereupon, the above-entitled matter went off the

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1 record at 11:35 a.m. and resumed at 11:41 a.m.)

2 CHAIRPERSON HILL: Okay, Mr. Moy. Before we start
3 again, just a show in hands in terms of people that are here
4 for Application 19633 of T Street. Okay, great. So what --
5 I know that some weren't so we are going to have people sworn
6 in again, but we were trying to accommodate people in terms
7 of if there are a lot of people here wishing to testify, we
8 were going to take it earlier rather than later.

9 Since in the agenda it had it later, the public
10 agenda, we wanted to make sure we didn't miss anybody, but
11 now it's like noon so I would assume that anybody who was
12 going to be here to provide testimony would have arrived
13 already so we are going to hear that case next just to let
14 everybody know so that everybody who doesn't have to be here
15 can go after they provided the testimony.

16 That being the case, Mr. Moy, if you would call
17 our next case. But before you do that, I suppose, if anyone
18 is here who hasn't been sworn in and you plan on providing
19 testimony, if you would please stand up and take the oath
20 which is going to be administered by the secretary to my
21 left. For any case, if you haven't been sworn in, please
22 stand.

23 MR. MOY: Do you solemnly swear or affirm that the
24 testimony you are about to present in this proceeding is the
25 truth, the whole truth, and nothing but the truth?

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1 WITNESSES: I do.

2 MR. MOY: Thank you. You may consider yourselves
3 under oath.

4 CHAIRPERSON HILL: Okay, great. All right, Mr.
5 Moy. Whenever you would like.

6 MR. MOY: Thank you. So this is case Application
7 No. 19633 of VI, Roman Number 6, 3629 T Street, LLC.
8 Captioned and advertised as amended. Special exception under
9 Subtitle D, Section 5101 from the rear yard addition
10 requirements of Subtitle D, Section 1206.4. This would
11 construct a three-story rear addition to an existing one-
12 family dwelling in the R-20 Zone, premises 3629 T Street,
13 N.W., Square 1269, Lot 804.

14 CHAIRPERSON HILL: Okay, great. Mr. Moy, I guess
15 there's a preliminary matter concerning the motion to waive
16 the 21-day deadline?

17 MR. MOY: Yes. That's under Exhibit 40, sir.

18 CHAIRPERSON HILL: Okay. Unless the Board has any
19 issues in terms of the waiver, I see from the application in
20 Exhibit 40 the motion and understand why, and so I don't have
21 any issues concerning waiving the deadline. Does the Board?

22 Okay. Mr. Moy, we're going to go ahead and
23 approve that motion to waive the 21-day deadline to accept
24 the materials?

25 MR. MOY: Yes, sir.

1 CHAIRPERSON HILL: Okay, great. Thank you.
2 If you could please introduce yourselves.

3 MR. BYRNES: Rory Byrnes. I'm with Vici
4 Investments and the development/owner.

5 MR. SULLIVAN: Marty Sullivan, law firm of
6 Sullivan and Barros on behalf of the Applicant.

7 MS. WILSON: Alex Wilson from Sullivan and Barros
8 on behalf of the Applicant.

9 CHAIRPERSON HILL: Okay, great.

10 Mr. Sullivan, in terms of any specifics that I was
11 interested in before you start, I guess I did just want to
12 mention -- this is also just for people that are here. There
13 does seem to be a little bit of concern in terms of some of
14 the issues that were placed in the record from people in the
15 public. This is for a special exception. It's not a
16 variance. Just so you know that. I know, Mr. Sullivan, that
17 you will speak to the issues in terms of a special exception.

18 The only thing as you are going through your
19 testimony, again, we would like to hear about the project and
20 how you are meeting the criteria for us to approve the
21 special exception. I guess it's just kind of the public
22 outreach and some of the concerns that the ANC has raised.

23 They didn't obviously approve or deny. I mean,
24 they just kind of listed their comments so you can speak to
25 that as you are going through some of their concerns or

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1 issues when you are going through your testimony.

2 Other than that, Mr. Moy, can you just put 10
3 minutes on the clock just so I know where we are.

4 Mr. Sullivan, you can begin whenever you would
5 like.

6 MR. SULLIVAN: Thank you, Mr. Chair, and members
7 of the Board. I would like to highlight to address your
8 concerns just before we jump into the presentation. Some
9 comments about the comments we've received.

10 As you've noticed in the last couple of days,
11 there's been a bit of a campaign of letters in opposition and
12 we will point out in the presentation we think only three of
13 those letters are from properties within 200 feet of the
14 property and none of them are abutting neighbors so we don't
15 think they are actually specifically affected by this
16 particular application.

17 The concerns in the letter, as you mentioned,
18 appear to be towards variance relief which we are not asking
19 for. I think a lot of their arguments may be more
20 appropriately directed to the Zoning Commission and just a
21 dissatisfaction that this special exception is available.

22 I would point out, of course, that up until March
23 we could have done a much bigger addition and we are asking
24 for 45 percent lot occupancy. I think this is a case where
25 what the Zoning Commission intended by adopting this relief

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1 works because the Applicant did adjust. He's doing a modest
2 addition, just 45 percent lot occupancy.

3 One of the responses to the ANC comments they
4 talked about, privacy from the side windows. He eliminated
5 several windows on the side. This is something that maybe
6 the opponents haven't reviewed. Three weeks ago, when we
7 filed revised plans the third story was scaled back
8 significantly with a pitched roof and a dormer instead of
9 going straight up.

10 CHAIRPERSON HILL: Okay. I'm sorry to interrupt
11 but just go through the whole thing. I mean, I appreciate
12 you pointing out some of those issues but just go ahead and
13 run through your presentation.

14 MR. SULLIVAN: Okay. I'll go to the first page
15 describing the addition itself. It's going to extend 25 feet
16 and six inches past the furthest rear wall of the abutting
17 property to the west. Then to the east is an alley, a mid-
18 block alley.

19 It has the benefit of not being seen on a corner
20 and being on two streets, but also being an end unit so only
21 potentially impacting one side. That abutting neighbor is
22 in support and is actually here to speak in support of the
23 application as well.

24 The specific relief being requested is from
25 Subtitle D 1206.4, also known as the 10-foot rule. The first

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1 criteria under that task is that the light and air available
2 to neighboring properties shall not be unduly affected. The
3 properties to the west are separated by an alley.

4 The properties to the north are also separated by
5 an alley and these are fairly long narrow lots on both ends
6 both on the White Haven and on this street. so there is quite
7 a distance between the nearest house to the north across that
8 alley. The only adjoining property as I mentioned, it's 3627
9 T and that owner is in support.

10 The next criteria is that the privacy of use and
11 enjoyment of neighboring properties shall not be unduly
12 compromised. Again, we have an alley to the west. A lot of
13 the facts, of course, apply to all of the area of criteria
14 so forgive me if I'm repetitive on that point. The Applicant
15 has removed a number of windows on that west facade in
16 response to the ANC's comments and just left what minimum
17 number of windows are required to allow light and air into
18 those rooms.

19 The next criteria is that the addition or
20 accessory structure together with the original building as
21 viewed from the street alley or other public ways shall not
22 substantially visually intrude upon the character, scale, and
23 pattern of houses along the subject street frontage. This
24 is one area where I think there may have been some question
25 about the original plan.

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1 The revised proposal has made great strides in
2 that area in scaling back the third story and making it more
3 consistent with the character of this block which is varied
4 in structure. You can see the existing and proposed on the
5 next slide showing that third-story pitched roof which
6 eliminates a significant amount of space on the third floor
7 but makes it a more tasteful and modest overall proposal.

8 The next requirement in demonstrating compliance,
9 the Applicant shall use graphical representations such as
10 plans, photographs, or elevation and section drawings
11 sufficient to represent the relationship of the proposed
12 addition or accessory structure to adjacent building and
13 views from public ways.

14 I think the previous slide satisfies that
15 requirement. You can see here from the map on this page the
16 open alley and the long length of the lots and the small size
17 of the existing building. We are not introducing expansion
18 of a nonconforming use, of course, or a nonconforming height
19 or number of stories.

20 So we do have a response to some of the letters
21 of opposition that we've received. We've counted a total of
22 31 letters representing 27 properties. They've all come in
23 in the last couple days. This slide says there's two. I
24 think there are three properties within the 200 feet of the
25 existing building. The only one that is even close to this

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1 is across the rear alley on Whitehaven and there's a
2 considerable distance, maybe 100 or 150 feet, between the two
3 buildings.

4 I don't want to be repetitive so I'm reviewing
5 over this. As you mentioned, the majority of these letters
6 talk about the variance test which we are not doing. Some
7 have talked about trees; we have received permission from
8 Urban Forestry regarding any trees on the property.

9 In conclusion, we do have support from the only
10 abutting neighbor that is potentially impacted by this. The
11 third story, of course, and changes to the front are
12 permitted as a matter of right but we've adjusted that to
13 make the building consistent with the character of the
14 neighborhood. The Office of Planning, of course, is in
15 support. The ANC did not oppose it. That's it. The
16 Applicant is here to answer any questions, as are we. Thank
17 you.

18 CHAIRPERSON HILL: Okay, great. Thanks.

19 Could you just flip through two back, two forward.
20 Yeah, right there. Thanks. Thank you, Mr. Sullivan.

21 Is the ANC Commissioner here by any chance? No?
22 Okay.

23 Again, I appreciate your presentation and we've
24 read everything that's in the record. As far as the work
25 that you do with the ANC, I mean, again they didn't oppose,

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1 nor did they approve. Can you speak a little bit more about
2 kind of what their concerns were or why they didn't vote one
3 way or the other?

4 MR. SULLIVAN: I don't want to put words in their
5 mouth but my experience with that ANC has -- I subsequently
6 had a meeting with them on another case that had the support
7 and they said the same thing, "We're not going to support or
8 oppose because we don't -- that's for the BZA to decide
9 whether or not you meet the test." Which I didn't
10 understand. That was new to me for that. There was nobody
11 that showed up to express opposition at the ANC meeting. The
12 Applicant did canvas the neighborhood and talk to, or tried
13 to talk to, as many neighbors as possible. I don't really
14 know the source of --

15 CHAIRPERSON HILL: We have heard from that ANC
16 before in the same way so I was just curious. I mean, I
17 think that they have had in terms of the feedback we've
18 gotten, it seems to have been more to the whole 10-foot thing
19 is when they kind of were letting us take over.

20 Okay. Does the Board have any questions of the
21 Applicant at this time?

22 COMMISSIONER HART: Did you -- Mr. Sullivan, did
23 you do any -- I didn't see any like shadow studies or
24 anything but did you do any of those, or are you going to do
25 any of those?

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1 MR. SULLIVAN: It's on the last page of the plans,
2 the most recent submitted plans. Sorry, I don't know the
3 exhibit number off hand.

4 COMMISSIONER HART: Exhibit 41A? Is that the one?

5 MR. SULLIVAN: I'll know in a second. That sounds
6 about right, yeah.

7 COMMISSIONER HART: I think they -- I may have
8 just missed it.

9 MR. SULLIVAN: Yeah. Admittedly I'm not the
10 greatest at shadow studies as far as being able to see what's
11 going on. They only submitted them -- we submitted them just
12 for the season that was potentially the most impactful.

13 COMMISSIONER HART: And which season is that?

14 MR. SULLIVAN: In January.

15 COMMISSIONER HART: Does it say somewhere on this?

16 MR. SULLIVAN: It's on the very bottom.

17 COMMISSIONER HART: It's really tiny.

18 MR. SULLIVAN: Sorry, it's July. January wouldn't
19 be it because July is when the sun is closest. There is a
20 January and July so we did both of those. Then, of course,
21 there is no impact -- the only potential impact is in the
22 afternoon to the property to the east and that neighbor is
23 in support. They have an alley on the other side facing
24 houses that are perpendicular to it.

25 CHAIRPERSON HILL: You had mentioned that you

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1 scaled back the third story per comments that you received
2 from the ANC. What was it -- can you just tell me a little
3 bit about what was originally proposed and what comments did
4 they have?

5 MR. SULLIVAN: Every comment that they had was
6 included in the resolution because we gave our presentation
7 and then they said, "Okay. I have a resolution." That was
8 the first time we had heard those comments from that
9 commissioner. I think it was just that he was focused on the
10 scale of the third story from the side.

11 CHAIRPERSON HILL: But you said you had scaled it
12 back. I was just trying to understand what you scaled back.

13 MR. SULLIVAN: Oh, the original plans had the
14 third story going straight up.

15 CHAIRPERSON HILL: I see. Okay. All right,
16 great. Thank you.

17 COMMISSIONER HART: Mr. Sullivan, also with regard
18 to the shadow studies, this is just the proposed and what the
19 existing is. There's nothing looking at the 10 foot? If you
20 had done it kind of --

21 MR. SULLIVAN: Correct.

22 COMMISSIONER HART: It's helpful sometimes to
23 understand what the three look like. What is the existing
24 kind of by

25 -- I guess by right would be probably a matter of right, and

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1 then what is being proposed to kind of see what the
2 difference is between what is the matter of right versus the
3 proposal.

4 MR. SULLIVAN: Understood.

5 CHAIRPERSON HILL: Okay. I'll turn to the Office
6 of Planning.

7 MS. THOMAS: Good afternoon, Mr. Chair, members
8 of the Board. Karen Thomas with the Office of Planning. We
9 are recommending approval of this addition. I would like to
10 be mindful -- I would just like you to be mindful that the
11 10-foot rule --

12 CHAIRPERSON HILL: I'm sorry. Can you say that
13 again? I was coughing just when you said that. You would
14 like us to be mindful?

15 MS. THOMAS: Well, everyone to be mindful
16 including -- I would just like to answer some of the
17 opposition's questions in terms of their concerns about the
18 10-foot issue. It's not a variance request. You have 10
19 foot allowed by right. With respect to this addition it's
20 25 feet long. It's more or less currently aligned as it is
21 so the addition is 25 feet.

22 They could absolutely go to 10 feet beyond that
23 as a matter of right. What we should really consider is the
24 controls that are in place to regulate beyond the 10 feet.
25 Those controls are like rear yard, the lot occupancy, and

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1 anything else in terms of bulk with respect to height. Those
2 have been satisfied.

3 The rear yard still stays twice the required rear
4 yard at 44.9 feet, 45 feet, where 20 feet is required. The
5 height is well within what is permitted. The lot occupancy
6 height and everything else sets the control for the 10-foot
7 rule. With that, I don't -- we did not see any issues with
8 this, especially since the next door neighbor had written in
9 support. It is next to an alley.

10 I was a little bit happy that the Applicant
11 reduced the number of windows. They changed the plans a
12 little bit. They reduced the number of windows that are
13 along the alley elevation with respect to neighbor concerns.

14 They did not change the front door of the
15 addition, the location of the front door. They put it back
16 to where it was. Those were our main concerns and I saw that
17 they had satisfied those just on the face of it. It's not
18 a zoning concern with respect to the plans. It was an
19 improvement. With that, I rest on the record of our report.
20 Thank you.

21 CHAIRPERSON HILL: Okay. Does anyone have any
22 questions of the Office of Planning?

23 COMMISSIONER WHITE: Just two questions. Can you
24 just provide some feedback on why there weren't any concerns
25 about the light and air? Was it just the adjacent neighbor

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1 was okay with the plans? So I just wanted to kind of get
2 OP's position on the light and air aspects of this particular
3 proposed development.

4 MS. THOMAS: This particular one it's not
5 different from many of the ones we've seen prior. The
6 privacy and use of the abutting neighbor would not be
7 affected. There are no windows on that side. I did take a
8 look at the light study that was presented at the end and I
9 was satisfied that there would be no light disturbance.

10 There is no loss of light and air to the abutting
11 property. There is an alley separation between the rear
12 yards that front on 37th Street. That didn't present an
13 issue for us. There is also vegetation, trees and large
14 trees, in this area and along the alley ways anyway. That
15 didn't present a concern for us.

16 If the neighbor had some questions, the abutting
17 neighbor had some questions or concerns and they had
18 expressed that, we would have liked to have seen the
19 Applicant work with the neighbor to address those issues, but
20 there were none.

21 COMMISSIONER WHITE: And what about the issue of
22 the development possibly visibly intruding upon the
23 character, scale, and pattern of houses along the street
24 frontage? Is it your position that there is no impact at all
25 with respect to that?

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1 MS. THOMAS: Everything has an impact. The impact
2 would be to change from what it is now to what it is
3 portrayed for the future. With respect to height and balcony
4 set back, it changes the front but it's no -- it's not
5 unusual to have changes to the facade of a home once it is
6 within the zoning aspects of height, bulk, and where the bulk
7 is set back and we were satisfied with that.

8 COMMISSIONER WHITE: Okay. Thank you.

9 CHAIRPERSON HILL: So I don't know if this --
10 we'll see who this question is for. Ms. Thomas, we've been
11 seeing more of these lately in terms of, as Mr. Sullivan
12 mentioned, the 10-foot rule. What I have always been kind
13 of curious of in terms of how the Office of Planning goes
14 through their analysis, usually people can even build farther
15 back.

16 You know, you just said 45 percent lot occupancy,
17 20-foot rear yard. They could have even gone back another
18 I don't know how many feet, but a lot. Quite a bit. Is
19 there a point where -- I don't know if you can necessarily
20 answer this but I'm trying to understand where kind of the
21 Office of Planning would be like, "Okay. That's too far back
22 now. It really does change the character." There's not --
23 how do you go through that analysis?

24 MS. THOMAS: It's not an issue of too far back or
25 too close. You have the controls of that rear yard and that

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1 lot occupancy. It pushes it into a variance. Once things
2 get into the category of a variance, you have to essentially
3 prove what is exceptional about the situation --

4 CHAIRPERSON HILL: Right, but they could have gone
5 farther back.

6 MS. THOMAS: Yes, they could have. If it had no
7 impact on the light and air of the abutting neighbor and if
8 the neighbor had no issues with it, then we would have looked
9 at it in a different way if the neighbor had issues with it.
10 Perhaps it could have been a set back of the second-story
11 addition or the third story. There are different ways of
12 design that may have been addressed if there were issues.

13 CHAIRPERSON HILL: Okay.

14 MS. THOMAS: It comes down to design, where the
15 bulk of the building is focused, and those types of issues.

16 CHAIRPERSON HILL: Okay. Thanks.

17 Mr. Byrnes and Mr. Sullivan, again, we see these
18 more often and, Mr. Sullivan, you come before us quite a bit
19 so I'm sure you will be back here again. How did you decide
20 that's as far back as you wanted to go?

21 MR. SULLIVAN: Basically we kind of wanted, you
22 know, to build a single-family house that can accommodate
23 like a larger younger family. Just basically it was a matter
24 of like putting enough bedrooms and space on the second and
25 third floor.

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1 CHAIRPERSON HILL: Okay. So I'm just saying you
2 didn't take the special exception criteria into account when
3 you were designing it? This just happened to be where the
4 design ended up?

5 MR. SULLIVAN: No. I mean, in actuality I saw
6 that the 10-foot rule limit due to a certain size on the
7 interior space you wouldn't be able to get -- you probably
8 would have like maybe a three or four-bedroom house.

9 CHAIRPERSON HILL: The interior space. Okay. All
10 right, great.

11 Does anybody have any questions for the Office of
12 Planning?

13 Does the Applicant have any questions for the
14 Office of Planning?

15 MR. SULLIVAN: No, thank you.

16 CHAIRPERSON HILL: Okay. I asked this already,
17 but is the ANC here? No? Okay. Is there anyone here
18 wishing to speak in support?

19 Okay. Please come forward. If you could
20 introduce yourself and give us your home address. You did
21 get sworn in, correct?

22 MS. LAMB: Yes.

23 CHAIRPERSON HILL: Okay, great.

24 MS. LAMB: My name is Sara Lamb and I live at 2813
25 Bellevue Terrace. I happen to be one of the owners of 3627

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1 T Street, which is the next door property. I really don't
2 have any major problems with what is going on. Mr. Byrnes
3 has been very good at communicating and working with me on
4 the different things. The reason for no questioning about
5 the shadows and whatnot is we really have a lot of shadows
6 from all the trees in the back so if we trim up the trees and
7 stuff, I might actually get more light than I have now.

8 I fully believe that, you know, being on the
9 corner where it is it's not really going to affect the
10 neighborhood that much because we have a lot of houses in the
11 neighborhood that have exploded and gotten really big. I
12 don't think the location is really going to be detrimental
13 and I think we do need space for families.

14 CHAIRPERSON HILL: Okay, great. Thank you. Ms.
15 Lamb, how long have you been in that property?

16 MS. LAMB: Since 2004.

17 CHAIRPERSON HILL: Okay. All right. Okay.

18 Well, does the Board have any questions for the
19 witness?

20 Okay. Thanks for coming down. It's hard to be
21 the member who is not with the group. Good luck to you.

22 Let's see. Is there anyone here who wishes to
23 speak in opposition? If you could all come forward.
24 Actually, we're just going to -- you guys can just leave the
25 table there. I think there's enough -- there's quite a few

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1 people here that would like to speak. Would all of you come
2 forward and let's see if I have enough chairs for everyone.
3 You can all speak. There are plenty of chairs. No one else
4 wants to come forward? Okay.

5 If you could just please introduce yourself. I
6 guess we'll start with you, ma'am, if you wouldn't mind and
7 then we'll just kind of go across there.

8 MS. DONALDSON: My name is Mary Donaldson.

9 CHAIRPERSON HILL: I'm sorry. You kind of have
10 to get a little more in front of the microphone.

11 MS. DONALDSON: Sorry. My name is Mary Donaldson.
12 I live at 1901 37th Street, N.W., and I'm speaking on behalf
13 of myself and my roommate Mauricette Halaet.

14 CHAIRPERSON HILL: Okay, great. Thank you. You
15 have to push the light and speak into the microphone. You
16 have to point it kind of at you.

17 MS. JUPPENLATZ: Okay. How's this?

18 CHAIRPERSON HILL: That's great.

19 MS. JUPPENLATZ: My name is Gail Juppenlatz. I
20 live at 3542 Whitehaven Parkway, which is the street right
21 above T Street and down partway through the block. We're in
22 the 3500 block near 3629 so it's just above it.

23 CHAIRPERSON HILL: Okay, great. Could you spell
24 your last name for me? You have to push the button again.

25 MS. JUPPENLATZ: J-U-P-P-E-N-L-A-T-Z.

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1 CHAIRPERSON HILL: J-U-P-P-E-N?

2 MS. JUPPENLATZ: Uh-huh. L-A-T-Z.

3 CHAIRPERSON HILL: Okay, great.

4 MS. CARPER: Ann Carper, 1935 39th Street, N.W.

5 I live two blocks away above T Street.

6 MS. BAUME: Carol Baume at 3602 S Street. It's
7 about two blocks away.

8 CHAIRPERSON HILL: Okay.

9 MR. LEVY: Ed Levy. Edward Levy. I live at 3534
10 T Street, roughly a block away to the east.

11 CHAIRPERSON HILL: Okay. Ma'am, would you like
12 to introduce yourself?

13 MS. HALAET: My name is Mauricette Halaet and I
14 live at 1901 37th Street.

15 CHAIRPERSON HILL: Okay. Can you spell your last
16 name for me? Just push the button. Just push it once and
17 then the light will stay on.

18 MS. HALAET: H-A-L-A-E-T.

19 CHAIRPERSON HILL: Okay, great. Thank you.

20 If it's all right, I'm going to start with you on
21 my left here and we'll just kind of go across. Everyone will
22 have three minutes to present and the clock is there on the
23 ceiling so you can see where you are. Then, again, just push
24 the button once. The light will come on and then you can
25 just speak into the microphone. I'm sorry but you have to

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1 speak directly into it because it goes on the record and
2 people are listening. You can begin whenever you would like.

3 MS. DONALDSON: Mr. Chairman, I think that one of
4 the main reasons why we are all in opposition is that these
5 humungous structures are being built in an area where there
6 are very modest homes. They just do not conform to the
7 fabric of our community.

8 I know we did a renovation five years ago. We
9 stayed within the guidelines as set forth by the city. We
10 have a lovely home but to have a house directly across the
11 alley from us that is doubled in size in the length and the
12 height it's just monstrous. It does not do anything for the
13 harmony of our neighborhood. I don't believe that the
14 statements that have been said that there's not going to be
15 any conflict of air and privacy and so on. I think that is
16 totally wrong. We have like five or six of these
17 monstrosities going up in our neighborhood right now. Why?
18 It just takes away from the fabric of our community. We have
19 a very lovely community. Families are coming into the
20 community. They are not asking for these humongous places
21 to be built.

22 I just -- I don't understand how he comes up with
23 the 40 or 45 percent use of the lot. I think it's more like
24 70 or 80 percent when you take into consideration the parking
25 pad, the patio, 120-foot-long house. I just think it's

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1 totally wrong. It does not make us feel comfortable in our
2 own neighborhood.

3 CHAIRPERSON HILL: Okay. All right. Thank you.

4 MS. DONALDSON: I speak for both of us.

5 CHAIRPERSON HILL: Oh, okay.

6 MS. DONALDSON: Because of the language.

7 CHAIRPERSON HILL: Oh, okay. If she speaks
8 French, she'll tell you.

9 CHAIRPERSON HILL: He speaks French.

10 COMMISSIONER HART: Un petit peu.

11 MS. DONALDSON: Un petit peu, okay. Merci
12 beaucoup. What Natalie is saying -- I call her Natalie --
13 we are afraid that we're going to have obstruction of the
14 light. Our house will sit much lower because you have to
15 understand they are sitting up already. There is a
16 foundation wall and everything so he is already higher than
17 us. To go up to 35 feet it would definitely damper the air
18 and light that is coming onto our property.

19 CHAIRPERSON HILL: Okay. Again, where are you
20 located in terms of where the property is? How far away are
21 you?

22 MS. DONALDSON: We are directly across the alley.

23 CHAIRPERSON HILL: You are across the alley.

24 MS. DONALDSON: Yeah.

25 CHAIRPERSON HILL: Okay.

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1 MS. DONALDSON: By the way, Natalie was the only
2 person that they visited in the neighborhood. We've
3 canvassed our other neighbors and he came to the house one
4 day and said, "Hi. I'm going to be your new neighbor," and
5 gave her all this swift talking. That's the only person that
6 we know of that he even spoke to in the alley -- in the
7 neighborhood.

8 Finally, the new presentation of this house with
9 the scale-back of the third floor and dormer, we know nothing
10 about it. It was never published to any of the neighbors.
11 His lack of communication with the neighbors has aggravated
12 everyone.

13 CHAIRPERSON HILL: Okay.

14 MS. DONALDSON: And Ms. Lamb doesn't live in that
15 house. Can I just add that? I'm sorry.

16 CHAIRPERSON HILL: Okay.

17 MS. DONALDSON: She does not live in that house.
18 She rents it out to Georgetown students.

19 CHAIRPERSON HILL: Okay. That doesn't matter but,
20 anyway, okay.

21 MS. DONALDSON: Thank you.

22 CHAIRPERSON HILL: Thanks. All right.

23 MS. JUPPENLATZ: I think actually it does matter
24 because it's not going to affect her at all. In fact --

25 CHAIRPERSON HILL: Just go ahead and present your

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1 testimony. I'm saying like that's her legal right. It has
2 nothing to do with zoning.

3 MS. JUPPENLATZ: It is her legal right but it
4 gives her the matter of right to go back and extra --

5 CHAIRPERSON HILL: I'm sorry. Go ahead and
6 present your testimony.

7 MS. JUPPENLATZ: My name is Gail Juppenlatz and
8 I live on Whitehaven Parkway.

9 CHAIRPERSON HILL: I'm sorry. You're going to
10 have to speak just a little more into the microphone.

11 MS. JUPPENLATZ: Okay. Sorry.

12 CHAIRPERSON HILL: That's all right.

13 MS. JUPPENLATZ: This is a very different type of
14 community. It was built as a village in the city about 70
15 years ago. It's made up of 535 two-story houses. There are
16 about three non-row houses in the whole community which is
17 four blocks by five blocks. That's it.

18 Almost all the houses have a specific facade
19 pattern changing from block to block repeating themselves.
20 This massive addition will ruin the pattern forever changed
21 by one house and remodeled by one developer. To add this
22 huge addition the Applicant needs a special exception in
23 order to be granted. This Applicant has the full burden to
24 prove that there will be no undo adverse effects if this
25 application is successful.

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1 This Petitioner did not prove it. In fact, there
2 will be overwhelming adverse effects on the entire community.
3 It will open the floodgates for every developer to demand the
4 same kind of special exception for their own McMansion
5 projects.

6 Required development standards state the addition
7 together with the original building as viewed from the
8 street, alley, and other public way shall not substantially
9 visually intrude upon the character, scale, and pattern of
10 the houses along the subject street frontage. It will do
11 exactly that. His own architectural drawings prove it.

12 Further, this project will not meet the more
13 important special criteria that it comply with the general
14 purpose and intent of the zoning laws to maintain the
15 character of the neighborhood, limit permitted ground
16 coverage of expanded buildings to encourage a general
17 compatibility between the sighting of expanded buildings in
18 the existing neighborhood. Clearly, it doesn't meet that
19 message.

20 The house is viewed from the street and both the
21 side and the rear alley will present as a huge structure, 55
22 feet long and 40 feet high from the alley, because it's
23 already set up about six feet. It will look massive. The
24 third floor on the front will stand as the only one in that
25 whole block. There are no other third floors.

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1 The above-grade square footage of the house is
2 about 3,000 square feet. The immediate neighbor's house will
3 look like a dollhouse at just over 1,100 square feet, one-
4 third the size. That house will be shaded, lose air, light,
5 and privacy. The owner has not objected to this addition.
6 She doesn't live there. It's a long-term rental.

7 Approving the application for a 25-foot rear
8 addition will give her a matter of right to extend with a 35-
9 foot addition on her deep lot and then goes the entire
10 street one house after another.

11 I do believe that they need some sort of an
12 exception because they are covering over 45 percent of the
13 lot. This is a semi-detached house. From my understanding
14 they can cover 40 percent of the lot so he does need an
15 exception to go to 45 percent. Also, on his own drawings he
16 says he's 36 one and three quarters inches high and I believe
17 him. It's 35 feet period. I never heard that there was
18 anything that gave him the right to go higher than that.

19 The Burleith community is counting on the BZA to
20 follow the rules of the Zoning Regulations and the intent.
21 Our only protection from these massive additions to the small
22 homes in our Burleith community is the BZA. I implore the
23 Board to enforce the new zoning regulations to ensure the
24 community of the integrity of the zoning process.

25 Please deny this application. The developer/owner

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1 should only be permitted to build as the matter of right
2 which is the 10 feet in back. A third-floor addition,
3 unfortunately, has been approved and we do disagree with that
4 as well.

5 I have pictures that I would like to show the
6 Board of what this thing is going to look like. Massive.
7 None of the neighbor's houses --

8 CHAIRPERSON HILL: Okay. That's good. Actually,
9 you can provide those to us after you're done with the
10 testimony and the secretary can make copies.

11 MS. JUPPENLATZ: You can have all of them. Thank
12 you for your consideration.

13 CHAIRPERSON HILL: If you want to give the copies
14 to the secretary.

15 MS. JUPPENLATZ: I will. Right now?

16 CHAIRPERSON HILL: Yeah, so we can look at them.
17 Okay. Please.

18 MS. CARPER: Hi. My name is Ann Carper, 1935 39th
19 Street. When Joel Larson of the Office of Planning came to
20 a Burleith community meeting in either March or April of 2017
21 to discuss the new zoning code, and especially the 10-foot
22 setback and the reduction in height from 40 to 35 feet for
23 our R-20 zone which Burleith and Georgetown are in, a lot of
24 us who were really concerned about the massive overscaled
25 development that was taking place which under the previous

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1 zoning code people were allowed to do, we felt kind of a
2 sense of relief that, "Good. Now this 10-foot setback is
3 going to provide some kind of protection for us."

4 Now we are dismayed that these special exception
5 requests are being asked routinely and for much greater than
6 10 feet. As I've been kind of skimming through your record,
7 I've been alarmed at this. Then we are also alarmed these
8 are being granted by BZA.

9 As Mr. Sullivan noted, most of us writing these
10 letters at the last minute, which I'm not really sure is
11 material. We got it in by the deadline. True, we don't live
12 nearby but as my neighbor Gail said, we see this as a
13 precedent-setting case. If this is approved, then why
14 wouldn't anyone else say, "Well, you approved it for them.
15 Why can't we do it?"

16 Then it's just going to roll through the
17 neighborhood. We see it that we need to take a stand now so
18 these exceptions aren't routinely granted and that the fabric
19 of our cohesively-designed 1920s neighborhood isn't forever
20 and permanently marred.

21 One other thing about the ANC. I'm not sure why
22 people -- I mean, I imagine people didn't come to the meeting
23 because they didn't know about it. Now the Burleith Citizens
24 Association, of which I'm an at-large member, we are sending
25 emails to our membership and our relief LISTSERV when these

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1 special exceptions cases are filed just so people are aware
2 of them and if they want to speak in support or opposition
3 they will have the opportunity to do so at the appropriate
4 time. Thank you.

5 CHAIRPERSON HILL: Okay, great. Thank you.

6 MS. BAUME: Yes. Carol Baume, 3602 S Street. The
7 question was raised earlier as to why people didn't attend
8 the ANC meeting when this was brought up. The people in the
9 neighborhood were only notified of this within 24 hours
10 before and we haven't had time to look at the plans and so
11 forth.

12 Then our commissioner said we could have our input
13 anyway so the ANC meeting doesn't really reflect the feeling
14 of the community. It is generally that ANC's position that
15 it does not either support or be in opposition to these
16 plans, it lets the neighbors decide and you can see the view
17 of the neighbors here.

18 I'm not sure but the developer keeps saying, "We
19 have the strong support of our neighbor," this woman who
20 testified. Burleith is almost 50 percent investor owned.
21 This is an example of an absentee landlord and investor.
22 Yes, I can see that she would be in support and so are the
23 developers.

24 They have a matter of right to do certain things
25 but this seems like an egregious exception to ask to go over

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1 25-and-a-half-feet back. Yes, as a matter of right the
2 developer can go three stories up, but I think when you
3 combine the length with the height, what you see walking down
4 the street and from that alley is a massive wall along that
5 alley.

6 The other point, as Mr. Sullivan noted, is that
7 these lots are very long and narrow. What happens when
8 people go back this far is that there's a tunneling effect
9 for the neighbors, for people who have lived there a long
10 time. I know several neighbors who have experienced this
11 thing near them and their whole light is lost. It's sort of
12 like living in canyons now. Again, the people who are long-
13 term residents invested in the community are suffering at the
14 hands of the developers who will understandably use whatever
15 rights they have plus push the envelope.

16 I ask you not to support this application on
17 behalf of the people who actually live and enjoy the
18 community.

19 CHAIRPERSON HILL: Okay. Thank you.

20 MS. BAUME: Thank you.

21 CHAIRPERSON HILL: Sir.

22 MR. LEVY: I'm Ed Levy. I've lived in Burleith
23 with my wife for 47 years, nearly 47 years, and have raised
24 two children in the community. I believe structures like the
25 one at issue here would erode the character and appeal of our

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1 community. I'm in agreement with the statements of my
2 neighbors about this.

3 I want to focus on the point that the addition is
4 not in harmony with the vast majority of the buildings in its
5 immediate vicinity, as well as the larger community. Clearly
6 this structure, the addition, is going to affect the light
7 and air of the property to the east. That can't be
8 questioned.

9 It appears to me that it's also going to affect
10 the light and air of the properties to the west, the ones
11 that front on 27th Street -- 37th Street. I'm sorry. There
12 are small back yards and there is a 15-foot alley. You're
13 talking about a nearly 33-foot tall structure.

14 Also, although it's probably a plus that there are
15 now fewer windows on the west face of this addition, the
16 remaining windows are still going to compromise the privacy
17 of those properties, you know, people looking down into the
18 yards and the houses which fronts on the alley.

19 In addition, as viewed from both of the alleys
20 that bound this property, this addition would represent a
21 very substantial departure from the character and scale of
22 additional buildings. It's definitely a plus that they have
23 scaled back the front of the third story. That doesn't have
24 any effect on the addition that is the subject of this
25 exception request.

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1 Finally, while there is some diversity in the
2 front facades of the properties on the 3600 block of T
3 Street, and a minor amount of diversity on the rear facades,
4 those differences just pale into insignificance when compared
5 with how different this structure will be from adjacent
6 structures and from the community.

7 Two other points. One of the comments by the
8 Applicant focused on how many comments were received from
9 nearby properties and the acquiescence or agreement of the
10 adjoining property owner with this request. However, my
11 understanding is that zoning is not just about adjacent
12 properties. It's designed to protect communities as a whole
13 and zoning limitations can't be waived by agreement of a few
14 nearby neighbors.

15 Finally, the Office of Planning's position on the
16 10-foot setback rule would virtually nullify that rule. They
17 are essentially saying that as long as the footprint doesn't
18 occupy more than 60 percent of the property, they would
19 approve the addition no matter how far back it went. There
20 is nothing in the rule that I could see that indicates that
21 10-foot limitation is dependent on the total footprint of the
22 property. Thank you.

23 CHAIRPERSON HILL: Okay. Thank you all very much.
24 Does the board have any questions for the witnesses?

25 I guess, instead of a question, I have a comment.

1 I mean, again, really what the applicant is here for is the
2 difference between the 10 feet that they're allowed to do by
3 right and what they're proposing. Do you -- and I don't even
4 know if anybody has a thought of this. Like, I mean, will
5 you all be opposed to the 10 feet, or it's just -- what do
6 you think of the fact that it goes back 10 feet to begin
7 with?

8 MS. BAUME: Well, I think if that's what the
9 regulation says, then let's just stick to the 10 feet if
10 that's what the -- that's what it's there for. I don't --
11 I wonder why they even came up with that 10-foot thing if
12 they're going to so routinely extend it.

13 CHAIRPERSON HILL: Okay. All right. Okay.

14 MR. LEVY: I mean, personally, I wouldn't object
15 to it, but that's almost irrelevant, because they have a
16 right to do it.

17 CHAIRPERSON HILL: Right. Well, the reason why
18 the special exception was -- I mean, this actually came --
19 just since I've been here, this happened because by right
20 they were allowed to build up much higher and go back a lot
21 farther. So, that's how this came into play. And then the
22 special exception was there, to, again -- and the Zoning
23 Commissioner could possibly speak more to it, but again, as
24 a special exception, if they meet the criteria, they were
25 then able to put forth what the applicant has put forth, in

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1 terms of whether or not we are able to grant it.

2 So -- but, anyway, thank y'all so much.

3 Yeah. Ms. Donaldson.

4 MS. DONALDSON: I have a question, Mr. Hill.

5 CHAIRPERSON HILL: Sure.

6 MS. DONALDSON: How do you compute the height?

7 Are you going to compute the height from the alley level, or
8 do you compute it from the basement level to get to the 35
9 feet, as per the regulations?

10 CHAIRPERSON HILL: Right. I'm going to turn to
11 the Office of Planning, if you wouldn't mind.

12 MS. DONALDSON: And -- in other words a ground
13 level --

14 CHAIRPERSON HILL: Sure.

15 MS. DONALDSON: -- because that basement, the
16 existing basement, already extends above.

17 CHAIRPERSON HILL: It's okay. She'll answer the
18 question.

19 MS. THOMAS: I'll turn -- and I'll turn to the
20 applicant to show how they measure that, because that was a
21 question that we had asked them.

22 CHAIRPERSON HILL: Okay. All right. Well, we'll
23 ask that when the applicant comes back then.

24 MS. DONALDSON: Okay. Thank you.

25 CHAIRPERSON HILL: Okay. Mr. Miller.

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1 VICE CHAIR MILLER: Thank you, Mr. Chairman. So,
2 the Chairman asked if you would be comfortable with the ten
3 foot, and some of you said that you would be. Is there
4 something in between the 10 and the 25 -- and the 15 extra?
5 I guess it's 15 feet beyond that. Is there something between
6 the -- is there some portion of the 15 that you would be --
7 that you think would be less objectionable?

8 MR. LEVY: Can I address that?

9 VICE CHAIR MILLER: Sure.

10 MR. LEVY: First of all -- I have two things.
11 One, I want to address that, and I'd like to also respond to
12 Mr. Hill's last point. It's not for us to say, you know.
13 We're just individuals. There all kinds of views that have
14 been expressed about this, and we don't represent anybody
15 here except for ourselves. We may be indicators of what
16 other people think, but for me, I think, personally, it would
17 be out of line to sort of enter into any sort of negotiation
18 about this. You know, if they have an alternative proposal,
19 then they can make it, and the people in the community can
20 respond, just as they responded to the proposal that's on the
21 table now.

22 Second, with regard to the criteria for the
23 special exception, my reading is that they don't meet those
24 criteria. So, you know, that -- that -- to me, that
25 addresses your -- the point that you were raising about

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1 whether or not the addition that they're proposing here comes
2 within the requirements for a special exception.

3 CHAIRPERSON HILL: Sure, no. What I was making
4 a comment, is those are the criteria that we look at in order
5 to determine whether or not, you know, we think, it's met the
6 criteria. And, again, you know, I might have an opinion.
7 Some other board members might have an opinion. And then the
8 Office of Planning has an opinion and the applicant has an
9 opinion. So, it's not -- you have a different opinion, in
10 terms of whether or not the criteria is being met. I was
11 just kind of pointing out that's what we look at.

12 MR. LEVY: I would say that the way their criteria
13 are articulated, some of the general exceptions that people
14 have fall within those criteria. In other words, there's --
15 one of the criteria's about the character and scale. I don't
16 know. It's not put in terms of the community, but it's also
17 not limited to, you know, the immediately adjacent properties
18 either.

19 CHAIRPERSON HILL: I understand your point. I
20 understand your point. Okay. All right. Sorry.

21 COMMISSIONER WHITE: I wanted to get a little
22 feedback, because, you know, just -- you okay there?

23 PARTICIPANT: Yeah.

24 COMMISSIONER WHITE: -- just mentioned, you know,
25 there are specific special exception criteria that we have

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1 to look at in terms of granting the requested relief that
2 they're seeking to be able to go, you know, further back.
3 So, I just wanted to get your feedback on whether or not you
4 could communicate what specific impact that this project
5 would have on you in terms of light and air.

6 One of the criteria is that light and air
7 available to neighboring properties shall not be unduly
8 affected. So, I wanted to see if you could maybe give me a
9 little color around that in terms of how this project unduly,
10 you know, impacts you, from a light and air perspective.

11 MS. JUPPENLATZ: It doesn't impact me, because I
12 live on top, further down. But I think that she can speak
13 to it, because it will definitely impact her.

14 MS. DONALDSON: If I understand the dimensions on
15 the drawings correctly, this house would be -- the height
16 would go up 20 or 40 percent. And that would directly impact
17 any air and any light that comes into our yard in our -- the
18 back end of our house. And it would just tower over our
19 house. And that's the way -- you know, looking at the
20 drawings here that we were provided, the scale, it appears
21 that it's just going to tower over every house along that
22 alley that faces onto T street, until you get to the end of
23 this parking path. So, it definitely affects our light and
24 air.

25 COMMISSIONER WHITE: There was also some comment

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1 from the adjacent neighbor about there being a lot of tree
2 shade in that area as well. Can you comment on whether or
3 not that's --

4 MS. DONALDSON: He has a beautiful -- he has a
5 beautiful -- and I'm going to be sick, because I'm sure he's
6 going to take it out -- a cut-leaf red maple tree in the
7 front. In the back, there are no trees. There are telephone
8 poles, but there are no trees.

9 COMMISSIONER WHITE: Okay.

10 MS. DONALDSON: Along the alley going on the west
11 and the alley on the southeast, very few, if any -- I mean,
12 three houses down maybe there's a tree or something.

13 MR. LEVY: Isn't there a large tree, right
14 adjacent to the alley?

15 PARTICIPANT: Yeah.

16 MS. DONALDSON: The one --

17 MR. LEVY: Okay. Halfway back?

18 MS. DONALDSON: -- that one is -- that one is
19 half-falling over.

20 MR. LEVY: Okay.

21 MS. DONALDSON: I mean, it needs to be removed.
22 It doesn't even have leaves on it in the spring and fall.
23 There's a dead tree in the alley.

24 MS. JUPPENLATZ: And any of those are all
25 deciduous trees. There's nothing that --

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1 CHAIRPERSON HILL: I'm sorry. You have to push
2 the -- just push the button once.

3 MS. JUPPENLATZ: Sorry. All those trees are
4 deciduous. Anything that they're talking about, there's
5 nothing that is there this time of the year. What she is
6 saying is, it will absolutely be the case.

7 We drive through that alley. That's how you get
8 to our house, because you can't park -- you can only park on
9 one side of the street on Whitehaven. So, in order to park,
10 you have to go through -- either go down to 37th or go
11 through that alley. And I drive through it a lot. This will
12 be 55-feet long. And in the alley, it will appear to be
13 about 40-feet high. It's just going to be this massive wall,
14 canyon, when you drive through the alley. And when you see
15 it from the street or anywhere in the neighborhood, that's
16 what it's going to look like.

17 MS. DONALDSON: Also, I'm curious -- I'm curious
18 about another topic. What about the parking? What is a
19 requirement for parking, Office of Planning, in that
20 neighborhood? I know we had to take down our grandfather's
21 garage, and we had to pour a parking pad, which barely fits
22 Natalie's Mini Cooper. So, how is this -- Thank you. How
23 is this increase in length -- and then you add the patio?
24 There's no yard, according to these drawings that we've seen.
25 There's going to be probably a stone patio --

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1 CHAIRPERSON HILL: Okay. Okay. I --

2 MS. DONALDSON: -- and then a parking pad. How
3 much parking pad to they have to have?

4 CHAIRPERSON HILL: Okay. They're not here for
5 parking relief. So --

6 MS. DONALDSON: But we need parking relief in our
7 neighborhood.

8 CHAIRPERSON HILL: So -- so -- so, I understand.
9 But that's not what they're here for. But I -- we hear what
10 you're saying.

11 MS. DONALDSON: Okay.

12 CHAIRPERSON HILL: So, does the board have any
13 other further questions for the witnesses?

14 COMMISSIONER HART: More of a -- I guess a
15 statement, I guess, regarding -- there's been some
16 conversation. Ms. Carper, I think, brought up the issue
17 about precedent setting.

18 MS. CARPER: Yes.

19 COMMISSIONER HART: We actually are -- and we
20 strive to take each case on its own merits. We look at the
21 individual aspects of this case. This particular case has
22 an alley that's next door to it, the house that's next door
23 to that, and the house that's next door to that don't have
24 alleys that are next door to them.

25 So, they have a different, you know, condition

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1 that's going on with them. Some of them may be -- this one
2 may be on a plan for -- on a higher level. Others may be
3 lower. Those kind of take into -- have to be taken into
4 account as well. And, so, this is just to say that we
5 understand that there may be other instances, and, you know,
6 I don't know where we're going to go on this, if we approve
7 or disapprove it. We may do the same disapproving or
8 approving applications in other parts of the community,
9 depending on what those -- those characteristics are of those
10 particular lots.

11 And, so, while it might seem as though we're, oh
12 yeah, we're just kind of rubber stamping and moving on, there
13 are -- there are specific instances where there are --
14 there's information that we are presented with, testimony
15 that you've provided. And we do appreciate the testimony,
16 because it helps us understand the kind of -- some of the
17 issues that we may not hear through the Office of Planning
18 report, through the ANC report, through the -- the
19 applicant's information that they provide.

20 So, I'm just trying to make sure you're
21 understanding that we do actually listen to everything that
22 comes through. We -- I have read quite a number -- actually
23 all of the letters that came in over the last few days. And
24 it's very helpful to see that. Some of it is a little
25 difficult to go through, because we understand that -- that

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1 people are not either on the board or planners. So, some of
2 the information is a little bit hard to kind of wade through.
3 Some of the zoning regulations are hard to wade through.

4 And, so, we -- I mean, I noticed that there were,
5 probably half of the letters that we received were talking
6 about this as being a variance. And it's not. And the
7 reason that that's important for us is that variances have
8 a much higher threshold to be able to be approved. It's not
9 saying that they are never approved. It's also not saying
10 that special exceptions, which this is, are always approved.
11 It just means that there is just a different standard.

12 And I appreciate reading that, because, again, it
13 gives us information about the breadth and depth of the
14 concern that is out there. And maybe this is a Zoning
15 Commission concern and an issue to kind of deal with again.
16 And I know that they -- that the -- I'm looking down the --
17 down the dais here, because Mr. Miller is on the Zoning
18 Commission.

19 And I'm not saying that it's you all. I'm just
20 saying that, you know, when this was enacted in the early
21 part of this year, that there were, you know, it was very
22 different.

23 And, so, this is, how do you then deal with the
24 issue of the buildings moving farther back, and, you know,
25 the ten-foot rule. And, so, people think that it's a ten

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1 hard and fast, and it's not. It's saying that after that
2 point, then there needs to be a discussion. And, so, we're
3 having that discussion now. So, this is kind of going -- all
4 going along with the process that was set up.

5 And, so, it's, I think, a good thing to do that
6 and understand how we're -- what the difference of opinion
7 is and how we can move forward with this. But all of this
8 is kind of part of the process that was set up, because there
9 -- from my understanding -- I wasn't on the board at that
10 point. But there was -- there was more building that could
11 actually happen on individual lots previous to this. So,
12 this is trying to set in place a process to try to deal with
13 that.

14 So, I appreciate you all for coming down. And
15 it's been very helpful to kind of read through this and hear
16 through this. But I just want to make sure you're
17 understanding that they're not precedents. They are -- it's
18 information that we are -- actually have understood. And
19 then we take each case as individually.

20 MS. CARPER: Oh. Okay. Thank you very much.
21 That was good to know. And I do take the blame for misusing
22 the term variance, and also having the incorrect email
23 address for some of the letters that the Office of Zoning
24 very nicely forwarded to your Commission.

25 COMMISSIONER HART: It's fine.

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1 MS. CARPER: But I'm not a real-estate
2 professional. So, I'll be a little slicker on the next time.
3 Thank you very much.

4 COMMISSIONER HART: No. It's fine. And like I
5 said, you're kind of wading into it for the first time. It's
6 somewhat hard to kind of -- Okay. So, what does this mean?
7 And wait a second, this means this. And then you realize,
8 oh, that's only pertaining to, you know, one aspect of -- or
9 this particular zone that's not my zone.

10 And, so, it's a lot of -- I mean, we have -- the
11 Office of Planning goes through. They're all staff that have
12 been professionals that are looking at this information. And
13 they are also having conversations with the DCRA, the
14 Department of Consumer Regulatory Affairs, so that they can
15 understand -- because that's where the zoning administrator
16 it. They can understand how these, you know, the zoning
17 regulations are really being enacted. So, there's kind of
18 a give and take with this. And we appreciate it. And it's
19 -- I wasn't trying to say that it was -- that they were
20 wrong.

21 MS. CARPER: I know.

22 COMMISSIONER HART: It's -- we understand that
23 it's hard to kind of go through all of this.

24 MS. CARPER: Right.

25 COMMISSIONER HART: And, we, like I said, we

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1 appreciate the information that you've provided so far.

2 MS. CARPER: Ok. Thank you.

3 CHAIRPERSON HILL: Okay. You looked like you had
4 something you wanted to say -- you're --

5 MS. JUPPENLATZ: This is a DCRA. It's a --

6 CHAIRPERSON HILL: You have to -- you have to push
7 the button if you're going to say something.

8 MS. JUPPENLATZ: She wanted to talk about the path
9 of the chimneys of the houses next door have to be extended
10 above. And there's a 10-foot rule, a 10-2 rule. But I
11 believe it's a DCRA building code violation. And the
12 neighbor has a right to deny the applicant these exceptions,
13 by the -- but this is a DCRA building-code rule, not a zoning
14 rule.

15 CHAIRPERSON HILL: Okay.

16 MS. BAUME: I did have one more question. When
17 will we know how the height is measured, whether it's
18 measured actually from the ground, or whether it's measured
19 from the above the --

20 (Simultaneous speaking.)

21 CHAIRPERSON HILL: I probably think that the
22 applicant has measured it correctly. But we will ask them
23 when they come forward again, right after this, meaning right
24 after you guys are done.

25 MR. LEVY: How did they measure it?

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1 CHAIRPERSON HILL: Pardon me?

2 MR. LEVY: How did they measure it?

3 CHAIRPERSON HILL: Yeah. You will -- we'll ask
4 them that.

5 Okay. Thank y'all very much. Thank you.

6 COMMISSIONER HART: Merci beaucoup.

7 CHAIRPERSON HILL: If we could have the applicant
8 back.

9 I don't know if the transcriber -- did your --
10 your recording device fell on the floor, I guess. I don't
11 know if you -- is that what that is? If you need it, I don't
12 know. Yeah. It was on the applicant's table.

13 PARTICIPANT: I think it's fine.

14 CHAIRPERSON HILL: It's okay? All right. Okay.
15 All right. Mr. Solomon, there's a couple of questions. I
16 have a couple of questions now, again, for the Office of
17 Planning. But the one that had been asked again -- how you
18 measure the height. Can you articulate that, please?

19 MR. SULLIVAN: I'm not the architect, but we
20 measured from the building head measuring point, which is the
21 center of the front of the building, a grade up to the
22 measuring point for the roof, which is, for a pitched roof,
23 at a point which is halfway between the eaves and the top --
24 and the peak of that roof. And, of course, that's self-
25 certified. So, we bear the risk of that being incorrect, of

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1 course.

2 CHAIRPERSON HILL: Okay. Okay. Great. All
3 right. Let's see. Does the applicant have -- or, do you
4 have any questions for the applicant?

5 MS. THOMAS: No. Not at this time.

6 CHAIRPERSON HILL: I wasn't looking at the Office
7 of Planning. But thank you.

8 MS. THOMAS: Oh. I thought you were looking at
9 me.

10 CHAIRPERSON HILL: That's all right. I was
11 looking at Mr. Hart. That's okay. It's over to the right,
12 and the medication I'm on, who knows where I'm looking right
13 now.

14 COMMISSIONER HART: Yeah. Mr. Chairman, I just
15 had a question for the Office of Planning. And I'll just
16 wait --

17 CHAIRPERSON HILL: Sure. Okay. Well, I've got
18 a question for the Office of Planning. I can start.

19 COMMISSIONER HART: Okay.

20 CHAIRPERSON HILL: So, in terms of -- and this is,
21 again, for the people here as well as myself. But, you know,
22 there is all the criteria that you have gone through. And
23 there's your report and the Office of Planning's report as
24 to how you have gone through these particular criteria. And
25 they're all -- for the people that are in the audience, it's

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1 all within the Office of Planning's report. And you can go
2 and see how they, the Office of Planning have gone through
3 their opinion as to how the criteria is being met.

4 The one that I continue to struggle with, with a
5 lot of these cases, I guess, you know, the C, in terms of,
6 shall not substantially, visually intrude upon the character,
7 scale, and pattern of houses along the subject street
8 frontage. Could you -- if you were to mind -- I'm sorry to
9 put you on the spot a little, but, but that's your job -- how
10 you got to that analysis?

11 MS. THOMAS: Well, we -- like I said initially,
12 one thing I looked at was the original drawing, where they
13 had -- I had a little bit of concern as to how they -- they
14 had. If you look in the original drawing, how the front door
15 is where it is, to the left. In the original submission,
16 they had put it on the right. And, so it -- to me, that
17 changed a little bit the -- how the front was looking.

18 And the later submission seems to be more in
19 character with what this, the street pattern looks like you
20 have. You have a Mansard roof, and it's looking down on the
21 others. It might be a little high, but that's just because
22 of where this house is situated on the elevation of that
23 frontage, in terms of how it looks, because of the grade.
24 But the house itself doesn't present to me a drastic change
25 in character of the pattern along the street frontage or the

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1 house that is there right now.

2 CHAIRPERSON HILL: Okay. And then -- and that's
3 helpful in that. So, when you're looking at this particular
4 standard, it's -- you're just -- it's just the street front?
5 It's like, it doesn't -- you don't -- the character doesn't
6 go to the depth of the -- or the massing of the property,
7 when you're looking at character?

8 MS. THOMAS: We do look at massing. Yeah. That's
9 what I had said earlier as well, that the addition to the
10 back -- it wasn't presenting itself on the front. Like, in
11 the original you saw that it looked -- the original
12 presentation, it was -- to me, you could have seen it a
13 little bit better --

14 CHAIRPERSON HILL: I understand. Okay.

15 MS. THOMAS: -- or a little bit more. But this
16 is more in keeping with what's around. And then, the mass
17 extends to the back.

18 CHAIRPERSON HILL: Okay.

19 MS. THOMAS: And to the right.

20 CHAIRPERSON HILL: And, then, I don't know if this
21 is for you or not, but in terms of, if this were approved --
22 right -- then the property next door could build up to that
23 same depth? Or can they go 10 feet beyond that depth?
24 That's where I sometimes get a little confused.

25 MS. THOMAS: This -- the next-door property would

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1 have to -- it can go to 10 feet. And then, anything beyond
2 it, it would have -- they are butting on both sides, you see?
3 So, they would also have to consider what is happening to the
4 property. What side is this? East -- or west, adjacent to
5 that.

6 CHAIRPERSON HILL: Right. Adjacent to that.
7 Right. They can go ten feet, but then -- right. So they
8 couldn't automatically match?

9 MS. THOMAS: No. They couldn't automatically
10 match. They would have to consider what's happening there.

11 CHAIRPERSON HILL: Okay. Okay. All right.
12 Anyone else for the Office of Planning?

13 COMMISSIONER HART: Yeah. Mr. Chairman, Ms.
14 Thomas, could you talk about the lot occupancy aspect of this
15 again? The -- one of the witnesses in opposition was
16 concerned or had a question about the semi-detached only
17 being -- only allowing 40 percent. And, so, they were
18 thinking that it was -- the 45 percent that was being
19 requested was -- or proposed -- was beyond that 40 percent
20 for what they were saying was a semi-detached house. And if
21 you just explained that a little bit more, that'd be helpful.

22 MS. THOMAS: As a rule, the end unit, no, is not
23 considered as semi-detached. It has a rear yard. So, that
24 was determined, that it wasn't a semi-detached, as part of
25 a rule.

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1 COMMISSIONER HART: And, so that's -- is that the
2 Office of Planning's or is that the DCRA? Where does that
3 come from?

4 MS. THOMAS: That is DCRA.

5 COMMISSIONER HART: So, DCRA looks at end units --

6

7 MS. THOMAS: Yes. For the end unit.

8 COMMISSIONER HART: A unit that is on an alley,
9 like this is --

10 MS. THOMAS: The end of a row.

11 COMMISSIONER HART: Okay. As being an attached?

12 MS. THOMAS: Attached.

13 COMMISSIONER HART: And even though it is not
14 attached on both sides?

15 MS. THOMAS: Right. It doesn't have a side yard.

16 And --

17 COMMISSIONER HART: And so, because of that then,
18 could you talk about the lot occupancy? How that -- what the
19 change is for the?

20 MS. THOMAS: So, with -- I can't remember. I
21 don't have the regulation in front of me, but with the rule,
22 it's 60 percent within that -- the maximum is 60 percent that
23 it can go beyond, without -- the special exception would
24 allow it up to 70 percent. I don't have the full regs. And
25 then with the other one, I think it goes up to 50 percent.

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1 Like I said, I don't have the regs in front of me now, but
2 it's different.

3 COMMISSIONER HART: So, you're saying that the 45
4 percent would be then a -- would not be an issue, because it
5 is below the lot occupancy?

6 MS. THOMAS: Sixty percent. The max lot occupancy
7 you can have as a matter of right is 60 percent.

8 COMMISSIONER HART: I mean, in your report, you
9 said that the matter -- in your report on page 5 -- I don't
10 know what exhibit this is --

11 MS. THOMAS: Three, four, five.

12 COMMISSIONER HART: Exhibit 43. The Board of
13 Zoning -- the BZA may approve lot occupancy of all new
14 existing structures on the -- on the lot up to a maximum of
15 70 percent.

16 MS. THOMAS: Seventy percent. Yeah.

17 COMMISSIONER HART: Seventy percent. So, that's
18 the --

19 MS. THOMAS: Yeah. So, it's -- Right. So, it
20 doesn't go well near to the maximum permitted to spell
21 exception.

22 COMMISSIONER HART: Okay.

23 MS. THOMAS: Through the special exception
24 process.

25 COMMISSIONER HART: But you're saying that as a

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1 matter of right, it would be -- it may be a little less than
2 that?

3 MS. THOMAS: It's less than -- it's less than 70
4 percent. Yes. I think 60 percent. I'm not sure.

5 COMMISSIONER HART: That's fine. I was just
6 trying to get an understanding of that, because one of the
7 folks that just gave some testimony was describing that --

8 MS. THOMAS: Yes.

9 COMMISSIONER HART: And I wanted to make sure that
10 where we were with that.

11 MS. THOMAS: Okay.

12 MR. COHEN: Mr. Vice Chair, I can chime in if you
13 guys would like --

14 CHAIRPERSON HILL: Sure.

15 MR. COHEN: Pursuant --

16 CHAIRPERSON HILL: God, I was like, where's that
17 voice coming from?

18 (Laughter.)

19 MR. COHEN: Sorry to creep everybody out. But
20 under section 1204.1 under -- excuse me for a second,
21 subtitle D, it's 60 percent, as a matter of lot occupancy,
22 in the R20 zone, which is what we're dealing with here. So
23 --

24 COMMISSIONER HART: So, Ms. Thomas, you have a
25 very good memory.

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1 CHAIRPERSON HILL: Okay. Does anyone else have
2 anything else for the Office of Planning?

3 Okay. Does the applicant have anything for the
4 Office of Planning?

5 MR. SULLIVAN: No.

6 CHAIRPERSON HILL: Sure. Go on.

7 COMMISSIONER WHITE: Just listening to some of the
8 opposition testimony about impacts from a light and air
9 perspective, I mean, they were -- you know, very adamant
10 about the fact that, you know, this particular development
11 would have some significant impacts to light and air and
12 privacy.

13 Can you comment on that? I mean, you've heard the
14 testimony, but in going through this analysis, looking at the
15 regulations, I wanted to see if you could provide some color,
16 regarding that, from OP's perspective.

17 MS. THOMAS: Okay. So, if you -- we are on this
18 Exhibit right now. If you look at where the addition would
19 go, and you measure about, you know, just average, what is
20 the distance -- within these lots, that front on 37th Street,
21 and comparing what's on the alley. And, so, where the house
22 is right now, it currently blocks two lots. If you look at
23 what the width -- I don't have the exact measurements at the
24 top of my head. So, the maximum effect it would have on any
25 lots that front on 37th Street, would just be, to me the max,

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1 would be these two lots, going north of 37th Street -- the
2 two lots on 37th Street. So, to me, that is where I looked
3 at what the effect of the addition would be.

4 Now, when you look across the alley and you -- you
5 have to -- is it a 15-foot wide alley, and then you have the
6 rear yards of these homes, there's a fair amount of
7 separation going on between the addition -- what would be the
8 addition, and those homes that front on -- across the alley
9 through the rear yard and the homes that front on 37th -- for
10 the homes that front on 37th Street.

11 So, anything more than one, two, three, four lots
12 from the alley going north, it would not have had an -- it
13 would have negligible impact on anything -- any of those lots
14 north. So, one, two, three, four, is what I looked at. I
15 negated the first two lots from the corner that front on 37th
16 Street, because the house is already there and it occupies
17 that space.

18 And I looked at one, two -- and given the
19 separation that we have there, across the rear yards and
20 their rear yards. And they also have -- I think one of them
21 has -- they have high fences or garage -- roll-up garages,
22 I think. I can't remember looking at it. And, so, I didn't
23 see where I -- I appreciate the fact that the applicant
24 reduced the number of windows that look from the alley, but,
25 again, those are bedroom windows.

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1 And the topmost floor, it's a bedroom. And that's
2 -- I mean, I don't know who will be looking out from that
3 bedroom window and their blinds. To me, the main issue would
4 be from the rear, where they have windows for their light,
5 for their purposes. But that upper floor is a bedroom, and
6 you wouldn't see anything.

7 Any -- along the wall, again, you have these rear
8 yards. They're not open rear yards. They're blocked off,
9 in terms of their gate, their fencing. And this house also
10 has fencing. And they have the -- you wouldn't -- you
11 wouldn't see into their rear yard from the first floor, where
12 they have the most number of windows, being portrayed. At
13 least the second floor. I don't see how that would have an
14 impact on their privacy, and the light and air as well.

15 CHAIRPERSON HILL: Okay. Great. I did have a
16 question for the applicant, and Mr. Sullivan, you may -- I
17 just -- I can't remember before the regulation change. And
18 since you've been here before, you might remember what the
19 regulation was before. They could have gone up, before the
20 regulation change, was 40 feet by right.

21 And -- do you remember -- you don't remember how
22 far back you could go. And I thought there was like a third
23 floor, plus the mezzanine. And -- do you remember?

24 MR. SULLIVAN: If I'm correct on this, it was 40
25 feet, prior to the change in the R4 regulations, which took

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1 place two summers ago. But that was only for Rf1. And so,
2 R3 continued to be 40 feet until the new regulations last
3 fall. And, so, that's now 35 feet as well.

4 CHAIRPERSON HILL: Right. But how far back?

5 MR. SULLIVAN: Oh -- it depends on --

6 CHAIRPERSON HILL: It was just a lot occupancy.
7 It was on the lot occupancy.

8 (Simultaneous speaking.)

9 MR. SULLIVAN: Yeah. It was lot occupancy in
10 terms of rear yard.

11 CHAIRPERSON HILL: It was all the lot occupancy.
12 So you could go far back as --

13 MR. SULLIVAN: So, we probably could have done a
14 50-foot addition back then.

15 CHAIRPERSON HILL: Right. Okay. I was just
16 trying to remember. Okay. All right. Let's see. Do you --
17 do you have anything you'd like to add in conclusion? And
18 if -- and you know, you didn't have an opportunity to cross
19 examine any of the witnesses. But if you feel as though you
20 need to add something, please go ahead.

21 MR. SULLIVAN: Just briefly, I think the only one
22 of the panel up here before that is anywhere close to the
23 property was Ms. Donaldson at 1901 37th Street. And from
24 this, you can see a footprint of her property. It's almost
25 triple the size of our existing building here. And this is

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1 an excellent point.

2 She said she did an addition five years ago and
3 had to comply with the regulations. So, she did an addition
4 that went about 25 feet past her neighbors building and
5 within 20 feet of the rear lot line. Now, we have the
6 ability now, under the new regulations -- and she did that
7 without having to interact with a neighbor, with the ANC,
8 with the Office of Planning, or with this board.

9 The zoning commission has adopted this so that we
10 do have to do those things. And we think that has led to a
11 superior design and a modest addition, as Mr. Burns stated,
12 the point being to provide enough space for a family.

13 The other thing I mention is -- not to handicap
14 any cases I might have in the future, but I think the mid-
15 block alley thing is ideal. It's the best of both worlds,
16 because you're missing a neighbor. So, you don't have to
17 worry about impacting a neighbor. But you're also not
18 hitting a corner. So, you're not -- you're not building a
19 side addition on a street, essentially. So, I think this is
20 -- this is an excellent opportunity to build this.

21 Another thing I would add is, somebody mentioned,
22 why ever go beyond the 10 feet? And I would say, well, why
23 ever allow an addition? People still do have some property
24 rights. Up until March they had significantly more. And now
25 this applicant is just asking this board to approve receiving

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1 back a little bit of what was taken away in the revision in
2 March of this past year. So -- and we think he's put forward
3 an excellent proposal in that regard. Thank you.

4 CHAIRPERSON HILL: Okay. Did you own the property
5 before March?

6 MR. BYRNES: No. We did not.

7 CHAIRPERSON HILL: Okay. So, you're -- you bought
8 it under these current regulations?

9 MR. BYRNES: I did. Yeah.

10 CHAIRPERSON HILL: Okay. All right. Does the
11 board have any questions? Any further questions? Comments?

12 COMMISSIONER HART: Just wanted to get a little
13 clarification about the whole semi-detached issue from the
14 OAG, if we could.

15 MR. COHEN: Well, just to clarify for the record,
16 we were discussing a lot occupancy permissions under the
17 regs. For attached dwellings it's 60 percent, but for all
18 other structures, it's 40 percent. By special exception, all
19 the structures can go up to 50 percent. So, I just want to
20 be clear based on what I said earlier, that the 60 and 70
21 percent figures that we were discussing earlier and related
22 and applicable to attached dwellings.

23 VICE CHAIR MILLER: Could you repeat that again?
24 I'm sorry. I was --

25 MR. COHEN: Sorry. I'll try to be a little bit

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1 more efficient in my -- So, for attached dwellings, maximum
2 lot occupancy percentage by right is 60 percent. By special
3 exception it's 70 percent, pursuant to subtitle D, 1204.1.
4 All other structures, which, under my interpretation involve
5 semi-detached dwellings, are 40 percent by right, 50 percent
6 by special exception.

7 VICE CHAIR MILLER: Which category does this
8 property fall in?

9 MR. COHEN: Well, that's where I would advise the
10 board to just gather some clarification, because I think
11 we've addressed -- we've described the property as both
12 throughout the hearing. So --

13 CHAIRPERSON HILL: Mr. Sullivan.

14 MR. SULLIVAN: Yes. Thank you, Mr. Chairman. I
15 have -- again, more self-certifying on the 60 percent. Not
16 asking for additional relief in that regard. And I'm very
17 comfortable with that based on decisions that I've received
18 from the zoning administrator under the new regulations.

19 VICE CHAIR MILLER: Do you have something in
20 writing? You said you have a --

21 MR. SULLIVAN: It's -- I think it's an email from
22 the zoning administrator.

23 VICE CHAIR MILLER: Could you submit that for the
24 record?

25 MR. SULLIVAN: Sure. Sure.

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1 CHAIRPERSON HILL: Okay. Anybody else? Okay.
2 I'm sorry. We finished that part. I can't reopen it again.
3 Right. So, I'm going to go ahead and close the hearing. I'm
4 going to have to think about this a little bit. I want to
5 take a little bit of time concerning all the testimony we
6 heard and all the letters that have come in, in the past day
7 or so. I don't need anything additionally.

8 I suppose if you want to submit that one thing
9 that Commissioner Miller had asked about, the email from the
10 zoning administrator, that could be helpful. I only need a
11 week. Does anybody need -- I mean, is that okay with
12 everybody in terms of taking a little time?

13 COMMISSIONER HART: Mr. Chair, if I -- I'm not
14 sure. I think a week is fine. I understand that the
15 applicant has provided drawings, I guess -- or, not drawings.
16 They're photographs. Exhibit Number 10 of the property, and
17 then some of the properties that are -- I think across the
18 street. I'm not exactly sure if they -- if they are. And
19 this kind of gets to that whole character discussion we were
20 having earlier.

21 But if the applicant could just let us know if
22 that's what -- if that's what we're looking at -- and I'm
23 looking at -- trying to figure out what page it is. Give me
24 a second. It's like, page 11, I think, of the -- of Exhibit
25 10. There are a couple of photographs of kind of the block.

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1 And I think it's directly across the street, but I'm not
2 exactly sure if that's it. And are there -- are there any
3 photographs of the -- anything to the east of the site -- of
4 the property, you know, kind of to understand what this --
5 what this would look like with regard to those?

6 Thank you. I'm hearing that one of the -- one of the
7 opposition folks -- witnesses that gave some opposition
8 testimony has submitted a letter. I think it was Ms. Juppen
9 -- Juppenlatz? Juppenlatz. I'm sorry.

10 So, Mr. Secretary, I think we have that, those
11 photographs. I think those are going to be part of the
12 record now, and they'll be actually in the record. But I
13 just wanted to make sure that those were the images on
14 Exhibit 10, page 10, 11. Those are across the street? I
15 just want to make sure that --

16 MR. SULLIVAN: I think it's mostly the property
17 and the rear of the property. I think we have a photo of a
18 neighboring property in the front. I'm not so sure that we
19 have a survey there. But we'd be happy to submit. Well, you
20 know, at the end, there's some smaller. So, this might be --
21 maybe it is page 11. It says 11 --

22 COMMISSIONER HART: But I just can't tell if these
23 are all across the street, or are they --

24 (Simultaneous speaking.)

25 MR. SULLIVAN: Right. So, we can do a better job

1 of identifying that and submit.

2 COMMISSIONER HART: And are there -- are there --
3 did you all provide? I understand that the opposition folks
4 that testified provided some image, but did you all provide
5 any images other than the image that we see on the first --
6 I guess, the first page?

7 MR. SULLIVAN: No. There's some at the very back,
8 at the very end.

9 COMMISSIONER HART: But those are the -- those are
10 the -- those are across the street. Is there anything along
11 the same block that you're on, that are on the same block
12 that you're on?

13 What I'm trying to -- what I'm trying to get to
14 is just the scale of what you're proposing to what's actually
15 already there.

16 MR. SULLIVAN: Right.

17 COMMISSIONER HART: And I don't know -- I don't
18 think I see anything that's there. I see what the scale
19 looks like across the street.

20 MR. SULLIVAN: So, the first -- I'm sorry. The
21 first photo is on this side of the street. And the others --
22 at the end -- there's three photos on one page at the end.

23 COMMISSIONER HART: Yeah.

24 MR. SULLIVAN: And the first of those is some --
25 showing a little bit of diversity on that side of the street.

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1 COMMISSIONER HART: And, so, this is -- how many
2 buildings? I mean, right now, we have the plan -- the plat, I
3 guess, of the block, on the screen in front of us.

4 MR. SULLIVAN: Yeah.

5 COMMISSIONER HART: So --

6 MR. SULLIVAN: It says 3623, '21, and 3619, is the
7 first photo.

8 COMMISSIONER HART: And so, these -- those are the
9 three that are next door, to the east of this?

10 MR. SULLIVAN: There might be one or two more
11 houses before where 3627. So, the neighbor's house, which
12 is shown in another photo. So, there's four here, and then
13 there's the neighbor's house, and then there's the subject
14 property.

15 COMMISSIONER HART: If you could just provide one
16 photograph that kind of shows where --

17 MR. SULLIVAN: Sure.

18 COMMISSIONER HART: Because, I really appreciate
19 having the images that see -- that, on Exhibit 10. And I
20 guess you can kind of see it in the first, second photograph.
21 You can kind of see some of the other. But there's -- of
22 course, there's a tree that's there, which makes it a little
23 bit difficult to see that.

24 MR. SULLIVAN: Right.

25 COMMISSIONER HART: I don't know if it's the

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1 reverse angle, like, looking from -- looking west -- if
2 that's helpful, to be able to see that, because I don't know
3 if -- I'm not sure if the tree blocks your front facade, but
4 it's helpful for me to see that, because I just don't have
5 a good sense of what that line looks like --

6 MR. SULLIVAN: Sure.

7 COMMISSIONER HART: -- the building face facade
8 line looks like.

9 MR. SULLIVAN: And we can take more photos --

10 COMMISSIONER HART: I'm not looking for a lot.

11 MR. SULLIVAN: Okay.

12 COMMISSIONER HART: Like two photographs to be
13 able to do that. I don't -- you know.

14 MR. SULLIVAN: Okay.

15 COMMISSIONER HART: Thank you.

16 CHAIRPERSON HILL: Okay. So -- so, Mr. Sullivan,
17 you're going to supply like two photos of what Mr. Hart was
18 looking for. Then you're also going to supply the email from
19 the zoning administrator. And I think that's all we were
20 looking for. And unless there's really a -- well, it does
21 matter. I was going to say, I do need to push it back a
22 little bit farther, because I just want to allow for the one
23 week, in terms of people having any response to what gets put
24 into the record. So, if you submit that by Friday -- is that
25 too soon? Can you do it by Monday? Monday's fine -- you'll

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1 have over the weekend?

2 MR. SULLIVAN: Friday's fine.

3 CHAIRPERSON HILL: Okay. So, if you submit that
4 -- Mr. Moy, they're going to submit it by Friday -- then
5 anyone who is here will have an opportunity to make comments
6 about what was just submitted into the record, meaning the
7 photos.

8 MR. SULLIVAN: Okay.

9 CHAIRPERSON HILL: Right.

10 MR. SULLIVAN: Even though they're not parties --
11 they're not parties?

12 CHAIRPERSON HILL: I'll have to ask. Isn't that
13 why we leave the record open? No. So, why do we leave the
14 record open again?

15 MR. MOY: The record's being left open for
16 additional information the board's asking for --

17 CHAIRPERSON HILL: Uh-huh.

18 MR. MOY: -- to make a judgment. And typically,
19 if there were any party-status people --

20 CHAIRPERSON HILL: Uh-huh.

21 MR. MOY: -- then they would be --

22 CHAIRPERSON HILL: So, the ANC can always --

23 MR. MOY: The ANC can, since they're an automatic
24 party.

25 CHAIRPERSON HILL: Okay. And, so, I don't need

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1 the seven days?

2 MR. MOY: No. That provision in the regs only
3 applies to parties.

4 CHAIRPERSON HILL: Okay. All right. Okay. Then,
5 in that case, we can still do a decision next week. So, go
6 ahead and -- unless you guys are fine with -- Okay. Then,
7 submit that by Friday, and then we can put this on for
8 decision next week.

9 Okay. Oh, yeah. You're not going to be here.
10 Oh. Great. Okay. Mr. Miller, that'd be great. If you can
11 come, that'd be great, because -- because you've been here
12 for this whole thing. And since you're the representative
13 for the zoning commission, and you're the ones that created
14 this problem -- Yeah. Although, I don't have a vote when I'm
15 with you --

16 VICE CHAIR MILLER: I didn't vote for it.

17 CHAIRPERSON HILL: Okay. Right. There you go.
18 I'm sorry. Your colleagues that helped in this situation.
19 So, you can -- you can --

20 VICE CHAIR MILLER: I'll be here.

21 CHAIRPERSON HILL: You can help discuss. So, Mr.
22 Moy, we're putting this on for decision next week?

23 MR. MOY: Yes, sir.

24 CHAIRPERSON HILL: Okay. We are going to take a
25 three-minute break. And so, we'll see y'all in a minute.

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1 (Whereupon, the above-entitled matter went off the
2 record at 1:14 p.m. and went back on the record at 1:28 p.m.)

3 CHAIRPERSON HILL: All right, Mr. Moy. Whenever
4 you like.

5 MR. MOY: Thank you, Mr. Chairman. We're
6 reconvening the hearing. Let's see what do I have it's 1:28.
7 Rhode Island.

8 Okay. I believe, Mr. Chairman, we -- the board's
9 position on the agenda for the Rhode Island Avenue case. So,
10 I believe that would be case application number 19625 of 61
11 Rhode Island Avenue NE, LLC, caption advertised for area
12 variance from the density requirements subtitle E, section
13 201.4.

14 This would add two units to an existing 21-unit
15 apartment house. RF-1 zone. This is at premises 61 Rhode
16 Island Avenue NE, where 35-35 lot 58.

17 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.
18 Moy. If you'd please introduce yourselves.

19 MR. SULLIVAN: Thank you, Mr. Chairman, members
20 of the board. My name is Marty Sullivan with the law firm
21 of Sullivan and Barros, on behalf of the applicant.

22 MS. WILSON: Alex Wilson with the law firm of
23 Sullivan and Barros, on behalf of the applicant.

24 MR. SIMON: Hi, Lee Simon, the applicant. One of
25 the owners of the property.

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1 CHAIRPERSON HILL: Did you get sworn in, Mr.
2 Simon? Okay. All right. Mr. Sullivan, if you could
3 particularly focus for me on the variance issue, but if you
4 could go through your presentation and what the project is
5 and how you're meeting the standards for us to grant the
6 relief, that would be great. Does the board have any other
7 specifics they'd like to hear from the applicant?

8 No okay. And you can begin whenever. I'm going
9 to put 10 minutes on the clock, whenever Mr. Moy has a
10 chance, just so we know where we are. And you can start
11 whenever you like.

12 MR. SULLIVAN: Thank you, Mr. Chair. You can see
13 from the first slide the location of the proposed additional
14 units, and also from this photo, you can see that the units
15 will be provided in an area that is -- it's basement level,
16 but because of the sloping grade down, they're almost full
17 walkouts to the street from that level. So, a lot of light
18 gets into those units. That space is currently idle.

19 The relief being requested is area variance
20 relief, from section E 201.4, to allow the applicant to use
21 this idle space for two additional apartments. It's
22 currently a 21-unit apartment building. And the proposal is
23 to add these two units. The planned area of the property is
24 6,174 square feet. And so, we need relief from the 900-
25 square-foot rule.

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1 The unique condition of the property. First of
2 all, it's an existing building that's had 21 units since
3 prior to 1958. That basement space is idle. It has
4 previously been used as commercial space. It was some sort
5 of data use most recently. And that was prior to the
6 applicant purchasing this property about three or four years
7 ago. And in that time, the applicant has searched for
8 potential commercial tenants, but that also would require use
9 variance, and was unable to find a potential tenant that
10 could brook the uncertainty of waiting for a use-variance
11 case. And, so he's now decided to put two additional units
12 in there to use that space. So, those are the unique
13 conditions.

14 The primary practical difficulty is the
15 maintenance and security of that open space. They already
16 have additional storage, and they already have a laundry
17 room. So, there's no other way the space could be used
18 effectively. Also, it is a practical difficulty to try to
19 combine that space with a unit upstairs because of the cost
20 involved with that.

21 The application is supported unanimously by ANC
22 5E and by the Office of Planning. And the applicant is here
23 to answer any questions. Thank you.

24 CHAIRPERSON HILL: Okay. Great. Thank you. Does
25 the board have any questions for the applicant? Okay. I'm

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1 going to turn to the Office of Planning.

2 MS. BROWN-ROBERTS: Good afternoon, Mr. Chairman
3 and members of the board. I'm Maxine Brown-Roberts in the
4 Office of Planning. The -- the request that the applicant
5 submitted was for a variance from the requirements of
6 subtitle E, 2001.4, which requires that properties within
7 this -- or mono-family units have a minimum of 900 square
8 feet of lot area per dwelling unit. This proposed -- this
9 building was constructed prior to 1958, and it's a purpose-
10 built building that does not currently meet the requirement.
11 And trying to -- if the applicant was to try to -- it would
12 be impractical -- and exceptional situation to try and meet
13 that requirement at this time.

14 The applicant has outlined a number of steps that
15 they have taken to use the space, which has not been
16 practical. And, so, they have -- they have decided to add
17 two additional units. Trying to -- one of the things that
18 we had talked to the applicant about was how to expand the
19 existing residences on the ground floor.

20 And one of the things that they brought to our
21 attention is, one, those units are currently occupied, and
22 an expansion would require the removal of those residents.
23 And, so, they would be put up against, exactly where would
24 those residents go? In addition to that, they would create
25 really large units, which -- you know, this is a building

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1 that majoritively the residents use voucher. And, so, that
2 may not be something that is an efficient use of the space.

3 There's no substantial detriment to the public
4 good. There are no exterior modifications to the building.
5 And the adjacent church and residential units will not be
6 impacted by the two additional units. There's no substantial
7 harm to the zoning regulations, as it will continue to be a
8 residential use and would not allow -- and would allow the
9 applicant to make use of that space, instead of having it
10 boarded up and be -- cause problems with security.

11 In addition to that, at that intersection, there
12 are a number of pedestrians walking along there. So, that
13 would also -- using the space would also allow for -- make
14 it an active use along -- along the street, along Rhode
15 Island Avenue. The Department of Transportation, in their
16 report had asked for that they restore the paved area in
17 front of the door on the west side of the building. And we
18 think this will give it a more residential use. And
19 therefore, we recommend approval of their requested variance.

20 Thank you, Mr. Chairman.

21 CHAIRPERSON HILL: Thank you. Does anyone have
22 any questions for the Office of Planning? Okay. I just
23 thought it was interesting that you guys -- the 900 square
24 feet thing, I never see you guys say yes to. So, I was just
25 a little surprised for myself. But -- I do. Maybe I'm

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1 missed this one -- like, I'm asking. But if you made just
2 one unit, it'd be -- you wouldn't be here. Right?

3 MS. BROWN-ROBERTS: Yes. He'd still have to be
4 here.

5 CHAIRPERSON HILL: Oh. I'm sorry.

6 MR. SULLIVAN: Yeah. We would need -- because
7 we're already over. The 21 units is over the --

8 CHAIRPERSON HILL: Oh. That's -- Okay. All
9 right. Okay. Okay. All right. Okay. All right.

10 Is anyone here from the ANC? Is there anyone who
11 wishes to speak in support? Is there anyone here who wishes
12 to speak in opposition? Okay. Anybody got any questions,
13 finally, now, for the board? I mean, sorry -- for the
14 applicant? Okay. No? Okay.

15 Do you have anything else you'd like to add?

16 MR. SULLIVAN: No. Thank you.

17 CHAIRPERSON HILL: Okay. I'm going to go ahead
18 and close the hearing. Is the board ready to deliberate?

19 Okay. I can start. I just -- I did think it was
20 kind of interesting, just because, again, the Office of
21 Planning and the 900 square feet, I had to really kind of
22 take a step back and really carefully look at it more. But
23 I agree with their analysis. I agree with the applicant in
24 terms of how they meet the standard for the variance relief.
25 And I think they provided a lot of information in terms of

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1 how the nexus is being connected between the -- for the
2 practical difficulty.

3 Does the board have any other comments?

4 COMMISSIONER WHITE: My only comment is that, I
5 think, you know, they clearly outline their arguments with
6 respect to how they met the area variance test. Each of the
7 three-step process were clearly communicated. So, I think
8 that the standard was met in this instance and that OP's
9 report did add -- added value towards making the argument for
10 the area variance.

11 CHAIRPERSON HILL: Okay. Great. All right.
12 Then, I'll go ahead and make a motion to approve application
13 number 19625 as captioned and read by the secretary and ask
14 for a second.

15 COMMISSIONER WHITE: Second.

16 CHAIRPERSON HILL: The motion is made and
17 seconded. All those in favor?

18 (Chorus of aye.)

19 CHAIRPERSON HILL: All those opposed?

20 (No audible response.)

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

22 MR. MOY: Staff would record the vote as four to
23 zero to one. That's on the motion of Chairman Hill to
24 approve the application for the relief being requested.
25 Seconded motion Ms. White. Also support Mr. Miller, Vice

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1 Chair Hart. We have a board seat vacant. The motion
2 carries.

3 CHAIRPERSON HILL: Thank you, Mr. Moy. Summary
4 order.

5 MR. MOY: Thank you.

6 CHAIRPERSON HILL: Thank you.

7 MR. MOY: All right. The next case application
8 before the board is number 19626 of Fort Lincoln Retail LLC,
9 captioned and advertised for special exception under subtitle
10 U, section 513.1 N. This is from the use requirements of
11 subtitle U, section 513. This would permit a fast-food
12 restaurant with a drive through in the MU5A zone, premises
13 Fort Lincoln Drive NE Square 4327 lot 1161.

14 CHAIRPERSON HILL: Okay. Good afternoon. If you
15 could please introduce yourselves.

16 MS. PRINCE: Allison Prince from Goulston and
17 Storrs.

18 MR. WEERS: I am Adam Weers with Trammell Crow
19 Company. We are co-owner of Fort Lincoln Retail LLC, which
20 is the applicant. And I would note that I do not have a cute
21 house, and I did not bring a cute baby, but I am here to talk
22 about Chick-fil-A, and I hope that makes everybody happy.

23 CHAIRPERSON HILL: Okay. You've been here a long
24 time.

25 (Laughter.)

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1 CHAIRPERSON HILL: All right. Okay. Let's see.
2 Ms. Prince, you're going to be presenting, I assume?

3 MS. PRINCE: Yes. I am.

4 CHAIRPERSON HILL: I guess, the main question is
5 obviously the drive-through. Or like, you know, if you could
6 just kind of speak to that. And that's what I'd be more --
7 most interested in hearing you folks on. Did the ANC report
8 come in, or did you? I don't know why I didn't see one
9 before. Oh. The ANC's here. Okay. All right. So, we'll
10 get to you. You've also been here a long time. Should have
11 let yourself know that you were here. We try to get the
12 commissioners out as soon as possible. So -- commissioners
13 are just as good as babies, also. Just to let you know.

14 So, Ms. Prince, go ahead. We're going to put ten
15 minutes on the clock and see how it goes. Okay. Thank you.

16 MS. PRINCE: Allison Prince with Goulston and
17 Storrs. I'm here on behalf of the applicant. As we stated
18 on the record in the statement of the applicant, the use here
19 is permitted as matter of right. It's simply the drive-
20 through that's at issue. It requires a special exception and
21 not a variance. This is the old C2B zone MU5A, for those of
22 you who haven't memorized the new regulations.

23 I do have here, Travis D'Amico of Bohler, an
24 engineer, who can go through the very specifics of the drive-
25 through. Rob Schiesel from Gorove/Slade, and John Martinez

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1 from Chick-fil-A.

2 But I would just note that when the fast-food
3 regulations were adopted way back in the '70s, and had a
4 specific -- they were specifically to control drive-throughs
5 in certain instances. And that was because of queuing
6 concerns, spillage out onto public streets.

7 That simply won't be an issue here. Also, Chick-
8 fil-A is known for the efficient operations of its drive-
9 through. They have a very sophisticated approach to it,
10 which we can go into in great detail.

11 But I suggest that we just hear from Adam Weers,
12 who's had all the community discussions on this. And then
13 if you'd like to hear directly from Chick-fil-A or the civil
14 engineer, we can do that.

15 CHAIRPERSON HILL: Okay. Great. Thank you.

16 MR. WEERS: Good afternoon, Chairman Hill and
17 members of the board. My name is Adam Weers. I am a
18 principle with Trammell Crow Company. We are a joint venture
19 partner in the applicant, Fort Lincoln Retail LLC. I've been
20 involved in the shops at Dakota Crossing Retail Project for
21 the last nine years.

22 As you may be aware, phases of the project have
23 been delivering since 2012. And the retail use is now in
24 operation at Dakota Crossing include a Costco and related gas
25 station, a Lowe's Home and Garden Center, a PetSmart, a

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1 Marshall's, a Dick's Sporting Goods, a Five Below, and
2 numerous smaller retailers, including national chain stores
3 like Starbucks, Vitamin Shop, and Panda Express, as well as
4 small and local businesses like Mecho's Dominican Kitchen,
5 and the Transit Employees Federal Credit Union.

6 When fully leased up, the shops at Dakota Crossing
7 will have delivered approximately 440,000 square feet of
8 retail to the Fort Lincoln neighborhood, making it one of the
9 largest retail developments completed in the District in more
10 than a decade, and the largest concentration of retail ever
11 developed in North East DC.

12 As a resident of the Fort Lincoln community myself
13 for the past 12 years, I know that -- I know firsthand that
14 one of the most immediate needs in what has been a
15 historically under-retailed community, is more high-quality,
16 family-friendly dining options. Much of our leasing efforts
17 throughout the development of the project has been focused
18 on attracting these types of tenants. And we are very
19 pleased that Chick-fil-A is interested in building a 5,000
20 square-foot restaurant within the center.

21 The restaurant use is permitted as a matter of
22 right. It is only the drive-through component that has
23 triggered the need for us to secure BZA relief. As you may
24 be aware, Chick-fil-A is known for operating its stores and
25 drive-throughs in a highly efficient manner -- excuse me.

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1 They are renowned as one of the best operators in the fast
2 food industry and are an organization that prides themselves
3 on going above and beyond through commitments to fresh food
4 prep, lean manufacturing principles, and parent-friendly menu
5 options that have recently expanded to include organic and
6 soda-free options for kids' meals.

7 The one-story masonry building will be modest in
8 scale. The facade includes large windows along the market-
9 street frontage, and the building is located on the southeast
10 of the Lowe's parking lot and immediately north of the
11 heavily-traveled New York Avenue. The nearest residents are
12 hundreds of feet away.

13 The drive-through in question will feature two
14 lanes for placing orders, two lanes for serving orders, and
15 also includes additional queuing space for large orders and
16 overflow. All of the queuing associated with the restaurant
17 will occur on-site, and based on the analysis completed by
18 the traffic-engineering team at Gorove/Slade, even under the
19 most high-intensity traffic generation scenarios, the current
20 design layout is able to accommodate all queuing without
21 overflow outside of the Chick-fil-A site. Furthermore, the
22 restaurant's location and orientation provide an additional
23 buffer, within the adjacent Lowe's parking lot, further
24 ensuring that even under the heaviest use cases, the queuing
25 will not flow over into public streets.

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1 Both the Office of Planning and DDOT support the
2 application. DDOT has requested a bike rack, which we are
3 happy to provide. Our team has also met with representatives
4 at the ANC several times. The ANC has not taken formal
5 action, but our single-member district has shown significant
6 interest, and we -- and he has requested that we agree to a
7 set of conditions, all four of which we are happy to agree
8 to.

9 Two of those conditions we would ask be included
10 in the BZA order, which include, number one, we will install
11 a two-way stop sign on Market Street, at the intersection
12 adjacent to the proposed Chick-fil-A store. This stop sign
13 will be installed at least 30 days prior to the opening of
14 the restaurant.

15 Number two, we will install and maintain two trash
16 cans on the east-bound side of Fort Lincoln Drive adjacent
17 to the villages at Dakota Crossing neighborhood.

18 In addition, we have agreed to work with the
19 community in two other items. We have agreed to lead
20 discussions between the Fort Lincoln community through our
21 single-member district ANC and the Fort Lincoln Civic
22 Association with DDOT regarding the impact on vehicular
23 traffic on South Dakota Avenue, New York Avenue, and
24 Bladensburg Road.

25 And number two, we have agreed to lead

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1 negotiations -- continuing negotiations between the Fort
2 Lincoln community and Chick-fil-A through our single-member
3 district ANC and the Fort Lincoln Civic Association regarding
4 community amenities that would lessen the impact of the
5 restaurant on the Fort Lincoln community.

6 Given our agreement with our single-member
7 district, which -- we've actually brought copies of this.
8 We wrote everything down, and I signed it. And we provided
9 that to our single-member district ANC rep. But we have
10 copies here as well.

11 I'm not aware of any other -- any opposition to
12 the application, given the manner in which the restaurant is
13 located, its efficient operations, its small scale, there
14 will be no adverse impacts associated with this operation.
15 In fact, it will be a benefit to the community, by offering
16 an extremely popular, family-friendly dining option.

17 I am joined today by Rob Schiesel of Gorove/Slade
18 and John Martinez from Chick-fil-A. And we are happy to
19 answer any questions that you all might have. Thank you very
20 much.

21 CHAIRPERSON HILL: Okay. So, Mr. Weers, the one
22 -- the conditions are just the first two that you mentioned,
23 and you're just going to lead discussions, and you're
24 agreeing to three and four in terms of --

25 MR. WEERS: Yes, sir.

1 CHAIRPERSON HILL: -- but we're going to -- we're
2 going to go ahead and put number one and two as conditions
3 in the order.

4 MR. WEERS: Yes, sir.

5 CHAIRPERSON HILL: Okay.

6 MR. WEERS: You'll see all four listed in the
7 piece of paper that we're going to submit.

8 CHAIRPERSON HILL: Yeah. I see them listed. I
9 just didn't know. I just wanted to be clear as to what's
10 actually going to be put in as conditions into the order.

11 MR. WEERS: Yes, sir.

12 CHAIRPERSON HILL: Okay. Does anyone have any
13 questions of the applicant?

14 VICE CHAIR MILLER: Do you have that document yet?

15 CHAIRPERSON HILL: Mr. Moy, did this get? Well,
16 here's this one here. You can put that one there.

17 VICE CHAIR MILLER: Oh. We have one up here. I'm
18 sorry. I will not take up the board's time, but I am very
19 curious about Chick-fil-A, and whether or not they like the
20 foul shot thing at the Wizards game and how many people
21 actually turn in their tickets, but maybe I'll get that if
22 I run into you in the hall. I'm just curious as to how many
23 sandwiches they actually do give away.

24 PARTICIPANT: Are you hungry?

25 VICE CHAIR MILLER: Yeah. I am hungry.

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1 CHAIRPERSON HILL: Uh. Okay. Let's see. I'm
2 going to turn to the Office of Planning.

3 MS. THOMAS: Good afternoon, Mr. Chair, members
4 of the board. I'd just like to say on the record of our
5 report with respect to this application. The main issue
6 would be with respect to queuing, which DDOT alluded to as
7 well. And they found that there is sufficient queuing space
8 on the side to prevent traffic from spilling out into the
9 public street, because it's well with -- far in within the
10 private site, so that queuing should not be an issue. And
11 no curb cuts are being requested in public space.

12 So, that was one of our issues. And those are the main
13 issues that we have with respect to drive-throughs on the
14 whole. And since this is a matter of right use, but the
15 driveway -- drive-through issue is not, those are our
16 concerns and DDOT has addressed that. And with that, I will
17 submit a record of the report.

18 Thank you.

19 CHAIRPERSON HILL: Okay. Thank you. Does the
20 board have any questions for the Office of Planning? Okay.
21 Does the applicant have any questions for the Office of
22 Planning?

23 MS. PRINCE: None.

24 CHAIRPERSON HILL: Okay. The ANC -- could the ANC
25 please come forward, just since you're here and waited all

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1 day? Actually, could Chick-fil-A come forward also?

2 I'll just go to the ANC. Sir, Commissioner, if
3 you could just introduce yourself first.

4 MR. LOOPER: Yes. My name is Commissioner Robert
5 Looper III. ANC SMD 5C03 Fort Lincoln.

6 CHAIRPERSON HILL: And the -- I mean, we have your
7 letter here. The testimony that you're providing, do you
8 agree -- so there's nothing -- you agree with what the
9 applicant has put forward in terms of the two conditions?

10 MR. LOOPER: All right. So, I guess, the letter
11 was just to sort of give context in the event that we had to
12 -- or couldn't come to an agreement on what those conditions
13 would be. I'm in agreement to the extent that, yes, I think
14 that one and two should be in there.

15 I think that with the other two points, some of
16 the things that we're requesting that the developer lead the
17 conversation on -- not necessarily broker a deal on, I think
18 should also be included. Because, with some of these things,
19 like, for instance, we said the installation of a sign in the
20 drive-through queue, just to remind people not to -- one to
21 drive safely and to not litter.

22 The other one was to demonstrate how it's
23 operations won't affect the tranquility and peace of the
24 neighborhood. Given some sort of preference to Fort Lincoln
25 residents who seek employment there at that restaurant

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1 specifically.

2 And then, the biggest thing for us is including
3 Fort-Lincoln-specific artwork or displays, whether historic
4 or current, within the restaurant, so that it's more so a
5 community-based restaurant, and not just sort of a rest stop
6 off the highway. Because, it is directly adjacent to 50
7 within the highway section.

8 And, so, while I do appreciate, sort of DDOT and
9 Zoning's review of their transportation study, it's important
10 to know that this thing doesn't exist by itself in a bubble
11 and that although -- even though it doesn't spill out into
12 public streets, if you've been to Costco, you know that
13 Market Street, the main street there, if you're trying to get
14 out of the Chick-fil-A drive-through onto Market Street
15 making a left, you're at the mercy of oncoming cars. And if
16 no one lets you by, you just sort of have to sit there until
17 you can get by. And, so, if everybody else has their food
18 and they're waiting for you to go, you can't, because you
19 can't leave. You can't exit the intersection adjacent to the
20 Chick-fil-A. But the developer has addressed that they'd put
21 a stop sign there, which would alleviate that issue.

22 And, so, I do appreciate that. And, so, I guess,
23 my only thing is that I would -- for me, if it's possible for
24 the four items to be included in the order, that would
25 satisfy me as a commissioner, in terms of our support of it.

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1 CHAIRPERSON HILL: Okay.

2 MR. LOOPER: If not, we'd need to know sort of how
3 else do we -- are we able to ensure that we have that
4 dialogue outside of just the stop sign and the trash cans,
5 which are going to be a big help.

6 CHAIRPERSON HILL: Okay. I understand. So, in
7 terms of the applicant, I mean, is there a reason why you
8 don't want to include three and four as conditions?

9 MS. PRINCE: Both of those conditions were so
10 general in nature they wouldn't -- they'd be tough for the
11 zoning administrator to determine compliance. Adam might
12 want to --

13 MR. WEERS: I would also note that part of the
14 reason why we put it in writing and we're happy to sign it
15 and commit to it, is because we will commit to it. I don't
16 think that the doing of the condition, doing the meetings,
17 any of that is a problem. So, we put a written agreement
18 together. We signed it. And the thought about not including
19 it as a condition here, I think, to Alice's point, it's just
20 more technical. But there's no issue for us to --

21 CHAIRPERSON HILL: Okay. I understand. So, Mr.
22 Commissioner, that's why they're not. And I will kind of
23 agree with them that it's kind of difficult to enforce three
24 and four, but I do think that they seem to be genuinely --
25 and they have a document, a signed document to go forward

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1 with that.

2 So, that's why, I guess, I would agree with them
3 in terms of -- in terms of how it's difficult to enforce
4 those conditions. But I do get the impression, or at least
5 I've seen from the community outreach thus far that they
6 would honor the agreement.

7 So, do you guys have any thoughts on it?

8 COMMISSIONER HART: Just one quick question. Mr.
9 Looper, very -- thank you very much for staying. For coming,
10 one, and staying all day. It's been -- I know it can get
11 somewhat long. So, much appreciated. Just a little point
12 of clarification. The letter that you submitted is from the
13 SMD only and not from the whole ANC?

14 MR. LOOPER: Yeah. There was a little
15 miscommunication in terms of whether or not the full ANC had
16 to vote on the special exception, versus it being a variance
17 or not being a variance. And, so this was the method of
18 communication we thought was appropriate --

19 COMMISSIONER HART: No. That's fine. That's
20 fine. I just wanted to make sure I had got that right.

21 (Simultaneous speaking.)

22 MR. LOOPER: This was based off of the two SMD
23 meetings that were held for the Fort Lincoln community, which
24 is where the Chick-fil-A is located.

25 COMMISSIONER HART: And, so, it's helpful for us

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1 to -- just for future knowledge, it's helpful for the BZA to
2 have the full ANC report, because the ANC report itself, from
3 the full ANC is what we give great weight to.

4 This, while it is very helpful, is a little bit
5 less than that. I don't want to say less than. It's seen
6 in a different light. You know, we are -- and I just wanted
7 to make sure that you are aware of that. But I do appreciate
8 it and appreciate your efforts. It seems like you all have
9 been in quite a bit of communication with this. So, that's
10 it.

11 MR. LOOPER: Just want to say, this is my first
12 BZA after two, almost three years now as the ANC
13 Commissioner. So, I understand. I had some conversations.
14 So, I know moving forward how to handle it. And I do want
15 to say that the developer, they have been really good with
16 working with the community. And, so, the engagement outreach,
17 that part of it is definitely covered. I just want to make
18 sure that for the residents are covered. Because there will
19 be a little bit of an impact with the traffic through coming.
20 But if they're willing to work with us, then we're willing
21 to work as well. We support it.

22 CHAIRPERSON HILL: Okay. Yeah. As to Mr. Hart's
23 comments, we're technically giving great weight only when we
24 get the full ANC. So, that's something, you know, as you
25 continue to serve there. And, really, like, as Mr. Hart

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1 said, and then we do always want to point it out -- it really
2 is very helpful for us for the commissioners to come down,
3 particularly the SMDs, because then that's the best way that
4 we can hear from the community. And, so, we really
5 appreciate you coming down and waiting.

6 And I'm not even being -- I'm not joking about
7 this, the next time you do come down, if you can just let the
8 Secretary know that -- you know, hopefully you won't have to
9 come down again. But if you do come down, we do try to
10 process the people when the commissioners are here more
11 quickly.

12 MR. LOOPER: Okay. I appreciate that.

13 CHAIRPERSON HILL: So, just so you know. Does
14 anybody have any questions for the Commissioner?

15 COMMISSIONER WHITE: No. I guess. You know,
16 thank you for coming, first of all. And I'd like to thank
17 the applicant too, because this is a very interesting
18 project. I think it will generate a lot of traffic, and a
19 lot of foot traffic as well, because, if you think about,
20 let's say, the holiday season, when -- during, you know,
21 people shopping at Costco and Dick's and Lowe's, and you
22 think about people running back and forth to Chick-fil-A or
23 driving, I think it's going to be important to at least try
24 to get a -- some kind of plan in place to also manage
25 pedestrian traffic as well.

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1 It sounds like you're on your way to resolving all
2 the other issues, but just for the record, I think that's
3 something that you may want to incorporate, because -- I see
4 you've got maybe 100 seats, 110 seats inside and maybe 25
5 seats outside, but that is a very high-traffic area. So,
6 you'll see a lot of customers and a lot of foot traffic as
7 well as vehicular traffic as well.

8 CHAIRPERSON HILL: To the point that the
9 Commissioner made -- and I don't even know. Like, he talked
10 about, you know, local artwork and stuff like that. Is that
11 stuff that Chick-fil-A can do? And can you introduce
12 yourself? I'm sorry.

13 MR. MARTINEZ: John Martinez. I'm a development
14 manager for Chick-fil-A. All right. So, to answer your
15 question, yes. We certainly want to become part of that
16 community. And in many locations, we do make an outreach to
17 the community to see what's important to them, specifically
18 related to either artwork or something we can do inside of
19 our facility that would display the character of the area.
20 So we would actually encourage our operator to do that. So,
21 certainly no issue at all.

22 CHAIRPERSON HILL: Okay. Mr. Weers.

23 MR. WEERS: I would also add, it is a topic that
24 we've talked about for the broader shopping center. And
25 we've met with a few different people to talk about murals

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1 and artwork and whatever I think the plan ends up being, not
2 just on the Chick-fil-A, but within the entire center, some
3 connection to the Fort Lincoln community is absolutely what's
4 going to be the spirit of it. We haven't really settled on
5 anything yet.

6 Part of the reason why I like the way Robert set
7 this up is so that we can have continuing conversations.
8 Because it might take a while to figure out exactly how to
9 do this right. You know, we've thinking about murals for
10 more than a year now and haven't pulled the trigger yet,
11 because, like, we got to get it right. But it's absolutely
12 something that we've considered.

13 CHAIRPERSON HILL: Okay. Great. Does anybody
14 have any more questions for the Commissioner?

15 Okay. Well, I'm glad you got to come up here and
16 got to answer a real question, but do you know how many
17 sandwiches get -- do you know, for the Wizards games, the
18 Chick-fil-A sandwiches that get given away?

19 MR. MARTINEZ: So, I don't have exact numbers on
20 it. No.

21 CHAIRPERSON HILL: Right. We're going to leave
22 the record open for that. That's seven days.

23 (Laughter.)

24 CHAIRPERSON HILL: No. Okay. All right. Let's
25 see. Is there anyone here who wishes to speak in support?

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1 Is there anyone who wishes to speak in opposition? Okay.

2 Is there anything else you guys would like to say?

3 MS. PRINCE: Nothing further.

4 CHAIRPERSON HILL: Okay. All right. I'm going
5 to go ahead and close the hearing. Is the board ready to
6 deliberate? Okay.

7 I'm satisfied. I mean, I thought that really what
8 I was most curious of was what they came to ask about, which
9 in terms of the drive-through and how that was going to be
10 mitigated. I'm comfortable with what the applicant has done.
11 I'm glad that they really are going out to the community.
12 And thanks for the Commissioner for coming down here. You
13 know, that shows that you've done a lot of community
14 outreach, in terms of working with, again, the community.
15 And, so I don't really have an issue. I think that the
16 Office of Planning's report is very thorough, and I would be
17 in support of the relief requested.

18 Does anyone have anything else they'd like to
19 mention?

20 COMMISSIONER HART: Only to add that I think that
21 the -- and I want to make sure we're kind of on the same page
22 with this. The two conditions, I think we'll -- we're
23 supportive -- I would be supportive of. The two end
24 conditions, I think the -- of the four, the last two -- the
25 last two, I think it's somewhat outside of our purview.

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1 And I think that they're -- that you all, Mr.
2 Looper, you have the -- we don't have an Exhibit on it, but
3 the letter that Mr. Weers provided to us -- I guess he sent
4 it to you as well. But that talked about the conditions that
5 they supported. That is the letter that is kind of -- this
6 is what they are -- this is what they are agreeing to do.
7 That letter that he had sent to you, earlier, I guess it was
8 this week. What's today? The 6th? Monday.

9 So, I just -- I'm not sure that we would
10 necessarily need to have that as conditions in the order.
11 I think that the first two conditions are reasonable and are
12 appropriate. And the other two, I think are things, kind of
13 more coordination and kind of discussion that you're going
14 to be having with the applicant in the -- or the -- yeah, the
15 applicant and Chick-fil-A in the future. But I also agree
16 with the Office of Planning's report and the testimony that's
17 been given, how the applicant has met the criteria for the
18 zoning regs.

19 CHAIRPERSON HILL: Okay. Anybody else? Okay.
20 Then I'm going to -- so there was the two conditions that the
21 applicant had read into the record. And, so, I'm not going
22 to repeat them. That's -- OAG, you're okay?

23 MR. COHEN: That's fine. The -- just for the
24 record, to be clear, it's conditions one and two of the --
25 that relate to where the stop sign is, and the placement of

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1 the two trash cans. Correct?

2 CHAIRPERSON HILL: Yeah. One and two from the
3 letter dated December 4th?

4 MR. COHEN: Got it.

5 CHAIRPERSON HILL: To Commissioner Looper.

6 MR. COHEN: Just for the record.

7 CHAIRPERSON HILL: And signed by Mr. Weers.
8 Conditions one and two. Yeah. Number one and two. All
9 right. So, with that, including those two conditions one and
10 two, I would make -- I'm sorry.

11 COMMISSIONER HART: And, I'm sorry.

12 CHAIRPERSON HILL: You need to push the button.

13 COMMISSIONER HART: I already pressed the button.
14 I do have to press button. There's also the condition from
15 DDOT about the one -- what do you call it?

16 PARTICIPANT: Bike rack.

17 COMMISSIONER HART: Bike rack. So --

18 CHAIRPERSON HILL: What I was -- what I understood
19 was that the --

20 COMMISSIONER HART: We don't have to do it. I'm
21 just making sure we're not forgetting it.

22 CHAIRPERSON HILL: No. No. No. Yeah. Well now
23 that you're bringing it up, I'm just clarifying. What I
24 understood is that that is in the regulation. So, therefore,
25 they have to do it anyway. So, it doesn't have to be a

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1 condition. So, that's why I wasn't mentioning it. But thank
2 you.

3 COMMISSIONER HART: Sorry.

4 CHAIRPERSON HILL: I don't want to miss anything
5 either. Okay. So, I'm going to go ahead and approve
6 application number 19 -- make a motion to approve application
7 number 19626 as read and captioned, as read by the Secretary,
8 including the two conditions from the letter dated December
9 4th from -- to Mr. Commissioner Looper from Mr. Weers, number
10 one and two, and ask for a second.

11 MR. HART: Second.

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

14 VICE CHAIR MILLER: Mr. Chair.

15 CHAIRPERSON HILL: Yes, sir?

16 VICE CHAIR MILLER: Since I didn't say anything,
17 I just wanted to say that I appreciate the Fort Lincoln
18 retail's community engagement with the Commissioner, the
19 single-member district Commissioner, and your commitment to
20 the conditions that you made in your December 4th submission
21 to Commissioner Looper. Thank you.

22 CHAIRPERSON HILL: Okay. Great. So, motion's
23 been made and seconded. All those in favor?

24 (Chorus of aye.)

25 CHAIRPERSON HILL: All those opposed?

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1 (No audible response.)

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

3 MR. MOY: Before I give the vote count, Mr.
4 Chairman, who seconded? Okay. All right.

5 CHAIRPERSON HILL: Mr. Hart.

6 MR. MOY: All right. Thank you. So, staff would
7 record the vote as four to zero to one. This is on motion
8 of Chairman Hill to approve the application for the relief
9 being requested, along with the two conditions as the Chair
10 has cited in his motion. Seconding the motion, Vice Chair
11 Hart. Also in support, Mr. Robert Muller, Ms. Lesyllee
12 White, and a board seat vacant. Motion carries.

13 CHAIRPERSON HILL: Okay. Thank you. Summary
14 order.

15 MR. MOY: Thank you.

16 CHAIRPERSON HILL: Okay. Thank y'all very much.

17

18 PARTICIPANT: Thank you.

19 MR. MOY: All right. I believe the next and last
20 case application for the day is application number 19616 of
21 Thomas Jefferson Real Estate LLC. This application is
22 captioned and advertised for special exceptions under
23 subtitle H, section 1200 from the lot occupancy requirements
24 of subtitle H, section 704.1, ground floor designated use
25 requirements, subtitle H, sections 1101.1 and subtitle C,

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1 section 1504. This is from the penthouse setback
2 requirements of subtitle C, section 1502.1 C4, which would
3 construct a new 46-unit apartment house in the NC6 zone, 818
4 Potomac Avenue SE square, 930, lots 1014, 800, 801, 816, 817,
5 828, and 829.

6 CHAIRPERSON HILL: Okay. Great. Thank you. If
7 you could please introduce yourselves.

8 MR. MALNATI: Donald Malnati, from the developer.

9 MR. MURILLO: Julio Murillo with Murillo-Malnati
10 group, developer.

11 CHAIRPERSON HILL: Could you say your last name
12 again? I'm sorry.

13 MR. MURILLO: Murillo.

14 MR. KADLECEK: Good afternoon. Cary Kadlecek with
15 Goulston & Storrs on behalf of the applicant.

16 MR. GOINS: Good afternoon. Jeff Goins, with BGN
17 Architects.

18 CHAIRPERSON HILL: Oh. You need to push the
19 button. Sorry.

20 MS. MCCARTHY: Oh. Ellen McCarthy..

21 CHAIRPERSON HILL: Have you all been sworn in?

22 MS. MCCARTHY: I have not.

23 CHAIRPERSON HILL: Okay. If you wouldn't mind
24 standing up and getting sworn in by the secretary there to
25 my left.

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1 MR. MOY: Do you solemnly swear or affirm that the
2 testimony you are about to present in this proceeding is the
3 truth, the whole truth, and nothing but the truth?

4 MS. MCCARTHY: I do.

5 MR. MOY: Thank you very much.

6 CHAIRPERSON HILL: Okay. Great. Mr. Kadlecek,
7 I presume you're going to be presenting to us?

8 MR. KADLECEK: Yes. As a preliminary matter, we
9 appreciate you moving the schedule around to accommodate us.
10 Ms. McCarthy is a new witness of us, and I just gave you her
11 resume. We would like to proper her as an expert in zoning
12 and planning. I know she's been qualified before the board
13 many times, but I just wanted to make sure that the board was
14 aware of that.

15 CHAIRPERSON HILL: Okay. No. Thank you so much.
16 Yeah. Ms. McCarthy, you've been included in our book, I
17 think. Correct? Yeah. Okay. All right. Okay. But thank
18 you, Mr. Kadlecek for pointing that out. And your
19 presentation here that we can look at. So, yeah. We don't
20 have any issues with her being submitted as an expert.

21 Give me one second. I guess I don't have any --
22 I'm going to, you know, let you go ahead and start your --
23 go through your presentation in terms of, again, what the
24 project is, and how you're meeting the criteria, for us to
25 grant the requested relief. I guess the only kind

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1 of thing I'm most interested in, I suppose, is the kind of
2 like, the exceptional circumstances that are existing, is the
3 only kind of focus that I'm most interested in. Does the
4 board have anything else they want to be focused upon?

5 COMMISSIONER WHITE: Yeah. I noticed -- and
6 you'll have a chance to respond, but I noticed, I believe,
7 that the Office of Planning had some issue with the lot
8 occupancy, I believe. So, you know, it would be interesting
9 to hear what your feedback would be, maybe prior to her
10 giving the report. But you'll have, obviously, an
11 opportunity to have dialogue with her when she testifies, as
12 well.

13 CHAIRPERSON HILL: Okay. Great. So, those are
14 the areas, and you can begin whenever you like.

15 MR. KADLECEK: Thanks. Thank you, again, for
16 moving the schedule to accommodate our witness. Just as a
17 recap, we're seeking special exception -- special exception
18 relief for three areas, as described in the caption. We're
19 pleased to have the support of the ANC, the Capital
20 Riverfront Bid, the Capitol Hill Restoration Society,
21 although, they didn't submit a letter. They thought they
22 had, but they didn't. But they did tell us that we could
23 tell you that they support the project. And, finally, DDOT.
24 And I just wanted to note that the conditions that DDOT had
25 requested, we are in agreement with.

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1 We are going to focus our presentation on the lot
2 occupancy relief, because that is the point where we have the
3 disagreement with the Office of Planning. And with that,
4 I'll let Mr. Goins give you an overview of the project and
5 the relief.

6 MR. GOINS: Thank you. Good afternoon members of
7 the board. I'd like to start, probably, by just giving a
8 brief overview, a little more detail than Cary just did. We
9 started this project in 2016 in the fall. We went through
10 three major redesign efforts through the HBRB process. We've
11 met with HPO staff. We had six ANC presentations. We were
12 actively involved in the community at every aspect of this
13 design.

14 Throughout the process, as Cary mentioned, we also
15 met with Capitol Hill Restoration Society on two separate
16 occasions. And all times, I think the ANC voted on four
17 occasions to vote this project -- support this project
18 unanimously. And so, did the Capitol Restoration Society on
19 both occasions.

20 To kind of start, the project -- it's a unique
21 project. And the reason we went through the design efforts,
22 it's worth mentioning. We have a project that has three
23 facades along three streets, and each facade is a different
24 length. So, coming up with a proportional design was a
25 challenge. And working with the staff at HPO and the

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1 community at large benefitted us greatly in achieving, I
2 think, a contextual design that blends in with the
3 neighborhood and fits the scale and character of this site.

4 I'll be quick on these slides, but you kind of
5 see, it's sort of isolated. It's bounded by the southeast
6 freeway on one side, and across the street is the Navy yard,
7 but in essence is the wall of the Navy yard. And on the
8 other side, there's a large park. Here's a good aerial view
9 that kind of demonstrates. You can kind of see the proposed
10 park along the one street facade. And then L street. And
11 the it's kind of tucked and wrapped around by a small
12 residential community. And then the main wall of the Navy
13 yard there, across Potomac street.

14 Through the process, the contextual design was
15 kind of pulled from the three main, large buildings, large
16 scale. The blue castle, which, if you're familiar with
17 Capitol Hill, takes up almost two city blocks. Across the
18 street is the Navy yard, and then 810 Potomac Avenue. We're
19 within one to two feet in character of all of those
20 buildings. And we believe that this fits in with the context
21 and the larger neighborhood.

22 CHAIRPERSON HILL: Before you switch -- I'm sorry.

23 MR. GOINS: Yeah. Sure.

24 CHAIRPERSON HILL: What about the -- I didn't
25 notice the feedback. I was curious, on the two properties

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1 there that kind of stand alone there, it looks like one of
2 them -- are they town homes? Are they not -- up on L street?

3 MR. GOINS: Yeah. I do believe that those are
4 rental properties.

5 CHAIRPERSON HILL: Okay. So, you -- not those.
6 The one your cursor -- just right below. Down lower. Okay.
7 Right there. Yeah. What are those?

8 MR. GOINS: Those are residential properties.

9 CHAIRPERSON HILL: And have you gotten feedback
10 from them? I'm just curious.

11 MR. GOINS: Yeah. I think they're commercial
12 properties. Yeah.

13 CHAIRPERSON HILL: Okay. But you haven't heard
14 from them?

15 MR. GOINS: No.

16 CHAIRPERSON HILL: Okay. All right. Okay. You
17 can keep going.

18 MR. GOINS: Yeah. Sure. Here's the proposed site
19 plan. And what we were talking about -- we believe that if
20 it's in and meets the criteria for lot occupancy -- or, with
21 the exception of the first two floors, there is existing
22 contributing historic structure here that occupies 452 square
23 feet on the lot.

24 That is a contributing structure which we are
25 retaining and will be used as a residential rental property

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1 in its entirety. And then there's the proposed structures.
2 You can see along Potomac there, we have a very large right
3 of way, almost 40 feet. And then it narrows along 9th
4 Street, and then kind of turns down L Street. But that's the
5 proposed site plan.

6 So, one of the areas that -- one of the conditions
7 that makes this kind of unique. There was an existing
8 easement that came with this property, which required 13
9 parking spaces that goes to the adjacent property. Actually,
10 it's the Navy --

11 PARTICIPANT: 810.

12 MR. GOINS: Yeah. It goes with 810. So, those
13 are -- it's a covenant that we have to provide those parking
14 spaces, which then increased our parking count to 29 required
15 parking spaces with the easement. So, one of the things that
16 we're proposing --

17 COMMISSIONER HART: Which building is it again?

18 MR. GOINS: What's that?

19 COMMISSIONER HART: Can you show which building
20 that is, that's --

21 MR. GOINS: Sure.

22 COMMISSIONER HART: No. Actually, yeah. Either
23 one of these.

24 MR. GOINS: This one right here.

25 COMMISSIONER HART: So, a building that the

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1 adjacent neighbor, they're -- they have an easement?

2 MR. GOINS: Yeah. The --

3 COMMISSIONER HART: The corner?

4 MR. GOINS: Yeah. The bluish-green building.

5 COMMISSIONER HART: The corner of 8th and Potomac,
6 you're saying?

7 MR. GOINS: Yeah.

8 COMMISSIONER HART: Okay. Interesting.

9 MR. GOINS: So, what we've proposed her was a
10 mechanical lift system. It's a unique system. It's a semi-
11 automatic system, where you go in your car, and you go down.
12 And through this process, we can provide 43 parking spaces
13 in one lower level. If this was a traditional parking deck
14 with a garage, we would probably be looking at 12 parking
15 spaces at the most that we could provide. But here we can
16 accommodate up to 44 parking spaces. And we have kind of a
17 -- a little video, because I thought the board might be
18 interested to see how it works.

19 COMMISSIONER HART: Actually, I am really --
20 because when I saw how many spaces, I was like --

21 MR. GOINS: Yeah.

22 COMMISSIONER HART: -- where are you doing them?

23 MR. GOINS: I'll see. Woops. Let me see if I can
24 get that video to play.

25 PARTICIPANT: They do that a lot in New York.

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1 MR. GOINS: As you can see, you would pull into
2 the bay and get out of the car. And then the cars will move
3 around.

4 (Video plays.)

5 COMMISSIONER HART: So, while we're looking at
6 this. I'm still a little confused as to, how do you get --
7 because at some point, there's going to be cars on the
8 bottom, and there's going to be cars up top. But you have
9 to have one space open to be able to then laterally move it
10 and get --

11 MR. GOINS: Yes. Each bay that you see there has
12 one open spot so the cars can maneuver around.

13 COMMISSIONER HART: Which is why you have --
14 which is why you have one less than when you --

15 MR. GOINS: Exactly.

16 COMMISSIONER HART: Okay.

17 MR. GOINS: And through the process, I think we
18 have another slide to show the impact if we had to move, to
19 kind of go to the variance of the lot occupancy here in a
20 second. I just kind of wanted to show, this is the proposed
21 garage plan. This is the cellar plan. And we'll go through
22 these quickly. This is the proposed first-floor plan. And
23 you can kind of see. I said 44, and the garage is 43, plus
24 the one parking space up above, which is 44.

25 As you can kind of see, we located the lift away

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1 from the corner down L Street for the garage entrances, to
2 pull in. We thought that -- we went through this process in
3 the design process as well, and you can see the existing
4 house that occupies 452 square feet.

5 Here's an aerial view, just to kind of give you
6 an overview of the scale and character of the project and how
7 it blends in. You can see the large park. This is a
8 community -- existing community garden, which will remain.
9 The park is being developed though, as a large community
10 benefit. As you can kind of see, you have a large public
11 right of way. And you can see the adjacent property there
12 in scale. This is down L Street, once again, to kind of
13 build a scale and context and no impact on the surrounding
14 neighborhood looking there. And this is the contributing
15 house structure that we'll retain. Aerial view down Potomac
16 and 9th. This is a slide there that's talking about the
17 retail relief. I think you can kind of see from the aerial
18 slides there the isolation of the site. It would not be a
19 good retail location. There would be no real draw for
20 someone to come down Potomac street unless they lived there.

21 The ANC agreed with us and voted unanimously to
22 support that relief. The other variance that we're asking
23 for -- the other special exception, excuse me, is the three
24 feet -- our penthouse is required to be set back, because
25 when you abut a contributing historic structure, if you're

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1 not the same height, you're required to have a one to one set
2 back.

3 We believe that intent was really to maintain the
4 integrity of a contributing historic structure. So, if you
5 are one story or two stories above that, that setback would
6 be needed. Here we are just right at three feet taller than
7 the adjacent structure. So, we are asking for that special
8 exception.

9 And you can kind of see here. We did kind of a
10 diagram to show that there is no impact on the contributing
11 historic structure with the penthouse as currently designed.
12 And if we were required to revise that, it would cause a lot
13 of detriment to the interior layout of the units.

14 So, back to the lot occupancy, which, I think is
15 the area that kind of focused on, as Cary mentioned. If it
16 wasn't for the existing historic structure, we would be
17 compliant. We are 78 percent on the first two floors, and
18 we are 74 percent for the upper floors. We're not asking for
19 any additional square footage. We're asking that we can
20 basically design this building with 78 percent on the first
21 two floors, which is the exact square footage of the existing
22 contributing historic structure.

23 CHAIRPERSON HILL: So, it's just -- I'm sorry.
24 So, it's just that contributing structure that's taking over?

25 MR. GOINS: Yes.

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1 CHAIRPERSON HILL: I was trying to figure out also
2 for the first two floors.

3 MR. GOINS: Yes. Yes.

4 CHAIRPERSON HILL: Okay. All right. Thanks.

5 MR. GOINS: And we were talking about the impact
6 if we had to comply and meet that requirement on the first
7 two floors. It really goes to where the car lift is located.
8 And I'll go back to the propose slide here. If we were have
9 to comply, we would have to move the car lift all the way
10 over to the front. We can't just move it the three or four
11 feet that we would need to comply on those first two floors.
12 We would have to move it all the way over, which -- in
13 essence, we would lose 19 parking spaces. And I don't
14 believe that DDOT would grant us a curb cut. We'd be too
15 close to the intersection.

16 CHAIRPERSON HILL: So, can you -- do you have an
17 overlay where the proposed building comes down on it? I
18 mean, is this -- because what you're saying is, those, the
19 red, the columns that you indicated -- those are actually --
20 the columns where it says electrical room and mechanical
21 room, those columns are actually on the -- the periphery, the
22 wall that's above it?

23 MR. GOINS: That is correct.

24 CHAIRPERSON HILL: Okay. So, you're saying that
25 if you move it to the east -- or, I guess. Yeah. I guess it

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1 is east. Or move them, that they would cause an impact to --
2 you wouldn't be able to then --

3 MR. GOINS: You have to pull out of it. Yes. And
4 plus, the mechanical system requires, as you can see, a
5 mechanical room adjacent to it, to support the lift for the
6 cars. So, we, in essence, have to move it a great distance,
7 not just a minimal distance, to get the lift to work. And
8 then I think it would not be centered in the design. And
9 then you were too close to the intersection. So -- and the
10 big thing is, we would not meet the parking count.

11 CHAIRPERSON HILL: Can you show -- can you show
12 the -- Okay. So, it's -- I guess it'd be helpful to have
13 what the -- this -- I don't know. Kind of a dotted line to
14 show where the one is with regard to this, because I can kind
15 of see it, but it's a little bit difficult to see between,
16 you know, the differences between these two. And maybe it's
17 also having the -- this slide, which is the garage level
18 showing what the -- indicating in writing what the rooms are.
19 Because, you have kind of spaces. And it's really hard to
20 see what those --

21 DR. DANCEY: Yeah.

22 CHAIRPERSON HILL: -- those rooms are used for.
23 Because this, you kind of say, oh, okay, I get what, you
24 know, where these things are. But the previous one it was
25 a little bit more difficult to figure that out.

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1 MR. GOINS: Right. I guess I'm trying to
2 understand.

3 CHAIRPERSON HILL: It's just trying to understand
4 what the --

5 MR. GOINS: Yeah.

6 CHAIRPERSON HILL: There is an impact to the
7 ability -- like right now it's -- go back one slide. Right
8 now there is a distance between the columns, the red columns
9 that you show, where the drive aisle is.

10 MR. GOINS: Okay.

11 CHAIRPERSON HILL: There's a distance that's
12 there. That distance is different on the previous one that
13 you showed.

14 MR. GOINS: Yes.

15 CHAIRPERSON HILL: And it's hard to see what that
16 -- to tell what that distance -- how that, what that change
17 is.

18 MR. MURILLO: I think what Jeff is saying is, the
19 slide that you're looking at now is the proposed, if we had
20 to move the elevator over, that's what it would look like.
21 But I don't know if there's a slide that shows how it's
22 currently designed and where the mechanical room is.

23 COMMISSIONER HART: Are these the same ones? It's
24 --

25 MR. MURILLO: They're two different things.

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1 That's why --

2 COMMISSIONER HART: Yeah.

3 PARTICIPANT: The columns change.

4 MR. GOINS: Columns didn't change.

5 PARTICIPANT: No. The columns didn't change.

6 MR. MURILLO: Just the location of the mechanical
7 room. That's what --

8 COMMISSIONER HART: Well, maybe that's -- maybe
9 the issue --

10 (Simultaneous speaking.)

11 MR. MURILLO: From the -- in the proposal

12 COMMISSIONER HART: -- is that if there's a -- if
13 you wrote out what these -- these--

14 (Simultaneous Speaking)

15 MR. GOINS: Yeah. Yeah. The adjacent room is a
16 mechanical room. There's a water room, and then there's
17 electrical room along the front there, adjacent -- where the
18 lifts are.

19 MR. MURILLO: So, this is the currently proposed
20 plan. Right?

21 MR. GOINS: Yes. That's right.

22 MR. MURILLO: Okay. On the left of the elevators,
23 which is boxed in the -- in the red box.

24 MR. GOINS: Yeah.

25 MR. MURILLO: On the left of that is a mechanical

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1 room that supports the mechanical lift --

2 PARTICIPANT: Okay.

3 MR. MURILLO: -- on the right of that is the
4 electrical room. Is that right?

5 MR. GOINS: Yes. That's right.

6 MR. MURILLO: Okay. On the right of the elevator
7 lifts, those two other rooms -- I believe it's an electrical
8 room and another mechanical room, if I'm not mistaken. So,
9 what Jeff is saying, is that if we move the elevators down
10 to where those other two rooms are --

11 COMMISSIONER HART: You shifted them to the east.

12 MR. MURILLO: Yeah. To the right on the diagram.

13 COMMISSIONER HART: Yeah. Yeah.

14 MR. MURILLO: Then there's a series of events that
15 happen. Firstly, I think we'd have a hard time getting a
16 curb cut so close to the -- 9th Street.

17 COMMISSIONER HART: Okay.

18 MR. MURILLO: Into the corner of the building.
19 And also, more importantly, we give up -- we wouldn't be able
20 to provide the parking that's required for the site, because
21 we'd lose --

22 MR. GOINS: Nineteen -- 19 spaces.

23 COMMISSIONER HART: Okay.

24 MR. MURILLO: So, the 44 proposed minus 19 would
25 be our ultimate count.

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1 COMMISSIONER HART: And these would be removed,
2 because you would have to still have the mechanical room and
3 the electrical room. You'd just be shifting where it
4 happened on the --

5 MR. MURILLO: Right. In order to drive out of the
6 elevators, you have to have a drive aisle.

7 COMMISSIONER HART: Yeah.

8 MR. MURILLO: And, so, the only -- the only place
9 to provide that is by moving it down.

10 MR. GOINS: I mean, when we located the lift as
11 well, we were certainly trying to move it as far away from
12 the intersection as possible. And then we worked extensively
13 to try to get this to -- I mean, it's almost located exactly
14 where it can and only work with the design concept.

15 MR. KADLECEK: And just to put a point on that,
16 DDOT actually made it clear to us that the driveway cannot
17 be any closer to the intersection. In fact, when they were
18 reviewing this BZA package, they had seen another prior
19 drawing that had the driveway closer. And they said, that
20 does not conform with our standards.

21 COMMISSIONER HART: Oh. Yeah.

22 (Simultaneous speaking.)

23 MR. KADLECEK: They're very clear on that.

24 COMMISSIONER HART: They have very -- they have
25 very strict minimums as to how far you can have a curb cut

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1 to the intersection.

2 MR. KADLECEK: Exactly.

3 COMMISSIONER HART: I understand that.

4 MR. KADLECEK: So, there's really no way -- I
5 mean, notwithstanding the impact on the building, there's no
6 way to move a driveway any closer to the intersection of L
7 and 9th.

8 CHAIRPERSON HILL: And with these, how come -- why
9 -- how does moving the lift create your compliancy? Or how
10 do you lose lot occupancy by moving the lift?

11 MR. KADLECEK: Well, Jeff can explain more, but
12 in order to comply with lot occupancy at the lower floors,
13 the building would have to be shrunk, narrowed. And, so,
14 that's what causes the sequence of events, to have to shift
15 the elevator over.

16 CHAIRPERSON HILL: Where is it -- I didn't notice
17 how it was narrowed. That's what I'm trying to get --

18 MR. KADLECEK: Yeah. Well, we didn't --

19 CHAIRPERSON HILL: When you move over, you move
20 over to the slide that has the shift --

21 MR. GOINS: Yeah.

22 CHAIRPERSON HILL: Right. So, you're saying that
23 building is narrowed?

24 MR. GOINS: Yeah. We're not showing the proposed
25 building being narrowed. I'm just showing the lower level.

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1 CHAIRPERSON HILL: That's what happens if you
2 narrow the building?

3 MR. GOINS: Yeah. You would have to move it
4 almost four feet.

5 CHAIRPERSON HILL: Okay. Okay. I was like, why
6 is it? I don't understand.

7 COMMISSIONER HART: And I think that was also why
8 I was having a hard time, because I was thinking that it was
9 narrowed.

10 MR. GOINS: Yeah. I should have -- we should have
11 done a diagram to demonstrate that.

12 COMMISSIONER HART: Yeah. And it's helpful to
13 kind of get a -- oh, I get it.

14 MR. GOINS: That's why they can't do it.

15 COMMISSIONER HART: That's why they can't do it.

16 CHAIRPERSON HILL: Okay. All right. We
17 understand now. You can keep going. Thank you.

18 MR. GOINS: And I think, the last slide I kind of
19 wanted to demonstrate, to kind of go back to the lot
20 occupancy here and why we believe that there is no impact of
21 air and light. We basically have almost a rear yard that's
22 three times the required of 12 feet. We have 30 -- for the
23 majority of the space. There is the 450 square foot existing
24 contributing foot print there. But as you can see from the
25 diagram over here, that we're almost at 34 feet. Our rear

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1 yard requirement is 12 feet. It does taper there, kind of
2 an odd-shaped lot there, at the end there. But we kind of
3 just thought that this would demonstrate that there is no
4 impact for scale and context.

5 At this point, I think I'm going to -- oh. And
6 the last slide. I forgot we had provided this, was kind of
7 the long-street elevation, kind of showing it all the way
8 from Potomac and 8th, all the way to the corner of L. And
9 kind of we wanted to go back to the scale and nature of this
10 project and how it fits in with the neighborhood and the
11 context of the existing surroundings.

12 I think at this point, I think Ellen is going to
13 say a couple of things.

14 COMMISSIONER HART: Just -- wait a minute. I'm
15 sorry.

16 MR. GOINS: Sure.

17 COMMISSIONER HART: One quick question as well.
18 Can you go back one slide, I think? Is there a -- is there
19 a cat walk? Is that what I'm -- is that what I'm seeing?
20 What am I seeing? Is there a --

21 MR. GOINS: Yes. Yes. There is.

22 CHAIRPERSON HILL: There is?

23 MR. GOINS: That's the -- there's a handicapped
24 spot, and there's an access ramp that leads from that
25 handicapped parking space right here into the rear entrance

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1 of the building.

2 CHAIRPERSON HILL: And, so, is that over a --

3 MR. GOINS: The cellar.

4 CHAIRPERSON HILL: It's like an area way?

5 MR. GOINS: Yeah. It's like an area way. There's
6 a cellar below that. There are cellar units, and that will
7 cross over those.

8 CHAIRPERSON HILL: And, so, the parking is below
9 that?

10 MR. GOINS: Yes.

11 CHAIRPERSON HILL: Okay. Okay. Thanks. So,
12 just, if you go to the next slide, just one. So, now this
13 one -- the little building there, the existing row homes.
14 So, that one that's in beige, that's the one you have to
15 keep?

16 MR. GOINS: Yes.

17 CHAIRPERSON HILL: And the one -- that's yours.
18 And then the next one, that's what I was curious of. That
19 next property. Whose is that?

20 MR. MURILLO: I believe there's an operator that
21 runs a business from there that owns the building.

22 CHAIRPERSON HILL: Okay. So, I'm just curious.
23 So, you guys haven't -- they don't know about this project,
24 or they do know about the project?

25 MR. MURILLO: Yeah. They do know about it. We

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1 actually considered buying that property as well to increase
2 our footprint, but it didn't work out.

3 MR. GOINS: Actually, one correction there. They
4 did come to -- we had an informal presentation at our office
5 with the single-member district. And they did come to that
6 meeting, and they like the project. So --

7 CHAIRPERSON HILL: Right. They just didn't want
8 to sell. Interesting. That's a spike right there.

9 MR. MURILLO: I think they wanted to sell. We
10 didn't want to buy.

11 CHAIRPERSON HILL: Sure. Sure. Everybody has to
12 be in agreement. Okay. All right. Is that it?

13 MR. GOINS: I think --

14 MR. KADLECEK: Ms. McCarthy is --

15 CHAIRPERSON HILL: Sure. Ms. McCarthy.

16 MS. MCCARTHY: Okay. Good afternoon, members of
17 the board. My name is Ellen McCarthy, and, as you requested,
18 I would like to focus today on specifically, the lot
19 occupancy issue and including in that the exceptional
20 circumstances issue. As you know, there are a number of
21 conditions to be met in order to get the special exception
22 granted. And I've listed them, in the interest of time and
23 lunch, I won't repeat them. But I thought before I go into
24 how the project meets those conditions, it might be useful
25 to just give a little bit of background on how we got from --

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1 how we got to the NC6 zone and why those conditions are set
2 up as they are as special exceptions.

3 In the 1958 zoning regulations, as amended, the --
4 what's the NC6 zone, was actually the A Street SE
5 neighborhood- commercial district overlay zone. And it was
6 grouped with the other neighborhood-commercial overlay zones
7 in section 1300 of the zoning regs. And as noted in section
8 1300, the NC overlay district is mapped in combination with
9 the underlying -- the underlying commercial district -- in
10 combination with that, and not instead of the underlying
11 district. As -- and what -- that was because these overlay
12 zones, these neighborhood-commercial overlay zones had a set
13 of restrictions that were greater than what was permitted in
14 the base zone.

15 So, for the A Street overlay, for example, the
16 base zone was C3A, which permitted a height of 65 feet and
17 an FAR of 4, but with the restrictions of the A Street
18 overlay, they could only go to 45 feet instead of 65 feet and
19 3 FAR instead of 4 FAR. So, in other words, the base zone,
20 which was set there and was considered appropriate for the
21 site, consistent with the comprehensive plan and the zone
22 plan, was further modified by the overlay, recognizing a
23 desire in the community to apply more restrictions than what
24 the base zone would provide.

25 But -- and in fact, this -- this NCA6 zone is kind

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1 of interesting, because when that A street overlay was
2 adopted, this whole area of lower Barracks row was outside
3 the Capitol Hill Historic District. So, because there hadn't
4 been interest on the part of the Historic Preservation Review
5 Board in expanding the Capitol Hill Historic District at that
6 point in time, Capitol Hill activists -- I believe
7 particularly Dick Wolf had proposed the overlay as sort of
8 a proxy to protect the scale and historic character of the
9 neighborhood.

10 Later, many years later, the Capitol Hill Historic
11 District was extended to encompass the area, but the overlay
12 was never eliminated or modified, even though the protections
13 that the overlay had sought to provide were then given to the
14 area through -- through the Historic District. So, that's
15 why the regulations for the overlay zones provide relief from
16 the dimensions that are in the zone through a special
17 exception and not a variance.

18 There's a recognition that there was nothing
19 horribly inconsistent with the zone and the future land use
20 map and all of that, that caused that underlying zone to be
21 considered appropriate at C3A. There was just a desire to
22 have additional tailoring. But there was a recognition that
23 that additional tailoring, those additional restrictions,
24 might not work in every instance. And, so, conditions were
25 established so that instead of having to go justify a full

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1 variance, you could go get a special exception, if you wanted
2 some of those -- some or more of those conditions waived.

3 And that the situation that we find us in --
4 ourselves in now, because when the framers of the 2016 zoning
5 regs considered all of the various neighborhood overlays that
6 we had, they decided, and what they considered to be
7 simplification, that I'm not sure necessarily was
8 simplification -- but they decided not to have overlay zones
9 per se and to just create new zones that were equivalent to
10 or the same as what the overlay zones had provided for.

11 So, when we look at the conditions for granting
12 the special exception, and specifically with regard to the
13 lot occupancy, the first condition talks about how we need
14 to -- the project needs to advance the purpose of the zone
15 and not adversely affect neighborhood property.

16 So, it's clear that the project, with its
17 requested lot occupancy relief, meets the requirement that
18 it will substantially advance the purpose of the zone and not
19 adversely affect neighborhood property, because it will
20 replace, basically, a surface parking lot, with an
21 attractively-designed structure with 49 residential units and
22 bring important vitality to a rather moribund corner of the
23 lower Barracks row neighborhood.

24 We should point out -- I think it's important to
25 keep in mind, the relief requested is really minimal. The

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1 requirement is 75 percent lot occupancy. We're at 78
2 percent. And that's only for the two stories of the historic
3 building. Above that we are below the lot occupancy
4 requirement. If the purpose of the lot occupancy restriction
5 is to provide for light and air, that relatively minor
6 overage of three percent that exists only on those two
7 stories that are occupied by the historic building, does not
8 -- as you saw from what Jeff was showing you in the diagram,
9 it doesn't affect the light and air that impact -- it doesn't
10 impact the neighboring dwellings, because there's still
11 substantial amounts of light and air. In addition, as we
12 explained in the application, the lot occupancy overage is
13 needed to accommodate the parking spaces and the mechanical
14 equipment, as Jeff just explained.

15 So, the second condition for getting a special
16 exception is appropriate architectural design. And, since
17 the Historic Preservation Review Board has already considered
18 the project and approved it, I think that that -- that is a
19 substantiation of the consistency of the character of the
20 building. Because, in fact, it's important to keep in mind,
21 when HPRB reviews new construction in a historic district,
22 the primary criteria that they apply is, is there anything
23 about the new construction that would have an adverse impact
24 on the character of the historic buildings that are -- that
25 are in the historic district?

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1 So, I believe the Historic Preservation Review
2 Board and the Historic Preservation staff have shown that
3 indeed this is consistent in scale and character and won't
4 have an adverse impact on the historic district.

5 So, then we come to exceptional circumstances.
6 And, as explained in the pre-hearing statement in the
7 application, there are circumstances with respect to this
8 site that do meet the exceptional circumstances condition.
9 In its simplest terms, the site encompasses a two-story
10 structure that cannot be demolished, because it's a
11 contributing structure to the historic district.

12 Were it not for that small historic building, the
13 project would meet lot occupancy, as is the case when one
14 goes above the second floor. In other words, if that
15 historic building were not there -- if it burned down or fell
16 down or whatever, we could build exactly the same project.
17 It would look exactly the same. It would have exactly the
18 same dimensions, and we wouldn't need any relief from lot
19 occupancy. The relief from lot occupancy is solely
20 occasioned by the fact that the historic building is there
21 and it has to be retained. So, that's, as exceptional
22 circumstances go, it's sort of a box that would not be the
23 case if we were just doing the project without that
24 circumstance.

25 And I think because of the -- the funny language

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1 of exceptional -- oh, and I should also add that in addition
2 to the historic building, the site is small. It's less than
3 10,000 feet. It has kind of an odd configuration, and we
4 have that easement too that requires us to provide the
5 additional 13 spaces, but within sufficient room to do a
6 parking ramp and all the rest of that, as addressed
7 previously. So, since that language is a little confusing,
8 I think it's worth emphasizing the difference between a
9 special exception and a variance. As I indicated earlier,
10 NC6 provides for relief by special exception. In other
11 words, the zoning regulations themselves permit the
12 requirements to be waived if certain conditions are met.
13 Exceptional circumstances are not the same as serious
14 practical difficulty, which would be what we would have to
15 prove, if we had to get a variance. The applicant merely
16 needs to show that there are conditions with respect to the
17 property or the area around it that justify that relief.

18 I think -- I was doing some research on origins,
19 or the applications of those terms, and I think the Michigan
20 State University extension program, which has some training
21 program for citizen planners and board members. I think they
22 explained it very well by saying, variance is allowed for the
23 approval of uses and structures that would otherwise be
24 prohibited because they don't meet the ordinance's
25 requirements, such as minimum property line setback or lot-

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1 size requirements. To obtain the variance, you have to show
2 hardship, which typically means proving that permitting the
3 applicant to vary from the ordinance's requirements is the
4 only way that the property can be expected to provide
5 reasonable use and return.

6 In contrast, an applicant for a special-use
7 permit, which is also a term used for special exception, does
8 not have to show hardship. Instead, the focus is simply on
9 showing that the proposed use meets the conditions that are
10 already contained in the ordinance, whereas a variance is,
11 in essence, permission to break the law.

12 So, we are consistent with the zoning and with the
13 conditions that are written right into the zoning for getting
14 relief from those special requirements, like the lot
15 occupancy.

16 Other conditions, I think, are pretty clear.
17 There is safe and efficient vehicular access and no adverse
18 effect from parking and traffic, because DDOT has already
19 studied the project and indicated that. There's no
20 particular adverse impact from noise that would be generated
21 by the project. The board has the right to make conditions,
22 but it is not clear that there are any additional conditions
23 that are required.

24 And lastly, we need to show harmony with the
25 purpose and intent of the zoning regulations and map. So,

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1 if we go back to the purpose of the NC6 overlay, it tells us
2 that number one, we want to encourage and allow new
3 neighborhood-serving retail and service businesses and office
4 development in close proximity to the Navy Yard, with an
5 emphasis on firms that will conduct business with the Navy,
6 as well as neighborhood-serving retail and service
7 businesses. And the second purpose is to allow and encourage
8 -- and this kind of shows the box that this overlay puts us
9 in, because it says, to allow and encourage mixed-use
10 development at a medium density, in the interest of securing
11 economic development, while restricting building heights to
12 a low-level density, to respect the historic scale of the
13 buildings and the entrance to the Navy yard.

14 So, in other words, they want to see medium-
15 density buildings, because they know that that will create
16 the vitality and the economic activity that is required in
17 the overlay. But medium density would normally allow you to
18 go higher than 45 feet. In the case of the C3A zone, you
19 could have gone up another 60 feet, which would certainly
20 make it easier to do a slimmer building and still get the
21 same FAR. But that's not -- that's not what the goal of --
22 or the challenge, in effect, that's created by the NC6 zone.

23 CHAIRPERSON HILL: Okay. Ms. McCarthy, I'm going
24 to just kind of -- I'm going to turn to the Office of
25 Planning. Do you want to wrap it up just a little bit?

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1 MS. MCCARTHY: Yes. I am basically at -- pretty
2 much at the end and just wanted to point out that with
3 respect to that first goal in the overlay about creating
4 neighborhood-serving businesses in close proximity to the
5 Navy yard, part of the exceptional circumstances and what is
6 affecting our building -- those 13 spaces that are covenanted
7 or that are the easement, those allow that corner commercial
8 building to function and have the off-street -- it's an
9 historic building, and it basically occupies 100 percent of
10 the lot. So, if we were not providing those 13 parking
11 spaces on our site, it might be difficult for the office and
12 commercial uses that are in that building, to be viable.

13 CHAIRPERSON HILL: Okay. Okay. All right. Okay.
14 So, I'm going to turn it over to the Office of Planning. Are
15 you good, Mr. Kadlecek?

16 MR. KADLECEK: Yeah. We have nothing further.

17 CHAIRPERSON HILL: Okay. And Ms. McCarthy, I was
18 looking through your resume. It's a very impressive resume.
19 And I can see that you were the head of Office of Planning
20 at one point. There are a lot of -- I'm learning a lot, even
21 just from listening to you. So, thank you.

22 Office of Planning.

23 MS. MYERS: Hello. Crystal Myers for the Office
24 of Planning. The Office of Planning is recommending approval
25 of the special exception relief from the designated retail

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1 and service use requirement of the ground level, as well as
2 recommending approval of the special exception relief from
3 the one to one penthouse setback from the historic building.
4 We are not recommending approval. We are recommending denial
5 of the lot occupancy relief, because the proposal was not
6 meeting the intent of the zone, and it is not -- or there are
7 no -- we do not see any exceptional circumstances justifying
8 the relief.

9 Again, the Office of Planning reviews it according
10 to the criteria, the special exception criteria, and so,
11 those two components, we do not feel the applicant had made
12 the case on. So, we stand on the record of the staff report,
13 with the supporting -- supporting the arguments on that.

14 CHAIRPERSON HILL: Okay. So, the argument -- I
15 mean, the applicant's made a few arguments in terms of the
16 lot area. So, the Office of Planning was not convinced, in
17 terms of the historic -- you know, taking that, the historic
18 building into account, in terms of the lot occupancy?

19 MS. MYERS: Correct. Our rationale on that is
20 that the row house is occupying a very limited part of the
21 site, and it existed before this project was created. In
22 effect, the project itself is resulting in a nonconformity,
23 in a sense, because the row house was there before, and the
24 building is completely new that the applicant is proposing
25 could be designed to consider that and still meet the zoning

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1 requirements. But the applicant has instead requested a
2 belief. We just don't feel that the row house is sufficient
3 enough to justify that relief.

4 CHAIRPERSON HILL: Okay. All right. Does anybody
5 have any questions for the Office of Planning?

6 COMMISSIONER WHITE: Can you talk a little bit
7 about what some of your recommendations would have been, or
8 some of the conversations you've had with the applicant, in
9 terms of suggestions for meeting the criteria for lot
10 occupancy relief? I think I read that you suggested
11 eliminating some of the parking, but are there any other?

12 MS. MYERS: Yeah. When you look at the
13 exceptional circumstances arguments the applicant provided,
14 the row house being one, and the other one being the
15 requirement to provide parking spaces for the other building,
16 810, the applicant's providing a total of, I believe, about
17 47 parking spaces, which is still significantly more than is
18 the requirement, as well as with the additional spaces for
19 810.

20 And, so, the Office of Planning felt that you can
21 reduce the number of parking spaces in order to eliminate
22 some of those issues on the site. Even with that number of
23 parking spaces of 47, you're also looking at causing
24 additional traffic issues. Not sufficient enough. We did
25 not feel it was at the point of causing major harm of the

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1 traffic conditions in the area, but still, I know that
2 traffic mitigation would have -- or, yeah, transportation
3 mitigation would have to be considered later on in the
4 process, just because it's significantly more parking spaces
5 than is required under the zone. So, reducing the number of
6 parking spaces would be one way to better achieve your -- I
7 guess, design goals.

8 COMMISSIONER HART: So, let's see. Ms. Myers,
9 you're saying that you -- that the applicant had an existing
10 condition, which is this existing row house, and built a new
11 -- and designed a new structure that could theoretically meet
12 the -- meet the -- what is -- the regulations. And they've
13 not done that and not provided a sufficient justification to
14 kind of say, yeah, we agree with this.

15 Do you think that they are -- I mean, right now
16 they're looking at 78 percent to 75 percent. I mean, is --
17 if this was 76 percent, I mean, is that -- would that be also
18 an issue? I mean, is this -- is there a limit to what
19 they're asking for? I know that 75 is there, but is there
20 something that would have been, okay, we can kind of
21 understand that. I mean, I can understand if they were
22 looking for 80 or 90 percent, but they're not. And, if you
23 could just give me some indication as to how you would think
24 about that.

25 MS. MYERS: So, we look at the criteria, and we

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1 just try to weigh out whether or not the argument has been --
2 is enough to satisfy that criteria. So, when it comes to the
3 exceptional circumstances on the site, the two arguments that
4 were provided to us, the existing row house or the row house
5 that, I believe, is being retained, because it is
6 contributing to the Historic District, and the other one
7 being the requirement to provide parking spaces for the other
8 property.

9 Those did not -- they were not convincing
10 arguments in our view, because those are not conditions that
11 make it difficult or completely difficult to do a project on
12 this site. The property could still be -- a residential or
13 a mixed-use building could still be constructed on this site
14 and designed in a way that would still comply with both those
15 issues.

16 So, the parking space issue, as I mentioned
17 earlier, but even with the row house, I mean, it's the
18 applicant's decision to create, I believe it was 46 dwelling
19 units on this site and to locate them where they have located
20 them. It's also the applicant's decision to not provide any
21 commercial use on this site, which puts them into this issue
22 of having a lot of lot occupancy requirement to begin with.

23 The residential requirement is what is triggering
24 -- providing residential units on this site is what requires
25 the lot occupancy. You -- the 75 percent lot occupancy

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1 requirement is because of -- is a residential use
2 requirement. And this zone promotes mixed use. So,
3 commercial use on this site does not have that same lot
4 occupancy requirement.

5 So, again, it's the Office of Planning's thought
6 process that this is a design choice. A lot of -- a lot of
7 this is design choice purposes. And, since this is a
8 completely new building, it can be designed in a way to
9 comply with the zoning requirement. So, that was our
10 rational on that.

11 And as for the extent of the percentage, 78
12 percent versus 80 percent, we don't really look at it from
13 that point of view, but I will say that -- you know, for the
14 same argument the applicant had said earlier about how it's
15 a pretty minor amount, as they phrase it, it would be the
16 same argument we would use at the other end, which is, you
17 know, because it is perhaps, you know, seen as a relatively
18 small amount, why couldn't it be complied with?

19 COMMISSIONER HART: The applicant has stated in
20 their -- in their testimony so far that they didn't feel that
21 retail would work in this location because of its placement
22 kind of off of 8th Street and not really on M Street. So,
23 it was kind of at a place that was, you know, that wouldn't
24 get enough foot traffic. So, retail wouldn't necessarily
25 work. I mean, I don't know about commercial, but --

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1 MS. MYERS: No. And the Office of Planning
2 accepted that argument as not disputing that part of the
3 relief, though. But the 75 percent lot occupancy requirement
4 is related to it being -- the residential uses on the site.

5 COMMISSIONER HART: No. I understand. I'm just
6 saying that -- you also said that if they had the mixed use,
7 they wouldn't have to actually do the 75 percent. They would
8 have to --

9 MS. MYERS: I should correct and just be clear
10 about this. If they were doing the commercial -- so, for any
11 residential use on the site, you would have to comply with
12 the 75 percent lot occupancy.

13 COMMISSIONER HART: Okay.

14 MS. MYERS: But the commercial uses on the site
15 do not have the same -- or in this zone, do not have the same
16 lot occupancy requirement. I believe they don't have any lot
17 occupancy requirement.

18 COMMISSIONER HART: And, so, if they had two
19 floors of commercial and two floors of residential, then --
20 because it seems like the two floors -- the first two floors
21 are over the 75 percent. The top two floors are not. So,
22 that, theoretically, that might be okay.

23 MS. MYERS: If the -- if it was commercial and
24 over 75 percent, then you don't need relief for that
25 particular component. The residential is what would need the

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1 relief. And I believe it's because that zone was trying to
2 promote more mixed use, or, you know, a little bit more
3 commercial in the area.

4 COMMISSIONER HART: Understood. Thank you.

5 CHAIRPERSON HILL: And this is where I'm just
6 unclear. The -- so, if one of these units was commercial --
7 a shop, that wouldn't count. That wouldn't put them in
8 compliance, meaning if -- if there was a mixed use and ground
9 floor residential, if one of those units was, you know, a
10 store, that wouldn't then make them compliant, or it would?

11 MS. MYERS: One of the units being commercial, but
12 the rest of the units being --

13 CHAIRPERSON HILL: Right. Exactly.

14 MS. MYERS: -- residential? They would still need
15 to comply with the residential lot occupancy requirement.

16 CHAIRPERSON HILL: Okay.

17 MS. MYERS: You know, I mean, I guess if you were
18 to say one floor were commercial and another floor were
19 residential, the residential floor would have to comply with
20 the lot occupancy requirement, but the commercial floor,
21 perhaps would not.

22 CHAIRPERSON HILL: Okay. Okay. I love zoning.
23 Okay.

24 COMMISSIONER HART: They would also have to deal
25 with loading for a commercial building?

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1 MS. MYERS: Yeah. They would have to comply with
2 all the requirements for commercial.

3 COMMISSIONER HART: Which would be -- which may
4 be difficult at this site, because of the -- you know, the
5 constrained nature of it. So, while there is a plus, there
6 is also probably a minus to, you know, having to deal. No.
7 I'm not saying you can't do it, but there's also something
8 to that to kind of deal with -- with that as well. So -- but
9 I appreciate the information.

10 CHAIRPERSON HILL: Nobody else has anything for
11 the Office of Planning? Okay. The applicant. So, in terms
12 of the design -- so, I know you showed that, I guess, the
13 building was going to be narrower in order to meet the lot
14 occupancy. And then you'd have to move the elevator over,
15 for the cars. Right?

16 And maybe you went down this road, meaning you
17 didn't know that -- you didn't know the analysis that was
18 provided by the Office of Planning until after you had your
19 design done and you'd gone through -- I mean, you had, right,
20 there was three major redesigns. There was all the different
21 ANC meetings that you went to and all the work that you've
22 done thus far. Again, it is a minor -- it's three percent.
23 Right? So -- so, I guess in my mind is, even as a developer,
24 why wouldn't you have just lost the three percent? Right?
25 I mean, had you really looked at it? Or where did you start

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1 to get to the point where you were like, wow, we're going to
2 have to do something about this to meet the lot occupancy?

3 MR. KADLECEK: Well, I think that goes to, kind
4 of the whole point of the case, which is, to make the
5 building work, it has to have a certain width at that ground
6 floor. And, so, in -- if it shrinks any amount, even
7 nominally, then it causes this cascading effect of having to
8 move the car elevator. And because of the presence of the
9 historic building, where it is, there's no other way to enter
10 the building to get underneath to provide the parking spaces.
11 So, that's why they came up with this solution for the car
12 elevator, which, fortunately, the 2016 zoning regulations
13 allow.

14 So, the elevator has to be in the place that it
15 is, for all the reasons that Jeff explained. If it moves
16 even a foot, then it causes the cascading effect of having
17 to rearrange everything.

18 CHAIRPERSON HILL: I understand. And I --

19 MR. KADLECEK: So -- so -- so that's -- so, I
20 guess that's the long way of saying, it's not as simple as
21 saying, oh, just cut off one percent. It's not that simple,
22 because it shifts and causes the cascading effect of
23 complicating the ability to provide parking.

24 CHAIRPERSON HILL: It's not that simple, and I do
25 --I'm not necessarily arguing against your case.

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1 MR. KADLECEK: Yeah.

2 CHAIRPERSON HILL: I'm just kind of thinking through
3 some logic. I mean, if you were denied, you would have to do
4 something else with it.

5 MR. KADLECEK: Right.

6 CHAIRPERSON HILL: So, something else would happen,
7 you know. And so, that's kind of where I'm just kind of seeing
8 here, you know, if you get denied, you get denied. So,
9 you're going to have to do something else with it. And, so,
10 that's kind of what I'm trying to figure out. What would you
11 have done with it if you don't get approved?

12 MR. MURILLO: If I -- If I could weigh in?

13 CHAIRPERSON HILL: Sure.

14 MR. MURILLO: I think it was in 2016 when we were
15 considering purchasing this property. We did check in with
16 the Office of Planning about this very subject. And we got
17 indications then, before the zoning code changed that it
18 would be acceptable to exceed the lot occupancy by a certain
19 percentage. That's why we didn't revisit it again.

20 Now, after designing the building, going through
21 six different design schemes, et cetera, as a matter of
22 course, we went to the Office of Planning, thinking that this
23 wasn't going to be an issue for that reason. And it became
24 an issue, obviously.

25 So, I want to also add, part of the reason we

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1 purchased the historic property, is because it has a large
2 enough lot that it allowed us to create a large enough
3 building to provide the sufficient parking for the site. So,
4 we accepted the conditions of the historic nature, knowing
5 that we would have to preserve that building. But we also
6 did it knowingly, in order to provide a larger footprint for
7 the building.

8 CHAIRPERSON HILL: Okay. I understand. And I
9 think it's an interesting project. And I think, you know,
10 what you've done and how you're getting to where you're
11 getting, I'm not necessarily in disagreement. I'm just
12 trying to understand, right, what got you here. I guess, I'm
13 also a little surprised that, you know, that the real estate
14 is that valuable that you guys are able to make this thing
15 work with that elevator, you know? And, so, you know, that's
16 also what I find interesting. But anyway. Anybody else got
17 anything else for the applicant?

18 COMMISSIONER HART: Yeah. I mean, I think that
19 you have a -- I mean, you know, every architect will tell you
20 that you have to -- when you get a project, you have
21 limitations, and you have restrictions on what you can build.
22 Height, width, setbacks. You know, the existing conditions.
23 They're all there. And, so, it's -- and I just looked at the
24 surveyor's plot, and I realized that that -- what do you call
25 it, that row house, has actually a pretty big lot, because

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1 it is literally attuned to as where the -- your building that
2 you're proposing is.

3 MR. MURILLO: It's a double lot.

4 COMMISSIONER HART: Yeah. Yeah. So, that
5 actually -- you know, I was thinking. And, I know you
6 wouldn't do this, but I was thinking, well, if you took down
7 the historic building, then you actually wouldn't have an
8 issue, because you'd have the -- I'm not saying to do that.
9 I'm saying that's the conundrum that you're in, is that, you
10 have an historic building that you have to -- that you have
11 to accommodate, and you're trying to accommodate.

12 You can't bifurcate it or, you know, separate it
13 out, because then you're losing the lot area that you would
14 need to actually build the building. So, these things are
15 kind of, you know, inextricably connected.

16 And, so, it then becomes, well, how do you make
17 the -- the building work? You know, you kind of have to have
18 a set -- you have a set hallway size. You have a set --
19 because of we're in DC, you have a set size for each of the
20 units, because, you know, that's what people are expecting.
21 And when you start making those kind of smaller or even kind
22 of feet, you're losing kind of valuable square footage.

23 So, you have to then deal with, how do I provide
24 what the -- you know, what the people want for it, to live
25 in, and do it in a way that is, you know -- do it in a way

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1 that is -- that will meet the zoning regulations?

2 So, I mean, I understand that there's, you know,
3 the nuances of it. I was trying to understand Mr. Goins.
4 When you were discussing, I thought you were talking about
5 moving -- I thought you had said that you were moving the --
6 the columns to be able to deal with that. But you were just
7 saying, you'd have to move the interior, where the pieces
8 were, where the car lift was.

9 MR. GOINS: Yeah. That's correct.

10 COMMISSIONER HART: And that would then shift all
11 of the things on the basement level, the garage level,
12 because then you wouldn't be able to -- as you shifted it,
13 you would have to lose a line of the vehicle, where the
14 parking areas were. So, that would cause, you know, yet
15 another issue. So, I get it. It is a rather interesting
16 kind of dilemma to have to deal with. And, you know, I --
17 it's a novel way of thinking about it. I think you probably
18 -- I'm not sure when you came up with the car lift, but that
19 may have been a -- you know, because you had lost a lot of
20 space with trying to park, because you wouldn't have gotten
21 anywhere near. Because, I was -- when I was looking, I
22 didn't -- I didn't -- you hadn't put anything about, or at
23 least I hadn't read about the car lift. And I was looking
24 at the plans, and I was like, okay. They've got --

25 MR. MURILLO: How do you get down there?

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1 COMMISSIONER HART: -- like -- why do they say.
2 How do you get the 40 -- one, how do you get down there? But
3 how do you get 47 --

4 MR. MURILLO: Well, we actually, we had worked on
5 a similar situation in Adams Morgan, where we proposed a car
6 lift as a way of solving the parking requirement, knowing
7 that in Adams Morgan, we couldn't get any relief for any
8 parking. And we actually looked at the systems in different
9 places like San Francisco and New York, where they're
10 applied.

11 And they're very effective. And we went as far
12 as designing a redundant car-lift system -- instead of a
13 single elevator, we have two elevators -- to provide the
14 security that you need, in case one of them goes down. So,
15 there's quite a lot of thought that went into this. I know
16 that not too many places have used this type of system here
17 in DC yet, but we think that it's a solution.

18 COMMISSIONER HART: Thank you.

19 CHAIRPERSON HILL: Okay. Anybody else?

20 VICE CHAIR MILLER: Thank you.

21 CHAIRPERSON HILL: Sure.

22 VICE CHAIR MILLER: Did you give the applicant the
23 opportunity to question the Office of Planning, or do you
24 just want to deal with that on rebuttal?

25 CHAIRPERSON HILL: I didn't -- I didn't ask it.

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1 MR. KADLECEK: We'll just -- I'll just deal with
2 it in rebuttal on closing.

3 VICE CHAIR MILLER: Okay. Okay. So, then I --
4 just had a couple questions. And they're not necessarily
5 related to the relief that you're seeking. So, indulge me
6 a second. They're different. The first one is, because
7 you're -- the having to reduce the building reduces the
8 parking. Why do you need -- it's 13 spaces for the adjacent
9 building. I think by easement, and maybe a BZA order, and
10 so then you're providing 43 spaces total. So, that's 30
11 spaces for the residents of the building. There are 46 units
12 in the building?

13 MR. KADLECEK: There's 40, and I think I know
14 where you're going. So --

15 VICE CHAIR MILLER: So, why do you need 30 spaces
16 for 49 units, when the requirements only, I think 16 or --

17 MR. KADLECEK: Yeah. So, the requirement is 16,
18 under zoning. And then there's 13 required be easement. So,
19 29 spaces are required by law. And then there's the
20 additional 15 spaces, because there's a total of 44 -- 43 in
21 the garage.

22 But because of the nature of the parking
23 mechanical system, one of the things that Jeff was explaining
24 is, if you lose -- if the garage is shifted, you lose all the
25 spaces along the east side of the building. So, then, we

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1 wouldn't even be able to satisfy the 29 spaces. So, that's
2 the conundrum. Is -- it's sort of like 49 or less -- sorry.
3 It's 44 spaces or less than 29, which is the legal
4 requirement. So, once the garage shifts, we can't even
5 satisfy what's legally required.

6 VICE CHAIR MILLER: Okay. And are you okay with
7 the -- the DDOT conditions in there? Report-- I mean, you may
8 have already addressed this.

9 MR. KADLECEK: Yes. We are. Thank you.

10 VICE CHAIR MILLER: So, that was the electric --

11 MR. KADLECEK: Yeah. The electric charging
12 stations, and then one more U lock on the exterior of the
13 building.

14 VICE CHAIR MILLER: And where is the electric
15 charging station, then? In that -- is it in that grid, that
16 lift system?

17 MR. MALNATI: There'll be charging stations -- two
18 charging stations within one of those assemblies.

19 VICE CHAIR MILLER: Okay.

20 MR. MALNATI: So, if that way -- Yeah. Whoever
21 has that kind of car can use that particular location.

22 VICE CHAIR MILLER: Okay. And the -- is this
23 property -- this project will be subject to inclusionary
24 zoning?

25 MR. KADLECEK: It is not in this zone. IZ doesn't

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1 apply, but there is habitable space in the penthouse. And
2 there will be a payment made to -- on the affordable housing
3 trust fund to offset that habitable space.

4 VICE CHAIR MILLER: What's the amount they have?

5 MR. KADLECEK: The estimated is, I believe,
6 155,000.

7 VICE CHAIR MILLER: All right. I did see that in
8 the record. And what's the zone that -- it's the NC6 zone.
9 What is it?

10 MS. MCCARTHY: It's because when we were
11 formulating the inclusionary zoning regulations, the Navy
12 Yard, the way we could have accommodated the bonus density
13 of which half would have been inclusionary, affordable, the
14 Navy Yard strongly objected to the height that we would have
15 had to give in order to accommodate the bonus density. So,
16 the entire overlay was exempted from compliance.

17 VICE CHAIR MILLER: Okay. And the -- the
18 building, the contributing apartment building, is it -- next
19 to the -- this project. That's an -- is that an apartment?
20 That's an apartment building?

21 MR. MURILLO: That's an apartment building that
22 we're currently renovating. We also own it.

23 VICE CHAIR MILLER: You own that. And does it
24 have at risk windows that are now going to be blocked, or it
25 has no windows on that side, where you're up against --

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1 MR. MURILLO: No.

2 VICE CHAIR MILLER: -- almost up against it.

3 MR. MURILLO: No. No at-risk windows within the
4 project.

5 VICE CHAIR MILLER: All right. Well, I think it's
6 a very attractive project, and you've certainly worked with
7 the community and the Historic Preservation Office and the
8 HPRB. I think it's worth pursuing.

9 CHAIRPERSON HILL: Did -- and I'm -- I'm curious,
10 because now, I know you had the ANC meetings. How did they
11 -- how have they been going? I heard the community was
12 pretty excited about the project?

13 MR. GOINS: Yeah. Overall, they're very excited
14 about the project. Yes.

15 MR. KADLECEK: The letter on the record, you'll
16 see, was a unanimous vote in support.

17 CHAIRPERSON HILL: I was just curious about the
18 hearing itself. I mean, you guys went at zoning?

19 MR. GOINS: Yeah. We started off with a fairly
20 modern design that -- that one they kind of pushed us in
21 another direction.

22 CHAIRPERSON HILL: I see. So, this is the second
23 -- you've designed this twice?

24 MR. GOINS: Three times.

25 CHAIRPERSON HILL: Three times. You've designed

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1 it three times. When did you start the process, again?

2 MR. GOINS: It was in the fall of 2016. I think
3 it was somewhere around August. Our first meeting with the
4 ANC was October 2016.

5 CHAIRPERSON HILL: Okay. Okay. Okay. Anybody
6 else? No? Okay. I'm going to go through the motions here,
7 but I can see I'm looking at an empty room. Is there anybody
8 here from the ANC? Is there anybody here wishing to speak
9 in support? Is there anybody here wishing to speak in
10 opposition?

11 Okay. There you go with that. Mr. Kadlecek, you
12 wanted to provide a conclusion and rebuttal for us to think
13 about in terms of the project?

14 MR. KADLECEK: Yeah. I just want to make a couple
15 closing statements. I want to emphasize again, there are
16 these two conditions that affect the property. The existence
17 of the historic building and the easement. And I think those
18 are both important, because they all relate to why the garage
19 has to operate the way it does, why it has to provide the
20 number of spaces that it does, and, as you heard, the
21 building wasn't sort of just designed in a vacuum. You know,
22 we want 78 lot occupancy on the lower two floors. It was all
23 sort of a culmination of a bunch of contributing factors.

24 With respect to these two conditions that affect
25 the property, I think it's really important to -- to let the

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1 board know, if they weren't already aware, this -- very
2 similar condition was actually considered by the Court of
3 Appeals in the Gilmartin case, where a property was in a
4 Historic District. It had a historic building already on it,
5 and there were easements affecting it. And the Court found
6 that that was an exceptional condition.

7 So, I think this kind of condition is exactly what
8 consists of -- being an exceptional condition that would
9 warrant or justify relief, like in this case. And it's
10 important to remember, of course, that this is special exception
11 relief. That case that I mentioned, the Gilmartin case, that
12 was for variance, which, as you know, is a higher standard.
13 We're talking about a special exception here. And even under
14 the variance standard, the conditions that are affecting this
15 property, as found by the Court of Appeals, would warrant
16 justifying the relief.

17 So, when you consider that in light of all the
18 other complicating factors that result in the building design
19 having to be the way it is to accommodate all the parking
20 spaces, I think that the criteria that we seem to have
21 focused on, which is 1200.1C, the exceptional condition of
22 justifying the relief. I think there's a really clear case
23 that's been made here that justifies the relief, and the
24 nominal amount of relief at that.

25 I think it's also worth pointing out, with respect

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1 to lot occupancy -- as will be mentioned, lot occupancy is
2 about light and air. And if the commercial use -- if the
3 entire two floors of this building were commercial use, then
4 100 percent lot occupancy would be committed -- permitted,
5 rather. And there would be no light and air at those lower
6 two floors really. So, if that would be acceptable, to then
7 say that 78 percent for residential use is not acceptable,
8 I think doesn't really -- it's sort of an inconsistent
9 statement.

10 And I think when you consider that in light of the
11 fact that the rear yard being provided for this building is
12 almost three times what's required by the regulations -- the
13 amount of light and air available to this building and the
14 neighboring buildings, I think has been demonstrably clear,
15 that it will be ample.

16 And, then, finally, with respect to the design,
17 I think it's been made quite clear through the numerous
18 iterations of design in the process that the applicant has
19 gone through to create a building that is consistent with the
20 neighborhood and the buildings along the streetscape of
21 Potomac Avenue. The two buildings further down the block to
22 the west are both historic buildings that occupy close to 100
23 percent of their lots. So, to have a building that is
24 basically, is less than -- more than conforming, I should
25 say, at its upper two floors, and just slightly under

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1 conforming at the lower two floors, is more than consistent
2 with what's in the character of the neighborhood.

3 So, I think when all of those things are
4 considered, the lot occupancy relief is quite justified. And
5 it meets the standards.

6 And, again, we're looking at a special exception,
7 as Ms. McCarthy testified. A special exception is assumed --
8 approved, provided that you meet the criteria. The
9 regulations allow for this special exception relief, and it
10 allows for a lot occupancy as proposed, provided that the
11 regulations are satisfied.

12 And I think that it's quite clear, based on the
13 evidence in the record and the testimony we presented today
14 that those criteria are satisfied. So, we're hoping that you
15 would approve. And with that, we don't have anything
16 further, and I'm happy to answer any additional questions
17 that the board may have.

18 CHAIRPERSON HILL: Okay. Is the architect here.
19 I forget. Oh. I always. I'll just -- it's a silly
20 question, but I am just always curious. How do you pick the
21 cars that you put in the little thing? Right?

22 (Laughter.)

23 CHAIRPERSON HILL: Do you actually think about it?

24 MR. GOINS: That's Julio's clientele.

25 CHAIRPERSON HILL: Okay. Just curious. Because

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1 every now and again, I'm like, wow, really nice neighborhood.
2 What's going on? Okay. All right. Does -- Okay. Does
3 anybody have any more questions?

4 Okay. Then we'll close the hearing. Is the board
5 ready to deliberate? Okay. Yeah?

6 Okay. I can start. I hate going against the
7 Office of Planning, I mean, because I really do respect their
8 analysis, and I think that they do a fantastic job at what
9 they do. And, so -- however, in this particular case, I am
10 in agreement with the arguments that the applicant have put
11 forward.

12 I think that the, you know, when the applicant was
13 talking about it, I mean, I guess, if they -- I think they
14 made the case in terms of how they're meeting the criteria
15 for the special exception. I think that the contributing
16 factor for the historic building and increased lot occupancy
17 because of that building is one reason why I thought the
18 argument was well made.

19 The second, in terms of the easement that they're
20 trying to -- that they need to provide, that is also what I'm
21 basing my decision on -- or thoughts on. Then moving the
22 entrance to the garage, how that would change the building --
23 oh. I'm sorry, them making the building more narrow, which
24 then has a domino effect on the garage, I think is a good
25 argument.

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1 You know, we look at each case on an individual
2 basis. And I don't know what I would necessarily think about
3 another case with lot occupancy issue. I mean, I guess, what
4 I'm thinking of is that this applicant, they've gone through
5 this process for a very long time. They've redesigned the
6 thing over and over again. They've met with the community
7 to do what they can, in terms of working with the community
8 on the design.

9 I think that had they known that this might have
10 been an issue, they would have designed it differently or
11 tried to design it differently, because, you know, it's a big
12 roll of the dice to get to here and then see what happens.
13 But, at least as far as I'm concerned, I think that, you
14 know, the -- the three percent discrepancy to 78, I don't
15 know whether I necessarily think that it's nominal, meaning
16 that, you know, again each case is different, and we'd see
17 what the next one would be.

18 But in terms of what they've been asking for in
19 terms of the penthouse relief and the lot occupancy relief
20 and the reasoning behind how they're getting to that, I also
21 think as far as the penthouse, that they did a good job in --
22 you can't -- you know, again, showing that it's not something
23 that you can perceive from the street and why that should be
24 allowed.

25 So, again, I'm uncomfortable with it because of,

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1 just kind of the analysis that the Office of Planning has
2 provided and that that three percent is something that they
3 probably could have figured out. But, at the same time, I'm
4 in agreement with the way they've presented the case, in how
5 -- that I can get to the point where I feel comfortable
6 granting this special exception.

7 Does anyone else have some thoughts?

8 COMMISSIONER WHITE: I'll give some initial
9 thoughts, because the only question I had about this case was
10 the whole lot occupancy scenario. And that's what I was
11 having problems kind of overcoming. And, like CHAIRPERSON
12 HILL, it's rare when I have slight disagreements with the
13 Office of Planning, but the three percent additional amount,
14 in terms of the lot occupancy was something that I was
15 concerned about.

16 But given the -- kind of the exceptional
17 configuration of the buildings and trying to preserve this
18 historic property and the way that the parking is configured
19 -- but even more importantly, you know, I was impressed with
20 the design of the building, but I think if the ANC had some
21 specific problems and the neighborhood had voiced some --
22 some serious negatives about this project, I would have been
23 reluctant to support it, because of the fact that you didn't
24 quite meet the lot occupancy requirement. But I can support
25 the other two sections of relief that you requested for

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1 ground floor designated use and penthouse setback.

2 But given all the facts that have been presented
3 -- and I think it would probably be extremely difficult. I
4 was trying to pull out of you what you could do differently
5 to meet this requirement. But I just didn't get the sense
6 that it would be that -- that easy for you and still be able
7 to make this project successful.

8 So, unless my colleagues can convince me otherwise
9 to reconsider those thoughts, I'm prepared to support it as
10 well.

11 COMMISSIONER HART: Mr. Chairman, I was looking
12 at the special exception criteria for H -- subtitle H, 704.1.
13 And, I mean, I understand that the Office of Planning has a
14 view of this, and really trying to take a fairly hard line
15 on this, but a special exception -- to me, it seems like you
16 should have the ability to vary. It in itself provides you
17 with that ability. And I think that the -- that the
18 applicant has shown that they're meeting the criteria in all
19 of the sections, I guess, that they needed to.

20 In particular, I see the Office of Planning's
21 report on page 3 talks about the architectural design of the
22 project shall enhance the urban-design features of the
23 immediate vicinity in which it's located. And I think that
24 the proposed new building -- I mean, I think that the
25 proposed building would be actually in scale with those --

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1 what would be anticipated in this zone.

2 And I thought the applicant provided sufficient
3 information to describe how it's meeting that and the fact
4 that it's -- has gotten a concept approval from HPRB, is also
5 helpful. I understand that that's -- they're not zoning --
6 they're not looking at zoning issues, but I think that it's
7 helpful to understand how they fit within the scale of the
8 neighborhood and meet that particular part of the criteria.
9 With regard to the exceptional circumstances, I think that
10 the applicant, through the testimony, has given information
11 about how it meets -- how the conditions with the existing
12 building, the existing historic row house that we wouldn't
13 want them to kind of demolish, because that would be really
14 the only way in which they'd be able to meet their -- well,
15 they could do it multiple ways.

16 But it seems as though they have a hard time
17 trying to meet the lot occupancy requirements without having
18 to remove that building. And I think that building is
19 necessary for the neighborhood. I mean, it's, you know, it's
20 an historic structure. And looking at the rest of the
21 criteria, I think that the applicant has met those as well.
22 I would be in support of the application as it has been
23 submitted to us and agree with all of the points that you all
24 have raised as well.

25 VICE CHAIR MILLER: Thank you, Mr. Chairman. I'll

1 be brief. I share the views of my colleagues. I think that
2 the applicant has made a persuasive argument that it's met
3 the criteria for the special exceptions for the three areas
4 of relief that it's requesting, the ground for designated
5 uses, the penthouse setback next to an adjacent building --
6 adjacent to a historic building, or contributing an historic
7 building, and including the lot occupancy. I think that
8 they've met that criteria.

9 And I think that we have a -- I was hoping that
10 the Office of Planning would be persuaded by the -- what I
11 thought were persuasive arguments on the lot occupancy. But
12 I think the amount of time you did devote to that subject,
13 demonstrates, at least from my perspective that we did give
14 great weight to the Office of Planning. We just happen to
15 disagree in this particular case. So, that's all.

16 CHAIRPERSON HILL: Okay. Great. So, I'm going
17 to go ahead and make a motion. I didn't clarify, but I guess
18 the applicant can. The two conditions from DDOT was, again,
19 one, provide two additional short-term bicycle parking
20 spaces, one inverted U rack. Yes?

21 MR. KADLECEK: Yes.

22 CHAIRPERSON HILL: And then the other was, provide
23 one electrical vehicle charging station in the parking
24 garage?

25 MR. KADLECEK: Yes.

1 CHAIRPERSON HILL: Okay. So, I'm going to make
2 a motion to approve application number 19616 as read and
3 captioned by the Secretary and with those two conditions that
4 the applicant has agreed to from DDOT and ask for a second.

5 COMMISSIONER WHITE: Second.

6 CHAIRPERSON HILL: The motion is made and
7 seconded. All those in favor, aye.

8 (Chorus of ayes.)

9 CHAIRPERSON HILL: Opposed?

10 (No audible response.)

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

12 MR. MOY: Staff would record the vote as four to
13 zero to one. This is on the motion of Chairman to approve
14 the application for the relief being requested, along with
15 the two conditions as cited in the motion. Seconded the
16 motion, Ms. White. Also, in support, Mr. Miller, Vice Chair
17 Hart. And we have a board seat vacant.

18 CHAIRPERSON HILL: And, so, I forget. Is it a
19 full order because Office of Planning? Okay.

20 MR. MOY: Yeah. What I'd like to do, Mr. Chair,
21 with your permission, to explore with OEG, the possibility
22 of a very in-depth summary order or a full order. So, if you
23 give me that flexibility, then that's how I'll move.

24 CHAIRPERSON HILL: Okay. Yeah. I mean, if you
25 can do an in-depth summary order, that'd be more efficient.

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1 And you can have that flexibility.

2 MR. MOY: Thank you.

3 CHAIRPERSON HILL: Okay. So, the motion passes.

4 And there you go.

5 PARTICIPANT: Thank you.

6 CHAIRPERSON HILL: Okay. Y'all have a nice day.

7 COMMISSIONER WHITE: Okay. Are we done?

8 CHAIRPERSON HILL: Mr. Moy, do we have anything
9 left for the board?

10 MR. MOY: I think that's a wrap.

11 CHAIRPERSON HILL: We're adjourned. Thank you.

12 (Whereupon, the above-entitled matter went off the
13 record at 3:25 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript


In the matter of: Public Hearing

Before: DC BZA

Date: 12-06-17

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



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