

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY
MARCH 7, 2018

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

PETER MAY, Commissioner
PETER SHAPIRO, Commissioner
ANTHONY HOOD, Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.
HILLARY LOVICK

OFFICE OF PLANNING STAFF PRESENT:

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STEPHEN MORDFIN
STEVEN COCHRAN
ANNE FOTHERGILL
MATT JESICK
KAREN THOMAS
CRYSTAL MYERS
JOEL LAWSON

The transcript constitutes the minutes from
the Public Hearing held on March 7, 2018.

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

10:12 a.m.

1
2
3 SECRETARY MOY: Thank you, Mr. Chairman. So
4 there will be case application of our 19638 of BB&H Joint
5 Venture as amended for special exception under the 8th
6 provisions of Subtitle A, Section 203.1(j) and pursuant to
7 11 DCMR, Subtitle X, Chapter 9 for a variance from the
8 previous parking requirements of Subtitle U, section
9 203.1(j)(4). This will permit the continued use of the
10 property as in accessory parking lot. In the MU-7 zone,
11 this is at 4422 Connecticut Avenue, Northwest quarter
12 1971, Lot 822 and this party will recall this was last
13 heard on January 24th, 2018.

14 CHAIRPERSON HILL: Okay, great. Thank you.
15 Good morning. If you could please introduce yourselves.

16 MR. JAMES: Good morning, Mark James with
17 Potomac Foods Group Burger King. I have your Whopper in
18 the car by the way.

19 CHAIRPERSON HILL: It's a veggie Whopper. It's
20 a veggie burger, right? Yes.

21 MS. SIGAR: I'm Karina Sigar from Troutman
22 Sanders here on behalf of the Applicant.

23 CHAIRPERSON HILL: Could you spell your last
24 name for me?

25 MS. SIGAR: Sure. S-I-G-A-R.

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1 CHAIRPERSON HILL: Okay. Thank you.

2 MR. CABE: And I'm Alex Cabe from Troutman
3 Sanders also here on behalf of the Applicant.

4 CHAIRPERSON HILL: Okay. That's right, Mr.
5 James. I forgot about Burger King. Yes. Once again, my
6 wife's vegetarian and so, you know, we're -- you're the
7 only place we can stop.

8 MR. JAMES: You declined our gift certificate,
9 but --

10 CHAIRPERSON HILL: No. Yes, I can't do the
11 gift certificate or the -- fortunately I can afford the --
12 today I can at least afford the veggie burger. I don't
13 know if -- we'll see how it comes on the projects I'm
14 working on go.

15 Okay. Let's see. So, you guys were here last
16 and there was some things that we asked you to go back
17 and -- if you did, I guess tell us what happened since the
18 last time you were here and then if you could also kind of
19 just review kind of the case a little bit for us so it
20 could be a little bit more fresh in our minds. And then
21 the standard with which we can grant the relief requested.

22 And just before you do it, I do want to just
23 make sure that, you know, you are in agreement -- in
24 agreeance with the conditions that have been put forth
25 with you and then, I guess, the last thing is that I think

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1 if we do move forward with this, we will probably grant
2 the variance if we do grant this for three years so that
3 you can get it to the re-paving so the timing all works
4 out. But if you could kind of go through all that with us
5 that would be great.

6 MS. SIGAR: Okay. Thank you very much. The
7 last -- when we came here on January 24th, we put forth
8 request for relief for special exception pursuant to
9 Section 203.j to permit the continued use of the accessory
10 parking lot to a Burger King restaurant that's located on
11 4422 Connecticut Avenue, Northwest.

12 As mentioned in that hearing, Potomac Foods
13 Company to Inc. has been operating this lot as an
14 accessory parking lot to the Burger King restaurant for
15 over 30 years and has been a good-standing member of the
16 community. The parking lot plays a crucial role in the
17 successful operations of the restaurant and therefore, the
18 continued use of this parking lot is necessary in order
19 for Burger King to remain in this property and operate as
20 a restaurant.

21 During the ANC meetings that we've attended, a
22 lot of the residents in the community have expressed their
23 support for Burger King to remain on the property and
24 we've explained that the use of the parking lot is
25 crucial, you know, to Burger King's continued use of and

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1 operations of their restaurant. This is further supported
2 by ANC 3F as well as the Office of Planning. And I
3 believe their reports have been submitted to the Board.

4 During the last hearing, it was noted that
5 there is the condition that was introduced, I believe, in
6 the 2016 Zone Regs where as one of the conditions to the
7 special exception is that at least 80 percent of the
8 parking surface is of impervious pavement which is not the
9 current status of, you know, of the parking lot. However,
10 you know, the Applicant had been operating this parking
11 lot with this impervious pavement, you know, prior to the
12 Zone Regs when it was introduced in 2016. And so, you
13 know, the strict application of this zoning -- which is
14 why we're here today to also ask for our second relief
15 which is for an area variance pursuant to Section X 1002
16 for failing to meet this condition.

17 The strict application of this zoning
18 regulation we believe would result in exceptional,
19 practical difficulties to the owner as well as the tenant
20 of the property as it would require a complete overhaul of
21 the existing pavement and replacing that pavement with new
22 pavement. And this would, you know -- this would be a
23 major capital project and may require closing of the
24 restaurant as it might impede the operations of the
25 restaurant. And so before the Applicant can commit to

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1 this project, we would first like to secure the continued
2 use of the accessory parking lot which is why we're
3 consolidating the requests today.

4 In addition, this parking lot and I believe we
5 mentioned in the last hearing that this parking lot is
6 adjacent to two other parking lots. Three of these
7 parking lots are owned by the same owner but leased by
8 different tenants and operated by different tenants for
9 different uses. And so, the plan is to re-pave all of the
10 parking lots together at one point which is, hopefully, in
11 the next three years if the relief is granted. And this
12 would require coordination which is why we are requesting
13 for the relief today.

14 I believe we also mentioned it in our last --
15 in the last hearing and this is actually one of the
16 requirements; one of the conditions that was put forth by
17 ANC 3F that we renovate the restaurant and that is
18 something that the Applicant is ready to commit to doing.
19 And so the plan is to roll in the paved -- the re-paving
20 into this project of renovating the property.

21 CHAIRPERSON HILL: Okay, okay. All right.
22 Does anybody have any questions for the Applicant? Sure.

23 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I
24 just wanted to understand what you're saying about the
25 three parking lots in the back with three different

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1 leases. Are you suggesting that there's going to be a re-
2 purposing of the three lots in some way or will they
3 continue as -- the leases will continue with the three
4 different separate lessees?

5 MS. SIGAR: Our understanding is that they'll
6 still be leased out to three different tenants, but the
7 ANC 3F has mentioned in their -- in one of the meetings
8 that we attended that their plan was -- I believe the
9 other two parking lots are up for renewal in nine years, I
10 believe which is why they are requesting that our -- that
11 the permit for our parking lot is for nine years as well
12 so that when -- so that all of the -- when the term for
13 all three parking lots are up in nine years, they can
14 review together and propose that they are -- I'm not
15 really sure and -- I'm not entirely sure what their plan
16 is for ANC 3F and what they would like, you know, the
17 owner to do for these three properties. But I believe
18 it's to potentially consolidate the three. But that's
19 something that I think is up for discussion nine years
20 down the road.

21 COMMISSIONER SHAPIRO: It's nine years down the
22 road so that's fine.

23 MS. SIGAR: Yes.

24 MR. CABE: The intent in the long term is to
25 get them on the same schedule so they have a unified --

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1 COMMISSIONER SHAPIRO: Right.

2 MR. CABE: -- management plan.

3 COMMISSIONER SHAPIRO: Okay, thank you. And so
4 I just want to make sure I'm clear and I'm building off of
5 what the Chairman said that if we are inclined to grant
6 the variance relief, it will be for a term of three years
7 to be consistent with the condition related to re-paving
8 and you understand that and that's okay with you?

9 MR. CABE: That's why we're requesting. Yes,
10 sir.

11 COMMISSIONER SHAPIRO: Okay. Three years?

12 MR. CABE: Yes.

13 COMMISSIONER SHAPIRO: Thank you. Thank you,
14 Mr. Chairman.

15 MS. SIGAR: Three -- correct. Three years for
16 the area variance but nine years for the special exception
17 of the parking lot.

18 COMMISSIONER SHAPIRO: Is that right? Okay.
19 Thank you.

20 CHAIRPERSON HILL: Ms. White?

21 MEMBER WHITE: I just want to be clear. One of
22 the conditions -- is one -- the condition to renovate the
23 restaurant within a three year period. Is that an
24 established condition as well or is that separate or apart
25 from the relief that you're seeking today?

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1 MS. SIGAR: The condition and I think -- I
2 believe you have the report from ANC 3F so I'll be -- so
3 I'll read the 18th -- condition number 18 where they would
4 like us to have, the Applicant to complete a -- to
5 complete the comprehensive renovation in three years so
6 that -- yes, that is --

7 MEMBER WHITE: That is --

8 MS. SIGAR: -- currently the plan.

9 MEMBER WHITE: Okay.

10 MS. SIGAR: Right.

11 CHAIRPERSON HILL: Okay. Anyone else? Okay.
12 I guess we'll turn to the Office of Planning. I don't
13 know if you want to add anything.

14 MR. MORDFIN: Morning.

15 CHAIRPERSON HILL: Good morning.

16 MR. MORDFIN: I'm Stephen Mordfin.

17 CHAIRPERSON HILL: You're there so, you know.

18 MR. MORDFIN: The Office of Planning supports
19 this area variance and stands on the record. And I'm
20 available for any questions.

21 CHAIRPERSON HILL: Okay. Does anybody have any
22 questions for the Office of Planning? Does the Applicant
23 have any questions for the Office of Planning?

24 MS. SIGAR: No, we don't. I would also like to
25 respond to Mr. Shapiro's question last time where I

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1 believe you asked us to coordinate to speak with the ANC
2 3F on addressing some of the pedestrian safety concerns on
3 the alley. And so, you know, the Applicant as well as the
4 ANC 3F have discussed this and they've come up with two
5 ideas. And one is to add special marking, connecting the
6 parking lot to the Burger King restaurant.

7 Another idea is to add a signage to basically
8 warn incoming traffic that there is, you know, it's heavy
9 pedestrian -- that, you know, there are a lot of
10 pedestrians in that area. And we've actually spoken with
11 Mr. Mordfin from Office of Planning as well as Ms. Emily
12 Delphi from the Department of Transportation. And Ms.
13 Delphi from DDOT have recommended that when we pursue the
14 renovation, that would require, you know, coordination
15 with the DDOT as well as, you know, getting permits from
16 them as well. Their recommendation is to roll in the
17 request for signage and so that would be part of the plan
18 of the renovation of potentially the re-paving as well.
19 But they're in support of the signage but not so much for
20 the special marking.

21 COMMISSIONER SHAPIRO: Thank you. Thank you.
22 That's wonderful to hear and thank you, Mr. Chair. It's
23 very comforting. It's a knapsack. That whole alley is a
24 mess. It's a -- it's almost as busy as Connecticut Avenue
25 so I appreciate you taking it seriously and working with

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1 DDOT to find a good solution.

2 MS. SIGAR: Okay. Thank you.

3 CHAIRPERSON HILL: Okay. We did this the last
4 time, but out of an abundance of caution I'm going to do
5 it again. Is there anyone here wishing to speak in
6 support? Is there anyone here wishing to speak in
7 opposition? Okay. Let's see. Does anybody have any more
8 questions for the Applicant?

9 Okay. Mr. James, are you guys keeping the
10 drive-thru?

11 MR. JAMES: Yes, sir. We are.

12 CHAIRPERSON HILL: Okay, good. All right.
13 Okay. Then I will go ahead and make a motion to -- okay,
14 I just want to note one thing for the Applicant, right.
15 So you're in agreement with all the conditions that have
16 been put forth? I'm not going to read them all.

17 MS. SIGAR: Yes.

18 CHAIRPERSON HILL: Okay. And then -- right.
19 You already said about the three years for the variance
20 but the nine years for the special exception. So, I'm
21 going to go ahead and make a motion to approve Application
22 Number 19638 of BB&H Joint Ventures as amended pursuant to
23 11 DCMR, Subtitle X, Chapter 9 for a special exception
24 under the use provision of Subtitle U, 203.1(j) for nine
25 years and pursuant to 11 DCMR, Subtitle X, Chapter 9 for a

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1 variance from the provision of paving requirements for
2 Subtitle U, Section 203.1(j)(4) for three years to permit
3 the continued use of the property as an accessory parking
4 lot in the MU-7 Zone at premises 4422 Connecticut Avenue,
5 Northwest square 1971, Lot 822 and ask for a second?

6 VICE CHAIR HART: Second.

7 CHAIRPERSON HILL: Motion made and seconded.

8 All those in favor say --

9 MEMBERS: Aye.

10 CHAIRPERSON HILL: All those opposed? The
11 motion passing, Mr. Moy.

12 SECRETARY MOY: The staff would record the vote
13 as four to zero to one. This on motion of Chairman Hill
14 to approve the application for the relief being requested
15 along with the conditions I received as cited in this
16 motion. Seconded motion, Mr. Peter Shapiro. Also in
17 support, Ms. White, Vice Chair Hart, Ms. John not
18 participating. So the motion carries four to zero to one.

19 CHAIRPERSON HILL: Great. Summary order.

20 SECRETARY MOY: Thank you, sir.

21 CHAIRPERSON HILL: Great. Thank you. Thank
22 you all very much.

23 MS. SIGAR: Thank you.

24 MR. CABE: Thank you.

25 SECRETARY MOY: Okay if we could have parties

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1 to the table to Case Application number 19692. This is a
2 Reno 809, LLC as amended for area variance from the side
3 yard requirements of Subtitle D, Section 307.1 to
4 construct a new one family dwelling R-2 zone, 809 49th
5 Street, Northeast square 5178, Lot 806.

6 CHAIRPERSON HILL: Thank you, Mr. Moy. Good
7 morning. If you could please introduce yourselves.

8 MR. HOOKS: Sure. My name is Earl Hooks. I'm
9 here for Reno 809 and I'm the property owner.

10 MS. HOOKS: Good morning. My name is Lonna
11 Hooks and I'm here for Reno 809 and I'm Property Associate
12 Manager.

13 CHAIRPERSON HILL: Okay, great. Thank you.
14 All right. So, I don't have a lot of questions actually.
15 I guess the one question I did have was I didn't see an
16 ANC report unless something's come in recently.

17 MR. HOOKS: That's a story. I --

18 CHAIRPERSON HILL: That's good. I'm going to
19 start that off from now on. Okay. No, that's okay.
20 That's okay, Mr. Hooks. Just --

21 MR. HOOKS: But I will be there tomorrow.

22 CHAIRPERSON HILL: -- be able to speak about
23 it. That's --

24 MR. HOOKS: Sure.

25 CHAIRPERSON HILL: You can speak about it.

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1 That's right. So that's the one question I had in terms
2 of the -- when you're giving your presentation. I didn't
3 have any other particular questions, but if you could go
4 ahead and kind of like walk through what you're asking;
5 what the project is all about. And then if you can
6 clarify how you're meeting the standards for us to grant
7 the request -- the relief requested.

8 I'm going to put ten minutes on the clock just
9 so I know where I am and that's -- Mr. Moy's going to do
10 that for me up there. And then you can begin whenever you
11 like.

12 MR. HOOKS: Okay. The property located at 809
13 49th Street, Northeast is a 12,000 square foot lot. It is
14 one of the largest lots in the community and, by far, the
15 largest lot on the street. When the property was
16 purchased, it was purchased with the thought that we would
17 be able to subdivide it and we initially thought it would
18 be able to be subdivided into three lots. That was the
19 initial plan and when we went to DCRA, that was how they
20 suggested that we draw it up based on what they looked at.
21 And so, we submitted that. We later found out after the
22 Office of Planning reviewed that, that one of the lots to
23 the right did not meet the south lot -- would not meet
24 that standard.

25 So, we had to come back to the drawing board

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1 and that's where we are right now with trying to subdivide
2 this into two lots with the north side would be 4,000
3 square feet, okay? But currently, the frontage width is
4 120 feet, the length is 100 feet. The previous owner
5 built this property in the center of the property. And
6 so, in order for me to be able to subdivide this into two
7 lots, I would need to be able get side yard relief of 5.1
8 feet to the left for the north side yard. Granting the
9 application would not be of substantial detriment to the
10 community as it relates to traffic, lighting, noise or any
11 other existing property.

12 Currently on 49th street, right now there are
13 many houses that have far less than 4,000 square feet
14 which is, if I am granted this relief, the new lot would
15 have 4,000 square feet and most of the houses do not have
16 side yards that are eight feet. There are several houses
17 that have side yards that are less than eight feet. So, I
18 think that it would be in the same sort of standard as the
19 current houses on the lot.

20 If I am granted this, the total distance
21 between the houses would be roughly 12 feet. Actually,
22 12.2 feet apart. There are many houses where the total
23 distance does not exceed eight feet on this particular
24 street. The Office of Planning which has helped me
25 significantly with this particular process because I was -

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1 - has -- is in favor of this and I think they have
2 provided a support letter which helps me clarify how I
3 meet these standards of asking for this relief.

4 And I'd like to just make a brief statement. I
5 do have on Exhibit 38 is the Office of Planning and on
6 Exhibit 39 -- let me make sure I have the right one. Just
7 one second. My updated plats. Exhibit 35, I'm sorry, for
8 the updated plat. I have my proposed building here which
9 you see would not be close to the existing house, 809
10 49th. And in the --

11 MS. HOOKS: DDOT's Report.

12 MR. HOOKS: Is it?

13 MS. HOOKS: Yes, it's the DDOT Report. Exhibit
14 34.

15 CHAIRPERSON HILL: Mr. Hooks, that's all right.

16 MR. HOOKS: Okay.

17 CHAIRPERSON HILL: So what happened to the ANC?

18 MR. HOOKS: The story.

19 CHAIRPERSON HILL: Yes.

20 MR. HOOKS: Okay. Initially I did -- I went
21 through the steps that are required from the beginning of
22 this particular process in terms of contacting them to
23 schedule, you know, a meeting and they require that you go
24 before the Board in order to be put on the schedule to
25 present before the community. There was some confusion.

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1 I sent all emails out to everyone and BZA did send out
2 notification. They -- and I sent certified mail to their
3 office. No one received anything.

4 So, I did show up at the community meeting and
5 they did give me a brief moment to speak and they invited
6 me back to their Board meeting on the 22nd and I was there
7 at the scheduled time of 7 o'clock. Unfortunately, that
8 Board meeting was cancelled and there was no notification
9 given. So, I got a little anxious about that and I
10 started knocking on the doors of the ANC Commissioners and
11 I finally got to someone that evening at about 8:30. It
12 happened to be the Commissioner of the ANC and he was very
13 apologetic that they did cancel meeting because, I think
14 three of the commissioners were going to be out of town.
15 They did not update their website. They did not notify me
16 that the meeting had been cancelled and he indicated that
17 I am on the schedule for their meeting tomorrow at 7
18 o'clock in which I will be able to present this to the
19 community.

20 So, they are aware now of what I've been trying
21 to do. They just scheduled their -- they just currently -
22 - didn't get any notifications and cancelled the meeting
23 on February 22nd. So, I will be on the schedule tomorrow
24 with the ANC.

25 CHAIRPERSON HILL: Okay. So did you get a --

1 so you didn't meet with the Single Member -- the SMD? You
2 have not yet?

3 MR. HOOKS: Correct.

4 CHAIRPERSON HILL: Okay. And then I don't know
5 whether they have a zoning committee. So, you met with
6 nobody at the ANC at this point?

7 MR. HOOKS: No, I did. I did. They allowed me
8 to speak --

9 CHAIRPERSON HILL: Oh, okay.

10 MR. HOOKS: -- at their -- yes, they allowed me
11 to speak briefly at a meeting because they -- there was
12 some miscommunication and they didn't get the information.
13 This is what they told me.

14 CHAIRPERSON HILL: Okay.

15 MR. HOOKS: But they allowed me to present to
16 the community --

17 CHAIRPERSON HILL: Okay.

18 MR. HOOKS: -- briefly and then they asked me
19 to come back to their Board meeting on the 22nd. Their
20 Board -- of February.

21 CHAIRPERSON HILL: Okay.

22 MR. HOOKS: The Board meeting was cancelled.

23 CHAIRPERSON HILL: Okay. So, did you have any
24 -- you haven't had any indication as to where their stance
25 is with the project?

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1 MR. HOOKS: I have not. I don't -- they talked
2 briefly about it. Everyone in the community is familiar
3 with the project, with the house. I've worked on it for a
4 long time. They're familiar with the lot and I think that
5 I will definitely get support. In the brief time that I
6 had to present to the community which was at the end of
7 the meeting, the first ANC meeting, some of the people
8 from the community expressed a great deal of enthusiasm
9 about that happening.

10 CHAIRPERSON HILL: Okay. All right. Well,
11 we'll see what the Board thinks. Does anybody have any
12 questions for the Applicant? Okay. I'm going to turn --
13 I'm sorry.

14 COMMISSIONER SHAPIRO: Quick question --

15 CHAIRPERSON HILL: Sure.

16 COMMISSIONER SHAPIRO: -- just to Mr. Hooks.
17 You said that the ANC meeting is scheduled for?

18 MR. HOOKS: Tomorrow.

19 COMMISSIONER SHAPIRO: Tomorrow.

20 MR. HOOKS: I will be there tomorrow to
21 present, yes.

22 COMMISSIONER SHAPIRO: Okay. Thank you. Thank
23 you, Mr. Chair.

24 CHAIRPERSON HILL: Okay. I'm going to turn to
25 the Office of Planning.

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1 MR. COCHRAN: Thank you, Mr. Chair. OP is
2 recommending that you approve the requested variance.
3 We're happy to stand on the record and answer any
4 questions.

5 CHAIRPERSON HILL: Okay. Does anyone have
6 questions for the Office of Planning?

7 VICE CHAIR HART: Yes I do, Mr. Chair. Let's
8 see. I was looking at the OP Report, Page 4, I guess of
9 the report. Let me see here -- Mr. Cochran, and it was
10 just kind of at the -- toward the bottom and it was
11 regarding how it kind of meets the finance criteria of --
12 and the -- there's a paragraph that kind of, you know,
13 describes what the site is. And it says that harbor under
14 the -- this is kind of mid-way. I think the third
15 sentence in here.

16 However, under the 2016 Zoning Regs it would
17 not be possible to construct a semi-detached house on
18 either of the new lots. Can you describe why that's the
19 case?

20 MR. COCHRAN: Yes, I'd be happy to. This is
21 why the Applicant has changed originally from going for
22 three lots, one of which would have been non-conforming,
23 to going for just two lots. Both of which would be
24 conforming if you grant the side yard relief. When we
25 first saw the application, we noticed -- well, basically I

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1 looked at it and realized the Applicant would wind up with
2 on the exterior, roughly a ten foot wide house on one of
3 the lots because with the 2016 zoning regulations, a semi-
4 detached house has to be attached to a wall of another
5 house. In the prior zoning regulations, a semi-detached
6 house simply had to be built to at least one lot line.

7 The first version of the request could have
8 constructed semi-detached houses under the 1958
9 Regulations, but not under the 2016 Regulations. The
10 conforming lot on the -- let's take three lots. The
11 center lot is the one that has the house on it. The
12 Applicant had originally found from what he felt was a
13 conforming lot to the north of that house. In fact, that
14 would have been a conforming lot for a semi-detached house
15 under the '58 Regulations but because side yards would be
16 required under the 2016 Regulations and because in this
17 zone the size of a lot for a semi-detached house is
18 smaller than the size of a lot for a detached house, the
19 Applicant would have had to meet the detached house
20 regulations.

21 That means that -- and he couldn't meet those
22 requirements unless there were relief on the side yard for
23 the existing house.

24 VICE CHAIR HART: So are you saying that there
25 is possibly a issue with the zoning regulations in how

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1 they're written for this? Because seems like this
2 shouldn't be the case. It's like --

3 MR. COCHRAN: Well, the zoning commission --

4 VICE CHAIR HART: -- I'm kind of struggling
5 with this when I was reading through it --

6 MR. COCHRAN: Yes.

7 VICE CHAIR HART: -- because I just seemed like
8 wow, why are they going through all of this to kind of do
9 something that you really think you should be able to do,
10 but it seems like there are rules in place or the rules
11 that are in place are making this more difficult than it
12 needs to be.

13 MR. COCHRAN: District agencies and the Zoning
14 Commissioner aware of this and the zoning commission has
15 sat down for a hearing some proposals that will -- that
16 would address this. I believe that the hearing is
17 scheduled for April 19th.

18 VICE CHAIR HART: Okay. I mean, and I
19 appreciate it. I know that it -- this was a hard thing.
20 We're here now, we're trying to deal with it. I just kind
21 of, you know, like God, it seems like it's such a large
22 lot and we're still having to deal with some sort of
23 relief that's necessary for even though it is such a large
24 lot. Granted, I understand the house is -- the existing
25 house is where it is, but it just seemed like it was -- I

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1 don't know. It just seemed like it didn't need to be this
2 difficult to get through, you know, a -- what seems like a
3 buildable lot which seems like a, you know, a house that
4 is -- an existing house that shouldn't be a problem.

5 So, I was just trying to get -- wrap my head
6 around that part of it. Thank you very much.

7 MEMBER JOHN: Mr. Chairman.

8 CHAIRPERSON HILL: Sure. Please, Ms. John.

9 MEMBER JOHN: I have a question.

10 CHAIRPERSON HILL: Ms. John, you'll have to
11 lean into the mic just a little bit more.

12 MEMBER JOHN: Yes. It's related to what you
13 were discussing with Mr. Hart. So, could you explain for
14 me what type of relief the Applicant would need in order
15 to build a detached house on the third lot which is on
16 Exhibit 35? And just looking -- I'm not an architect, but
17 just looking at the lot, it seems to be fairly large and
18 the Applicant said that there were houses in the
19 neighborhood that had side yards less than four feet --
20 less than five feet. So, if -- what sort of relief do you
21 think might be appropriate?

22 MR. COCHRAN: Excuse me but I'll need to go
23 back to the plat that was filed and so we can pull it up.

24 MEMBER JOHN: This is Exhibit 35, I think.

25 MR. COCHRAN: No. To look at the third lot,

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1 you'd have to go back to the earlier plat. Let me pull it
2 up. Okay. I believe you'll want to go and look at
3 Exhibit 3. No, sorry.

4 VICE CHAIR HART: Yes. It's Exhibit 3.

5 MEMBER JOHN: It's Exhibit 35.

6 VICE CHAIR HART: No, it's Exhibit --

7 MEMBER JOHN: Or is this the original?

8 VICE CHAIR HART: The original is Exhibit 3 and
9 it's Page 2 on it -- of that.

10 MR. COCHRAN: No. I'm sorry, but Exhibit 3
11 doesn't show the -- what had first been requested which is
12 three lots. That just shows what's there now.

13 VICE CHAIR HART: Look on the second page.

14 MR. COCHRAN: Oh, okay.

15 VICE CHAIR HART: Scroll down.

16 MR. COCHRAN: I see it. Thank you, thank you.
17 Okay. To -- where the 28 foot wide -- 28.1 foot wide lot,
18 you'd be -- that lot would not be wide enough to conform
19 to the regulations for lot width for either semi-detached
20 house or a detached house. It would also be 200 square
21 feet smaller than one for a semi-detached house and 1,200
22 square feet smaller than is required for a detached house.
23 With 2 8 foot side yards, you're down to 12 feet. If you
24 were to -- even if you granted relief on the lot size, you
25 then still have to have a detached house on it because you

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1 couldn't build the semi-detached house because there's no
2 house next to it that you could attach a wall to.

3 So then you'd be down to what did I just say?
4 Twelve feet, give or take a foot by each side for walls.
5 That leaves you with about ten feet inside. So, basically
6 you'd be marketing to somebody who'd be looking for a
7 trailer. I'm being a little facetious on that. I'm sure
8 that there's -- are ten foot wide houses somewhere in the
9 -- interior houses of ten feet somewhere in the city. But
10 that is the difficulty that the Applicant would face --
11 would have faced with that original application.

12 MEMBER JOHN: Thank you.

13 CHAIRPERSON HILL: Okay. That was --

14 MR. HOOKS: May I?

15 CHAIRPERSON HILL: Yes. Sure, sure.

16 MR. HOOKS: Okay and I'm going to keep it
17 short.

18 CHAIRPERSON HILL: Sure.

19 MR. HOOKS: I just wanted to say that I
20 appreciated the question from Mr. Hart and Ms. John and
21 the reason being is because that -- your thinking and your
22 questions was the same line that I followed in the
23 beginning. If the law had not changed in 2016, I would
24 have been able to build on the lot line and Mr. Cochran
25 was able to explain that to me when we were going through

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1 the process.

2 So, if I'd have been able to build as a semi-
3 detached then I would have just had to ask for the side
4 yard relief from the existing property and that possibly
5 could have been granted for me to be able to build on both
6 the lots, but I can't. I would have to -- it would have
7 to be a detached home. So -- but I really appreciate it
8 because I think that's what they're going to be looking at
9 with their April 19th meeting. So, I appreciate it.

10 MEMBER JOHN: Thank you.

11 CHAIRPERSON HILL: Okay. All right. Is there
12 any -- do you have anything else for the Office of
13 Planning, Mr. Hooks?

14 MR. HOOKS: I do not.

15 CHAIRPERSON HILL: Okay. Ms. Hooks, do you
16 have anything you'd like to add or say or anything?

17 MS. HOOKS: I just wanted to say that DDOT also
18 supported the application.

19 CHAIRPERSON HILL: Okay. Is there anyone here
20 wishing to speak in support? Is there anyone here from
21 the ANC? Is there anyone here wishing to speak in
22 opposition? All right. Please come forward. Did you get
23 sworn in earlier?

24 MS. BORRAZAS: Yes.

25 CHAIRPERSON HILL: Okay. If you could just

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1 state your name for the record and the address -- and your
2 address.

3 MS. BORRAZAS: Meghan Borrazas. I live on 821
4 49th Street, Northeast which would be the adjacent
5 property to the northside.

6 CHAIRPERSON HILL: Okay. Can you spell your
7 last name for me?

8 MS. BORRAZAS: B-O-R-R-A-Z-A-S.

9 CHAIRPERSON HILL: Okay. So, Ms. Borrazas?

10 MS. BORRAZAS: Yes. Borrazas, yes.

11 CHAIRPERSON HILL: Borrazas. I'm going to give
12 you three minutes which --

13 MS. BORRAZAS: Yes, of course.

14 CHAIRPERSON HILL: -- as the public is allowed
15 and you can begin whenever you like.

16 MS. BORRAZAS: All right. I guess it's not a
17 full opposition. I just have concerns. Exhibit 7, the
18 laid spec of the house looks a little different than like
19 Exhibit 35 that has it as a full rectangle. So there
20 seems to be a pop-out on Exhibit 7 for I think a deck --
21 not sure if that is laid out in the rectangle as the full
22 width. So, I'm not sure if that's the part that takes the
23 four feet.

24 CHAIRPERSON HILL: Sorry. I'm just trying to
25 figure out what your testimony is. Are you just asking

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1 questions or are you --

2 MS. BORRAZAS: I'm asking questions but I'm
3 also I'm concerned that -- I'm one of the smaller houses
4 on the street. So I have a one-level house. The -- I
5 guess the closer the property line, I'm concerned with --
6 that I'm going to feel towered over. And when I moved
7 here, that property a year and a half ago when they were
8 still working on the house that existing on the property
9 next door, I don't know if I would have bought it if I
10 didn't -- if I felt so closed in. There's a reason why I
11 moved to part of northeast and that's because you feel
12 like have more space to breathe and you have more room.

13 CHAIRPERSON HILL: Okay.

14 MS. BORRAZAS: And there's less people towering
15 --

16 CHAIRPERSON HILL: Okay.

17 MS. BORRAZAS: -- over you. So --

18 CHAIRPERSON HILL: Okay.

19 MS. BORRAZAS: -- that's just my concern.

20 CHAIRPERSON HILL: Okay. All right. Okay.

21 All right. Thank you.

22 MS. BORRAZAS: Thank you.

23 CHAIRPERSON HILL: Does anybody have any
24 questions for the witness?

25 MEMBER WHITE: Just one question. How close

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1 are you to the property? You're at -- you said you're at
2 809?

3 MS. BORRAZAS: 821.

4 MEMBER WHITE: 821.

5 MS. BORRAZAS: So, I have three lots of
6 property.

7 MEMBER WHITE: 821.

8 MS. BORRAZAS: And so, it's right next to it.
9 We share like a -- if you looked at the pictures, there's
10 a little gap in the fences -- we have two fences. I'm
11 right to the north side.

12 MEMBER WHITE: Okay. So they're 809 and you're
13 821?

14 MS. BORRAZAS: Yes. It skips numbers.

15 MEMBER WHITE: Okay.

16 CHAIRPERSON HILL: Okay, great. Thank you.
17 Thank you.

18 All right. So, Mr. Hooks, do you have any
19 answers for the witness or do you have anything to
20 explain?

21 MR. HOOKS: Well, sure. Absolutely. The total
22 distance -- the total width of this house is only 24 feet.
23 Okay? So it fits right within, if I'm granted this, the
24 side yard requirements. The eight feet to her lot line.
25 The relief that I'm requesting is for the house that I

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1 already own which is to the south. So, it would be closer
2 to the house that I already own; not the house that's
3 going to be built. The physical distance from -- if this
4 new house is constructed, the physical distance from her
5 lot line would be eight feet. I'm sorry, from the lot
6 line the physical distance from her house because she has
7 a smaller house would probably be in the neighborhood of
8 about 30 feet. Because the -- her two --

9 CHAIRPERSON HILL: Okay. That's right. I
10 understand.

11 MR. HOOKS: Oh, okay.

12 CHAIRPERSON HILL: The side yard. I was just
13 kind of --

14 MR. HOOKS: Yes.

15 CHAIRPERSON HILL: I was understanding the side
16 yard. Okay.

17 MR. HOOKS: Yes, yes.

18 CHAIRPERSON HILL: Okay. So -- let's see. So,
19 my question, I guess, is really just kind of about the ANC
20 and how we don't have something from the ANC but you're
21 going to be presenting, you said, tomorrow?

22 MR. HOOKS: Yes.

23 CHAIRPERSON HILL: Okay. So, I don't know how
24 the Board feels or what the Board thinks about it, but I'd
25 like to get something from the ANC. And so we've had the

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1 testimony here. We've taken, you know, all of the
2 testimony that we need to take. We could put this on for
3 a decision and then you can get us something from the ANC
4 in order for us to understand at least what the community
5 has to say. And that could also be an opportunity for the
6 witness to maybe get a little bit more clarification as to
7 what your project is. I think that, you know, your side
8 yard is -- you know, you're already meeting that side yard
9 is what you're saying.

10 MR. HOOKS: Yes.

11 CHAIRPERSON HILL: So, it's already -- you
12 know, it's legally -- that's not what you're here for.

13 MR. HOOKS: Yes.

14 CHAIRPERSON HILL: In terms of re-zoning but
15 maybe, you know, you could explain that to the witness and
16 or, you know, have an opportunity to explain that if
17 there's something that's brought up at the ANC meeting.
18 So, I don't know when the ANC might be able to get
19 something to us. You're meeting tomorrow.

20 I would propose that we put this on for
21 decision two weeks from today and then you can get us
22 something from the ANC.

23 MR. HOOKS: I appreciate it.

24 CHAIRPERSON HILL: Okay? Does anyone else have
25 any thoughts?

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1 MEMBER WHITE: I would agree with you, Mr.
2 Chair, because, you know, I think it's critical to -- part
3 of that area variance test associated with the public.
4 The -- and so, obviously, the ANC that's their job.
5 They're supposed to weigh-in on things like this. But,
6 besides that, I think you're -- you've provided all the
7 information we need.

8 CHAIRPERSON HILL: Okay. What? Okay. That's
9 fine. Let's see. And then also, Mr. Hooks, there was a
10 question I guess about -- you posted for a variance,
11 correct?

12 MR. HOOKS: Yes.

13 CHAIRPERSON HILL: You advertised. You posted
14 for a variance. Because I guess the picture is kind of
15 difficult to read in your post.

16 MR. HOOKS: Yes.

17 CHAIRPERSON HILL: If you could take another
18 photograph --

19 MR. HOOKS: Sure.

20 CHAIRPERSON HILL: -- of your posting --

21 MR. HOOKS: Sure.

22 CHAIRPERSON HILL: -- so that we can then
23 submit that into the record.

24 MR. HOOKS: Sure.

25 CHAIRPERSON HILL: So, submit that into the

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1 record. Submit something into the record from the ANC,
2 okay? Otherwise we're going to close the record.

3 MR. HOOKS: Okay.

4 CHAIRPERSON HILL: Okay? So, we're going to
5 close the hearing, we're going to close the record, you're
6 going to get us something from the ANC and then we'll put
7 this on for decision two weeks from today.

8 MR. HOOKS: Okay.

9 CHAIRPERSON HILL: Okay?

10 MR. HOOKS: And will I need to be here for
11 that, or --

12 CHAIRPERSON HILL: No, you don't have to be
13 here for it.

14 MR. HOOKS: Okay.

15 CHAIRPERSON HILL: Right. Mr. Hart -- Mr. Vice
16 Hart.

17 VICE CHAIR HART: Yes, just one thing. For the
18 posting, just get as close as you can to the actual sign.

19 MR. HOOKS: Sure.

20 VICE CHAIR HART: I mean, you can do some that
21 are farther away, but it's helpful for us to kind of, you
22 know, to have all that stuff in the record itself.

23 MR. HOOKS: Okay. I would have done that from
24 the beginning. I thought it was more important to show
25 that it was with the property.

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1 VICE CHAIR HART: You can. You can have that,
2 but it's also a helpful to actually --

3 MR. HOOKS: Okay.

4 VICE CHAIR HART: -- see that's everything that
5 is actually --

6 MR. HOOKS: Sure.

7 VICE CHAIR HART: -- and the information on
8 there.

9 MR. HOOKS: Okay.

10 CHAIRPERSON HILL: Yes, just go ahead and
11 submit two so we know it actually is on the property. I
12 agree.

13 Sure.

14 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.
15 This may be stating the obvious, but you probably don't
16 need to be here unless for some reason you have heard
17 clearly that there's issues from the ANC.

18 MR. HOOKS: Okay.

19 COMMISSIONER SHAPIRO: And then that will be a
20 -- probably be a very different conversation with us.
21 We'll have to factor that in as well so that may be
22 helpful for you to be here in that case.

23 MR. HOOKS: Okay.

24 COMMISSIONER SHAPIRO: That fair to say, Mr.
25 Chair?

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1 CHAIRPERSON HILL: Yes. No, I'm smiling
2 because I've been -- I don't know if reprimanded is the
3 right word. Opening -- re-opening or asking questions
4 during a decision has usually gotten me into trouble. And
5 so, probably we won't ask anything. But you never know, I
6 suppose.

7 MR. HOOKS: Okay.

8 MS. GLAZER: Mr. Chair?

9 CHAIRPERSON HILL: Certainly.

10 MS. GLAZER: Could I make a friendly
11 suggestion?

12 CHAIRPERSON HILL: Sure. Go ahead.

13 MS. GLAZER: Put this on for a public hearing -
14 - but a very limited hearing just to receive the ANC
15 report and anything that arises --

16 CHAIRPERSON HILL: Okay.

17 MS. GLAZER: -- out of that could be covered.

18 CHAIRPERSON HILL: All right. So, Mr. Hooks,
19 you will have to come back. Okay? So you'll be here in
20 two weeks, okay? Does that work for you, two weeks? Or
21 do you want to do it in three weeks?

22 MR. HOOKS: No, I -- if I could do it tomorrow.
23 This has been a long process, so --

24 CHAIRPERSON HILL: Right.

25 MR. HOOKS: -- I'd do it tomorrow.

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1 CHAIRPERSON HILL: Sure, I know. I empathize.
2 It is always a long process.

3 MR. HOOKS: Yes.

4 CHAIRPERSON HILL: It's just surprising how
5 this goes on and on. You know?

6 MR. HOOKS: Yes.

7 MS. BORRAZAS: Can I just say something about
8 the signs?

9 CHAIRPERSON HILL: No, no. I'm sorry, you
10 can't. Thanks so much.

11 MS. BORRAZAS: The signs haven't been up.

12 CHAIRPERSON HILL: They. It's so funny. Come
13 on over now that you've yelled that out from the crowd.
14 Can you just state your name again and then --

15 MS. BORRAZAS: Meghan Borrazas.

16 CHAIRPERSON HILL: Okay.

17 MS. BORRAZAS: I just want to say that the
18 signs haven't been up --

19 CHAIRPERSON HILL: Okay.

20 MS. BORRAZAS: -- for the last week --

21 CHAIRPERSON HILL: Okay.

22 MS. BORRAZAS: -- on the fence. They --

23 CHAIRPERSON HILL: Okay.

24 MS. BORRAZAS: So I had to look it up to make
25 sure --

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1 CHAIRPERSON HILL: Okay. All right. Ms.
2 Borrazas, I am -- you can go to your ANC meeting and you
3 can go ahead and testify as you like, but what they're
4 trying to do probably doesn't have any import into your
5 lot. Okay. Just to let you know as far as zoning is
6 concerned.

7 MS. BORRAZAS: Okay.

8 CHAIRPERSON HILL: But you can go ahead and
9 express whatever you want to express at your ANC meeting
10 and see what they have to say.

11 MS. BORRAZAS: Okay.

12 CHAIRPERSON HILL: Okay? So, if you could go
13 ahead and do that for us. So, we're going to have a
14 limited scope hearing which in that we're just going to be
15 talking about the ANC meeting and what the ANC had to say.
16 And then you'll submit the photographs, okay? And then --
17 yes, that's it.

18 MR. HOOKS: Okay.

19 CHAIRPERSON HILL: All right. Thank you, Mr.
20 Hooks. We'll see you in two weeks.

21 Okay, just -- our commissioner that is here for
22 the decision cases has arrived. So, we're going to take a
23 quick five minute break and then we'll be back to have a
24 discussion.

25 SECRETARY MOY: Okay. Before we do that, Mr.

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1 Chair, I just wanted to say for the transcript that the
2 limited scope hearing on this application is March 21st.

3 (Whereupon, the above-entitled matter went off
4 the record at 10:54 a.m. and resumed at 12:30 p.m.)

5 CHAIRPERSON HILL: Okay, let's get started
6 again. Before we do, just to let everybody know where we
7 are, what the plan is, I guess, we just finished
8 deliberating for our meeting cases, so that's the end of
9 that. And then we're going to pick back up with whatever
10 the next application was which I think we left at 19701.
11 And we're following the agenda and the reason why we're
12 following the agenda is because I think the last two are
13 going to take a lot of time, so we're trying to get
14 through the ones as best as we can before the last two
15 show up. So just to let you all know. Mr. Moy?

16 SECRETARY MOY: I was going to ask, Mr. Chair,
17 if there was any representatives of upcoming cases that
18 might have a time restraint.

19 CHAIRPERSON HILL: Okay.

20 SECRETARY MOY: For the Board to reconsider the
21 line up.

22 CHAIRPERSON HILL: Okay, is there anyone here
23 that has a time constraint? Okay, are you all here for
24 the same case? You don't know. Hold it, hold it, a
25 second.

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1 Who is the representative for all those people
2 raising their hand? You don't have a representative.
3 Since you're talking the loudest, would you come forward
4 please, in the red?

5 (Laughter.)

6 CHAIRPERSON HILL: You need to speak into the
7 microphone and introduce yourself and then let me figure
8 out where we are.

9 MR. NICYNSKI: Yes, Joe Nicynski, resident and
10 board member at 1405 W Street, N.W.

11 CHAIRPERSON HILL: Which case is it that you're
12 talking about?

13 MR. NICYNSKI: 19705. Madison Investment.

14 CHAIRPERSON HILL: Okay. All right. Okay.
15 I'll tell you what. We're going to see how long the other
16 ones take and I'm going to go through a couple and see how
17 long -- I'll try to get to you guys as quickly as I can,
18 but the problem with you all's case is it's going to take
19 a long time. So all the other people that are here that
20 might not take a long time have to wait through your case.
21 Just go ahead and sit back down and then we'll try to --

22 MR. NICYNSKI: That seems counterintuitive.

23 CHAIRPERSON HILL: You'd be surprised as to
24 what counterintuitive sounds like.

25 (Laughter.)

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1 CHAIRPERSON HILL: So go ahead and go back
2 there and take a seat and then we'll get through this as
3 quickly as we can to get to you.

4 SECRETARY MOY: Mr. Chair?

5 CHAIRPERSON HILL: Yes.

6 SECRETARY MOY: If I may take one more second.
7 I think there may be another issue with an ANC person,
8 Application No. 19704 of Milestone. I think if the
9 applicant is here, maybe they can speak to that.

10 CHAIRPERSON HILL: Wait a minute, wait a
11 minute. Oh, 19704?

12 SECRETARY MOY: Yes.

13 CHAIRPERSON HILL: So that's another person.
14 Okay. You can go ahead and come forward, please?

15 MR. BROWN: Patrick Brown from Greenstein,
16 DeLorme & Luchs on behalf of the applicant. The SMD for
17 the property in 19704 is here, but she does have some time
18 constraints, employment related. We will bring that to
19 the Board's attention.

20 CHAIRPERSON HILL: Okay, all right. Let's go
21 ahead and do 19704, Mr. Moy, first. See where we are and
22 then if that tends to go a little bit long, maybe we'll do
23 the next one which has all the different people here
24 wishing to speak. Okay? Mr. Moy has to call it.

25 SECRETARY MOY: Thank you, Mr. Chair. So that

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1 will be Case Application No. 19704 of Milestone East
2 Capitol 4, LLC. The caption advertised as a special
3 exception under the new residential development provisions
4 of Subtitle U Section 421, and pursuant to Subtitle X,
5 Chapter 10, for variances from the FAR, floor area ratio
6 requirements of Subtitle F Section 302, the lot occupancy
7 requirements of Subtitle F Section 304, and the rear yard
8 requirements of Subtitle F Section 305. This will
9 construct a new 90-unit apartment house and retain seven
10 existing apartment houses in the RA-1 zone at 127 35th
11 Street, SE, Square 5413, Lot 802.

12 CHAIRPERSON HILL: Okay. So this actually -- I
13 don't know how much time this is going to take, but it is
14 going to be a little bit longer than I thought. So we are
15 going to take the next case which is the one that has --
16 how many people if you can all raise your hands again?
17 All right, all right, good. Mob rules today. So we'll
18 you all next.

19 Could you please introduce yourselves for the
20 record?

21 MR. BROWN: Patrick Brown from Greenstein,
22 DeLorme & Luchs on behalf of the applicant.

23 MR. GALLAGHER: I'm Tom Gallagher. I am the
24 applicant.

25 MR. MATTIES: I'm Scott Matties with Wiencek &

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1 Associates Architects.

2 MS. WHITE: Nicole White, principal at Symmetra
3 Design.

4 CHAIRPERSON HILL: Hi, Mr. Brown. I assume
5 you're going to be presenting?

6 MR. BROWN: Yes.

7 CHAIRPERSON HILL: I guess if you can just kind
8 of walk us through what you guys are trying to do and also
9 if you could pay a little bit attention to the nexus as it
10 -- well, I'll you go ahead and argue your points in terms
11 of why we should approve this in terms of how you're
12 meeting the standard. There is a bunch of stuff in here
13 that you're asking for. And let's go with that. And then
14 I guess you said the SMD is here?

15 MR. BROWN: Yes.

16 CHAIRPERSON HILL: Okay, because I don't see an
17 ANC report, so I guess we'll get to that also. Or I
18 didn't at least when I was first reviewing it. But you
19 can go ahead, Mr. Brown.

20 MR. BROWN: How much time, do you know?

21 CHAIRPERSON HILL: We'll go and put 15 minutes
22 on the clock, sir.

23 MR. BROWN: This case has got two related
24 elements to it. The first is the special exception
25 application in the RA-1 zone to build a new largely

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1 affordable housing apartment building. Directly related
2 to that is that building will not occupy the entire
3 square, but related to the construction of that new
4 building is the need to reconfigure the existing lots on
5 the balance of the square to allow those buildings, which
6 again are all affordable housing units, to remain in place
7 while this project, both this building and future
8 buildings which will be part of a PUD progress.

9 So we've asked for variance relief for the
10 existing low rise apartment buildings that will remain in
11 place. The buildings won't change, just -- we'll go
12 through in more detail. The lots that those buildings are
13 located on will change. But again, the physical buildings
14 will not change in their size in relationship to the
15 surrounding neighborhood. And those variances are already
16 in the chart we've provided. I think we can discuss the
17 variance tests, but it's been laid out in quite a bit of
18 detail in the prehearing submission.

19 CHAIRPERSON HILL: Can you just go over the
20 variance test, Mr. Brown, for us?

21 MR. BROWN: Well, in the case of the variances,
22 there's some unique condition of the property. And if
23 you go through and look at these lots, one, they were all
24 nonconforming for one purpose or another, well, for FAR.
25 The buildings were bigger than the lots would permit. The

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1 buildings all date back to the 1940s, pre-'58 zoning
2 regulations. And in order to construct the property, the
3 new affordable housing building, there's a need to create
4 a lot that is sympathetic to that building while
5 respecting the existing buildings that will remain in the
6 interim phase until they are redeveloped as part of a
7 larger PUD that's being planned right now.

8 So each of the properties were nonconforming to
9 begin with. They're unique, so the configurations of the
10 lot were kind of pie shaped, so the properties are
11 occupied by older buildings, pre-'58 zoning regulations.

12 You can't maintain those buildings on the site,
13 again, for affordable housing without granting the
14 variance relief and that would make a hardship for the
15 occupants of the building, as well as the ability to, as
16 we'll discuss further, in a measured way relocate those
17 residents into the new building.

18 One of the commitments the applicant has made
19 which is critical is to guarantee and relocate existing
20 tenants into the new buildings. If you have to tear the
21 buildings down to build a new building, it's very hard to
22 comply with that requirement which is critical to the
23 neighborhood.

24 And at the end of the day, the variances have
25 to do with the lot configurations. But the buildings

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1 aren't getting any bigger. They're not changing and in
2 fact, the variance relief will self-destruct or fade away
3 when those buildings are ultimately replaced as part of
4 the ongoing development project, so that there's no impact
5 on the zoning regulations and the zoning map to maintain
6 these buildings.

7 CHAIRPERSON HILL: And Mr. Brown, what about
8 the ANC?

9 MR. BROWN: Well, you may not have received it,
10 the ANC met on this project on the 20th of February and
11 then had a special meeting to continue the discussion on
12 the 26th. The ANC on the 26th of February voted to
13 support the project subject to certain conditions. The
14 chair, Mr. Holcomb, has submitted a letter into the record
15 dated the 5th of March. I don't know if you've seen it.
16 "Please accept this letter as the formal request of
17 Advisory Neighborhood Commission 7F that the record in the
18 matter, blah, blah, blah, blah, be allowed to remain open
19 14 additional days thus allowing the Commission to be able
20 to exercise great weight in the case. The Commission will
21 submit an official resolution on the matter after its
22 general Commission meeting on March 20, 2018."

23 I'm not privy to why having voted on the 26th
24 to support the project that they don't feel they're able
25 to submit a letter, but certainly people here at this

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1 table and the SMD, Ms. Fletcher, can attest to the fact
2 that they did vote to support the project.

3 We don't object to leaving the record open to
4 allow a letter to come in, but we don't want to delay the
5 hearing and it's not necessary.

6 CHAIRPERSON HILL: Okay. Okay. Does anyone
7 have any questions for the Applicant? Sure, go ahead.

8 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.
9 If I understand this correctly, and maybe I don't, but if
10 I understand this correctly, the reason why you're before
11 us rather than -- as a Zoning Commissioner member, I may
12 see this down the road as part of the PUD. The only
13 reason why you're here before us is because you want to
14 accelerate the process because of the low income housing
15 tax credit funding you're seeking. Is that right?

16 MR. GALLAGHER: Can I? Hi, Tom Gallagher,
17 applicant. So we have a commitment with the residents'
18 association to move ahead expeditiously. And there's an
19 annual, as you are aware, an annual funding cycle for the
20 bulk of the District's support which include tax credits -
21 -

22 COMMISSIONER SHAPIRO: Is this in the spring or
23 in the fall?

24 MR. GALLAGHER: We don't know right now. We
25 understood it was in the spring. The date now is

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1 uncertain. It's been pushed out a little bit, but
2 certainly well beyond the PUD filing. So we're in a
3 position where we are committed to relocating about 350 or
4 so households. The first 60 or so are under construction
5 now. They're for our seniors. This will house another 89
6 of those residents.

7 And in order to keep the prices moving forward,
8 we're trying to get this building positioned so as soon as
9 the NOFO is published, we can go ahead and apply. We need
10 to be properly zoned in order to have that happen.

11 We're also looking at a number of other funding
12 options, focusing on tax credits through the Housing
13 Finance Agency, funding for the central plants which could
14 be done separately. We're looking at a central plant.
15 One of the reasons why the PUD is taking a while is we're
16 looking at a central plant option. We could have four
17 plants on each of the four blocks. So it's a fairly
18 complicated planning process. And we kind of carved this
19 piece out to keep the overall effort when they have
20 relocate people.

21 COMMISSIONER SHAPIRO: So you're looking at 9
22 percent tax credit deal?

23 MR. GALLAGHER: Correct.

24 COMMISSIONER SHAPIRO: And if you don't get
25 funding, if you aren't allocated the 9 percent tax

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1 credits, then you're going to look to 4 percent or are you
2 going to --

3 MR. GALLAGHER: We're going to -- then we would
4 need to take the process where we have that, sir.

5 COMMISSIONER SHAPIRO: Thank you. Thank you,
6 Mr. Chairman.

7 CHAIRPERSON HILL: Okay, I'm going to turn to
8 the Office of Planning real quick and then if we have any
9 other questions.

10 Office of Planning, please?

11 MS. FOTHERGILL: Good afternoon. For the
12 record, I'm Anne Fothergill with the Office of Planning.
13 And this is an unusual case coming to the BZA for the
14 relief request that are fairly unique to this project.
15 The Office of Planning has recommended approval overall of
16 the relief. There are variances for the record, lots for
17 FAR lot occupancy in rear yard and then the special
18 exception that is for new family residential built in the
19 RA-1 zone which is essentially design review for the ward.

20 We did find that the variance test, because of
21 these unique circumstances, the LIHTC funding, the goal to
22 not displace residents, the temporary nature of the relief
23 because a PUD will be coming as part of an overall
24 redevelopment of this site. And while, generally, OP
25 doesn't support an increase in nonconformity of record

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1 lots, this is an unusual situation and it is for the short
2 term. So we did support the variance request for this
3 specific project.

4 In terms of the design review, we overall
5 supported the special exception, but we did raise some
6 concerns with the applicant that are in the staff report.
7 And we asked the applicant to provide some additional
8 information into the record which they did, specifically
9 about the zoning regulations and the Zoning
10 Administrator's concurrence that some of these things were
11 allowable, tying the C of O, tying relief to the C of O,
12 things like that. They were a little unusual.

13 And the Zoning Administrator did concur that
14 the plans do meet the criteria for DCRA and you know, the
15 applicant had to, in terms of design, had to -- the site
16 has a significant grade change. It has a number of
17 Heritage Trees to be retained. They had a number of
18 factors to consider in the design of this building.

19 And so we understand a lot of the rationale
20 behind the design. We did raise some issues about the
21 number of units below grade and the significant area ways
22 that would be created. And we raised the possibility of
23 perhaps putting some of those units in the penthouse which
24 would be allowable in the zone and they have responded
25 which you will see in their presentation or in the record.

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1 And the other concern we raised, a significant
2 concern was about the below-grade entrance to the building
3 which is a pretty -- is not something we generally support
4 for streetscape design and building design and that is --
5 they have an argument, and maybe it was a conscious
6 decision on their part. It had to do with the interior
7 flow of the building, combined with maximizing the number
8 of units. They don't want to lose a unit. And also sight
9 lines to the courtyard because of the factor and the
10 design of this building was security and they consulted
11 with MPD about a number of the design features. So they
12 have responded to our concerns and explained why the
13 design is such that it is.

14 This again is a little unusual because if it
15 was coming in as a PUD perhaps they would be requesting a
16 map and then perhaps it would be a different zone where
17 they would have a higher FAR. So this is a little
18 challenging for us to review in this way and there's
19 already been one building as part of the Meadow Green
20 redevelopment. The applicant mentioned that came through
21 the BZA so this is -- it's part of their phasing of the
22 project and it to do with the funding timing and
23 displacement and all those factors. So we understand that
24 and that's how we got where we are.

25 But it is hard to do this building and design

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1 review knowing that the rest of the property which is 13
2 acres and on five squares will be coming in separately.
3 So it's a little hard to do not knowing what the rest of
4 the project will be.

5 That said, we did go through the criteria of
6 U421 and we recommend approval of the special exception.
7 And DDOT also reviewed this and submitted a report. And
8 I'm happy to answer any questions that you have.

9 CHAIRPERSON HILL: Okay, does the Board have
10 any questions for the Office of Planning?

11 COMMISSIONER SHAPIRO: I do, Mr. Chair.

12 CHAIRPERSON HILL: Please, go ahead.

13 COMMISSIONER SHAPIRO: Thank you. So Ms.
14 Fothergill, in your process, actually, real quickly for
15 the applicant, are you the owner? Are you the contract
16 purchaser or?

17 MR. GALLAGHER: We've owned the property since
18 1997.

19 COMMISSIONER SHAPIRO: So did you do any risk
20 assessment, Ms. Fothergill? You know, if they don't get
21 the tax credits, if they can't figure out the financing,
22 and they essentially there's no way they're moving forward
23 with the project, then what happens? If we have granted
24 this and then they're not moving forward with the PUD,
25 because there's really no way to financially -- it's not a

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1 financially-feasible project?

2 MS. FOTHERGILL: In that case, they would
3 construct a new apartment building if they get the relief
4 today. You're saying if they couldn't construct the
5 building?

6 COMMISSIONER SHAPIRO: Right.

7 MR. GALLAGHER: May I speak to that, Mr.
8 Shapiro?

9 COMMISSIONER SHAPIRO: Sure.

10 MR. GALLAGHER: So this is a little bit of an
11 unusual situation. We have what I have called a
12 generational opportunity. We have 360 occupied residents
13 and have made a deal with them through the TOPA process.
14 We have a comprehensive development being signed. One of
15 the officials of the association is here with us today.

16 The goal is to relocate every resident who
17 wants to stay on the property over time. The buildings
18 are functionally obsolete, built in the '40s. They simply
19 cannot sustain continued existence. They leak. The HVAC
20 is very inadequate.

21 Putting that aside, the commitment is to
22 rehouse folks who live there now and of that population,
23 75 percent or 50 percent are median or less with 150 of
24 them receive rental assistance. So we're really in a
25 tricky place. And if I don't get money from Polly

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1 Donaldson I've got a big problem. I can't build
2 conventionally there for two reasons. One, I have a
3 commitment in place which is written and enforceable and
4 the market isn't there right now.

5 And I think to that end, we're engaged in a
6 deep conversation with both Polly and with DHS about how
7 to make this project come to life for us. So they're very
8 invested to make that happen.

9 COMMISSIONER SHAPIRO: Thank you, Mr. Chairman.

10 CHAIRPERSON HILL: Ms. White?

11 MEMBER WHITE: For the city, this is a
12 priority, this project. Obviously, affordable housing
13 overall is a major deal for this country and for the city.
14 From your perspective, the city is committed to supporting
15 this from start to finish?

16 MR. GALLAGHER: Yes, if I may, we have a really
17 strong relationship both with the Housing Department and
18 DHS. We have 40 formerly homeless households on the
19 property now. We're very proud of our commitment to that
20 program and a total of 150 residents receive rental
21 assistance already. So it's a very unusual situation.
22 We'd like over time to bring in some work force housing,
23 maybe when the market is ready for that, but right now,
24 the commitment is to rehousing folks who live there now
25 who are low and very low income folks.

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1 CHAIRPERSON HILL: Okay, anyone else?

2 MEMBER HART: Yes, Mr. Chairman. How many --
3 you just own units on this block or are you talking about
4 the blocks that are surrounding this? You're throwing out
5 a lot of numbers, but I don't know if you're actually
6 talking about here or you're talking about other places,
7 so I'm trying to get a better understanding of that.

8 MR. GALLAGHER: If you look at the aerial
9 photograph, our company owns all of the property outlined
10 in blue, so it's four entire squares and part of the
11 square all the way to the right of the photo. That square
12 is now under construction as a 60 unit senior building.
13 And the other, the square we're talking about today is the
14 one on the lower left, but we own all of it. It's 160
15 roughly existing units. It's a changing number because
16 we're tearing it down and rebuilding.

17 MEMBER HART: And you're also saying that as
18 you're tearing them down and I think I heard this, you're
19 displacing people to other units that you already own?

20 MR. GALLAGHER: Correct.

21 MEMBER HART: And then bringing them back into
22 the new?

23 MR. GALLAGHER: Yes, yes, sir. That's right.
24 And one thing, you came up the other day and we were
25 meeting at DHS. There's no reapplication requirement

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1 here. This is a commitment to who lives there now. As
2 long as you're not being evicted and don't pay the rent,
3 you're going to be moved to a new unit under a set of
4 pretty strict rental restrictions.

5 MEMBER HART: And a final question, the odd
6 configuration of the parcel that you're trying to create,
7 you have one lot that is kind of to the north on A Street
8 or the lot, one portion of this is kind of on the north.
9 Is that just because you couldn't get to the right amount
10 of lot area? I'm just trying to figure out why the one
11 building, Lot 39 is set back?

12 MR. GALLAGHER: The one building that's at the
13 northeast corner of the lot, that's our somewhat under
14 used community center. It doesn't have any residents in
15 it. So we picked it because we can take it down with less
16 disruption. When we finish the senior building we'll have
17 very nice community space on the property in the building
18 that's at the corner of Minnesota and 35th. So I can give
19 up that building more easily than giving up another eight
20 or units of residential. That's why I didn't pick an
21 adjacent building.

22 MEMBER HART: Okay, so is that going to be then
23 -- you're tearing it down, but are you putting something
24 up on that --

25 MR. GALLAGHER: When the PUD comes in, it will

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1 be, we hope, part of another affordable housing building.
2 It's been like reupholstering a chair while sitting on it.

3 CHAIRPERSON HILL: Is there anyone here from
4 the ANC?

5 MS. FLETCHER: Yes.

6 CHAIRPERSON HILL: Would you like to come
7 forward, please?

8 If you can please introduce yourself?

9 MS. FLETCHER: Yes, I'm Commissioner Carol
10 Fletcher, 7F06.

11 CHAIRPERSON HILL: Hi, Commissioner Fletcher.
12 Thanks for coming down. You get five minutes to speak
13 because you're part of the ANC, and so you can give your
14 testimony whenever you like. Maybe you can lean a little
15 bit more into the microphone.

16 MS. FLETCHER: We had our meeting on the 26th
17 where we approved their project that we're having. I know
18 you received a letter from our chair. I think it wasn't -
19 - we didn't have enough time, so therefore I'm here to
20 just speak on the behalf of 7F, saying that we approve the
21 project.

22 CHAIRPERSON HILL: So you needed to take a
23 vote.

24 MS. FLETCHER: Yes.

25 CHAIRPERSON HILL: Do you remember what the

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1 vote was by any chance?

2 MS. FLETCHER: It was majority.

3 CHAIRPERSON HILL: Unanimous?

4 MS. FLETCHER: Yes, unanimous. I'm sorry.

5 CHAIRPERSON HILL: That's all right. Okay,
6 does anybody have any questions for the Commissioner?

7 MEMBER WHITE: What was the overall opinion
8 about the project specifically and why are you supporting
9 it?

10 MS. FLETCHER: Well, through the whole
11 procedure of the project they did invite us. We saw
12 everything. The unit residents agreed to everything.
13 Some things the residents wanted. They went back and they
14 gave what the residents wanted. They agreed to it. So we
15 were saying that it was better for the community and plus
16 it was good for the residents.

17 MEMBER WHITE: Thank you.

18 CHAIRPERSON HILL: Sure, please, go ahead.

19 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.
20 Ms. Fletcher, if you could just -- if you could give us a
21 little bit of a sense of -- maybe I'm just the one that's
22 missing it, why the Commission wants to keep the record
23 open for 14 days?

24 MS. FLETCHER: I think what happened was that
25 the Commission, he was our new chair. And I just spoke to

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1 him. He really didn't understand why he wanted to leave
2 it open and so I spoke to him and he said lesson learned.
3 So we did approve it, so I was calling him like why did
4 you write this letter? We left it open for 14 days.

5 COMMISSIONER SHAPIRO: So from your
6 perspective, there's nothing of the substance, and I'm
7 asking you as an individual, there's nothing of the
8 substance that really is bubbling up that we need to be
9 hearing about?

10 MS. FLETCHER: No, not at all.

11 COMMISSIONER SHAPIRO: Okay, thank you. Thank
12 you, Commissioner. Thank you, Mr. Chair.

13 CHAIRPERSON HILL: Okay. Thank you,
14 Commissioner. Is there anyone here who would like to
15 speak in support? Please come forward.

16 Did you guys get sworn in? If you could please
17 stand and Mr. Moy, is there anyone else here who hasn't
18 been sworn in yet, if you're planning on testifying,
19 please stand up now and be sworn in. Okay. Okay. Great.
20 Great, wonderful. Mr. Moy, will administer the oath.

21 SECRETARY MOY: Good afternoon. Do you
22 solemnly swear or affirm that the testimony you're about
23 to present is the truth, the whole truth, and nothing but
24 the truth.

25 (Witnesses sworn.)

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1 SECRETARY MOY: You may be considered under
2 oath.

3 CHAIRPERSON HILL: Okay, Commissioner,
4 Fletcher, can you just come back for a second real quick?

5 MS. FLETCHER: Sure.

6 CHAIRPERSON HILL: And just tell me that
7 everything you said before was the truth?

8 (Laughter.)

9 CHAIRPERSON HILL: I'm not joking.

10 MS. FLETCHER: Yes. Everything I was saying
11 was the truth. And I also wanted to added something in
12 reference to what you were saying of the planning.

13 At the last meeting they did have, they did
14 send out letters to all the residents in that area, even
15 private homes, to come out to see the project. So I just
16 wanted to say that.

17 CHAIRPERSON HILL: Okay, great. Thanks,
18 Commissioner. Thanks for coming down.

19 If you guys can please introduce yourselves and
20 you'll each get three minutes, so maybe you want to
21 introduce yourselves and then go ahead and speak.

22 MS. WRIGHT: Hello, how are you? My name is
23 Shirley Thompson Wright. I'm the vice president of the
24 Tenants Association at Meadow Green Court. The Tenants
25 Association and I'm speaking on behalf of the residents,

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1 so I believe I have that right, we're in support of all of
2 this project.

3 We have since day one been going hand in hand
4 with E&G in reference to planning the projects, the likes,
5 the dislikes, the things that we've been dealing with
6 previously and want to see happen in this new project.
7 The living conditions of some of the units and we have
8 maintenance on these things that we want to be having as
9 far as the air conditioning units, heating, the design,
10 the colors, any kind of community events that we would
11 like to see happen as far as having community centers set
12 in different buildings so that we can have different
13 projects for the kids, some job placement for adults who
14 are now seeking employment and would like to be homeowners
15 because hopefully on one of these projects it will be
16 houses for our people, maybe through the project we'll be
17 able to get affordable housing for low income, not low
18 income, but at a lower cost rate coming in as a homeowner.

19 We have had plenty of community meetings and
20 community events, having the community surround and I know
21 personally myself and the president, she's not here, but I
22 had her on text. Like I said, I could speak for her, I do
23 a lot of the legwork as far as getting the letters out to
24 surrounding community, the homeowners and the residents,
25 inviting them, the community and itself, the residents

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1 that live at Meadow Green Court who come out to any of the
2 events that we host.

3 E&G has really been a listening ear to a lot of
4 the things that we needed and we asked for as far as
5 security, moving forward with job development and you
6 know, they really have been, I want to say, on top of
7 getting the things that we really wanted to happen to see
8 in this new project and we're really in support of it.

9 CHAIRPERSON HILL: Okay. Great. Thank you,
10 Ms. Thompson Wright.

11 Sir?

12 MR. BUTLER: Hi, I'm Kevin Butler, resident at
13 Meadow Green Court. My son lives here. We're tired.
14 We're tired of living like we're living right now. We
15 want something new real soon. I'm going to try to keep
16 this as simple as possible.

17 We've been dealing with that for a long time,
18 E&G has stepped up tremendously trying to keep that band-
19 aiding them buildings basically and trying their best to
20 keep those buildings up for us.

21 Our seniors are tired. I can count right now
22 Ms. Mills one of our seniors, 47 years on that property,
23 that I help on a regular. She's tired. She couldn't be
24 here.

25 We just want something new. We want the area

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1 to grow up. They got good schools over there. I'm a
2 volunteer at DPR. I coach football, youth football. You
3 got a lot of good youth over there, a lot of good youth.

4 We had one coming home, that got in the draft.
5 So figure, you all. Tired though. We just want something
6 new. We just want something new. Thank you.

7 CHAIRPERSON HILL: All right, Mr. Butler.
8 Thank you. Does the Board have any questions for the
9 witnesses?

10 Okay, I want to thank you all for coming in.
11 Thank you for taking the time.

12 Is there anybody here wishing to speak in
13 opposition? Okay.

14 SECRETARY MOY: If I may interject?

15 CHAIRPERSON HILL: Sure Mr. Moy.

16 SECRETARY MOY: These are people who are late
17 and missed your opening statement. If they could remember
18 to fill out a witness card.

19 CHAIRPERSON HILL: Oh, yes. Sorry. Hello.
20 Everyone, if you came and just got sworn in and you missed
21 the beginning, you need to fill out witness cards and then
22 pass those witness cards to the transcriber to my right.
23 And you can fill them out after the fact. If you just
24 want to go ahead and push the button there and then you'll
25 get three minutes as a member of the public, and if you

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1 can just introduce yourselves and tell us where you live.

2 MS. DIGGS: Yes, Betty Diggs, I have a property
3 at 3427 Beech Street, SE, which is directly across the
4 street from the planned development.

5 I don't know if I'm in opposition or in
6 ignorance. My problem is that I never got any kind of
7 written notice about what was going on. My first written
8 notice was from the developers referring to this hearing.
9 Subsequent to that, I got an email from Mr. Hokum
10 (phonetic) ANC. That was on the 23rd announcing that
11 there would be a special meeting about this matter. And
12 it was not a regular ANC meeting. It was a meeting that
13 was a special meeting. And that was planned. It didn't
14 even start at the school where they usually meet.

15 On Sunday, the 25th, I got a second notice via
16 email saying that the place had been changed and the new
17 meeting place would be at Marshall Heights.
18 Unfortunately, I didn't read that email in time, so I was
19 not able to attend the meeting.

20 And like I said, there's a lot going on, but as
21 a resident of the area, we would just like to be notified
22 what's going on. I know there's a lot of people have
23 moved out of Meadow Green, but how many vacancies do they
24 have in terms of to replace people, you know, currently,
25 as they will? Do they have to wait until they -- the

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1 center, the place where you said we don't use that often,
2 would you tear that down first because that wouldn't
3 displace anybody and build something there.

4 You know, just tell me what's going on or what
5 impact it's going to have on us. So that's my primary
6 concern. I'm not necessarily in opposition, but I'm
7 saying all of the dealings have been with the residents
8 and not with the neighborhood.

9 CHAIRPERSON HILL: Okay. All right, does
10 anybody have any questions for the witness?

11 Ms. Diggs, I guess my thought is just while
12 you're here with your SMD and the Commissioner, and I
13 guess could possibly answer some questions for you. I
14 guess you're saying you didn't have an opportunity to go
15 to the ANC meeting?

16 MS. DIGGS: No, it was a special meeting and
17 the site was changed the day before the scheduled meeting.

18 CHAIRPERSON HILL: Okay.

19 MS. DIGGS: So the meeting was scheduled on the
20 26th which is on a Monday. I got an email late Sunday
21 night of the new place.

22 CHAIRPERSON HILL: Okay.

23 MS. DIGGS: I just didn't read it in time, but
24 I'm just saying there's been no communication from the
25 Single Member District or from the ANC in terms of what's

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1 been going on.

2 CHAIRPERSON HILL: Okay. All right.

3 MEMBER HART: One quick question, Ms. Diggs,
4 thank you for coming down. Did you actually get a letter
5 from the BZA?

6 MS. DIGGS: I got a notice that anybody who was
7 within 100 feet.

8 MEMBER HART: Two hundred, yes.

9 MS. DIGGS: Of the property, 200 feet of the
10 property got a notice about this hearing today. That's
11 all I got.

12 MEMBER HART: Okay, and you're just saying that
13 subsequent to that you actually haven't had the
14 opportunity to be able to see this so you're kind of not
15 really sure what's going on.

16 MS. DIGGS: Right.

17 MEMBER HART: Have you gotten at least some
18 information about what's happening?

19 MS. DIGGS: Not really. I know it's going to
20 have an impact because of the height. It looks completely
21 different. What I see here looks completely different to
22 what exists there now, although I heard there's no
23 significant difference. To me, I didn't even recognize
24 it.

25 MEMBER HART: We have the applicant next to

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1 you. They can reach out to you and maybe have a
2 conversation with you.

3 MS. DIGGS: I would appreciate that.

4 MEMBER HART: Maybe after this, to be able to
5 show you what it is that they're proposing because it's --

6 MS. DIGGS: Parking. I know that it's going to
7 dwarf -- my building is going to be dwarfed. So I don't
8 know if I'll ever seen the sun again. There are a lot of
9 concerns, it's good to see someone that we're able to talk
10 to and understand what's happening.

11 MEMBER HART: I appreciate you very much for
12 coming down. Thank you.

13 CHAIRPERSON HILL: Okay, Mr. James, if you
14 could just talk to Ms. Diggs, give her your card, maybe
15 have an opportunity to get a little more clarification as
16 to what's going on.

17 So anyone else, Mr. Brown, do you have anything
18 else you'd like to add?

19 MR. BROWN: The record is full. I think we
20 don't need to go over it again. I would point out and
21 just in concluding that this has really been a very
22 successful collaborative process and it involves
23 discussions about this project, the senior building, the
24 PUD.

25 A lot of people have been involved, residents,

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1 neighbors, OP, DDOT, MPD, and so I think that's why we're
2 where we are now and why we've made the changes to the
3 project that you see in what we've submitted now. I think
4 that's the success of this process.

5 CHAIRPERSON HILL: Okay. All right.

6 MR. BROWN: I think that's the context I'd like
7 to close on.

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

10 MEMBER WHITE: If I can jump in, give the chair
11 a little bit of a break. Thanks, Mr. Chair.

12 Well, I think from what I'm hearing, this is a
13 wonderful project. I think you've met the criteria for
14 the variance tests for FAR under F Section 302, lot
15 occupancy, as well as rear yard, as well as special
16 exception requests for new development.

17 Obviously, and I probably have shown my hand a
18 little bit, I think that there's a tremendous need for
19 affordable housing in the city and it appears, based upon
20 the feedback that I've received from the ANC, as well as
21 the neighborhood association representatives, as well as
22 the residents, obviously, it sounds like you may need to
23 do a little bit more communications with some of the
24 individual residents that weren't there in those meetings
25 like Ms. Diggs. But I don't have any concerns, especially

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1 with reviewing the report from the Office of Planning and
2 just the points that she made in terms of how you met the
3 variance test. So I'm perfectly comfortable with the
4 application presented.

5 CHAIRPERSON HILL: Anyone else? I would agree
6 -- oh, Mr. Commissioner?

7 COMMISSIONER SHAPIRO: Thank you. I would
8 agree with the board member, but I do have some concerns
9 about OP's issues around design and the step-down
10 staircase and the number of below-ground units and it
11 would be helpful for me to hear you all address that in
12 some way, shape, or form and react to OP's comments.

13 You know, do you have some flexibility there?
14 Because I agree with some of these concerns. It's fairly
15 unusual design and who even cares about why it needs to be
16 that way or if it does.

17 MR. GALLAGHER: Can I read off and then pass it
18 to Scott if need be. I'll keep my remarks really quick.

19 We went, I think, the extra mile with Ms.
20 Fothergill and her folks at OP because this site offers
21 some real challenges. There is TOPA. When we come back
22 to the PUD, we'll be back with TOPA again to talk about
23 because this site, what's the total fall from Minnesota?
24 About 50 feet?

25 MR. MATTIES: Yes, the overall fall on the

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1 overall property from Minnesota down to the sort of west
2 end of this block is a little more than 50 feet. On this
3 building alone, it's a 20-foot fall.

4 MR. GALLAGHER: We also have about 40 Heritage
5 Trees on the property, so we're trying to snake these
6 buildings through and preserve every one of these Heritage
7 Trees that's in good shape. We'll be not back here, but
8 at the Zoning Commission dealing with these same issues
9 and that's why we spent some time.

10 I asked Scott to look at moving the entrance up
11 the hill. We looked at penthouse units. We've looked at
12 all these options and for this particular building, I
13 think we're kind of out of gas. We need the density
14 increase to make this all work financially.

15 If we're going to pull off -- we've committed
16 to the residents that anybody who lives there now will
17 have rent protections as long as they live there. And
18 basically, it looks like rent control, but in this
19 situation we're moving folks from a 1940s-era building
20 into a hopefully a 2020 building at the same rent and to
21 make that work we need to have extra density so it can
22 bring additional revenue into the property.

23 So am I totally thrilled with what we have?
24 Not totally, but I think we're there for reasons of TOPA,
25 reasons of trees, and reasons of commitment to -- as Ms.

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1 White said, affordable housing for residents who live
2 there now.

3 MEMBER WHITE: Just one other question. I was
4 looking at some of the notes here and OZ staff referred
5 the application to the Deputy Mayor of Education. I guess
6 that's part of one of the conditions that the chair was
7 referring to. And also referred the application to DPR.
8 I don't know if that is a condition that needs to be met,
9 but I just wondered if you had any comment with respect to
10 what the expectation was in terms of the response back?

11 MR. GALLAGHER: We didn't hear anything either
12 from the public schools or DPR. I think they're routinely
13 asked to comment. Our sense is we're not going to be --
14 since we're relocating District residents, the
15 demographics are not going to change much and I think our
16 impact on the schools for this property is de minimis.
17 We're going to come back and revisit this issue clearly at
18 PUD time.

19 CHAIRPERSON HILL: And again, that does bring
20 me -- just for clarity for me, there was the one condition
21 from the Office of Planning prior to the issuance of the
22 Certificate of Occupancy for the new apartment building.
23 The applicant shall demolish two buildings within the new
24 lot area. Yes? Just say yes for me in the microphone.

25 MR. GALLAGHER: Yes. Yes, sir. We are.

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1 CHAIRPERSON HILL: Great. Thanks.

2 MR. GALLAGHER: We are committed to doing that.

3 CHAIRPERSON HILL: Okay. Anybody else? Okay,
4 well, I'm following up with Ms. White's discussion and
5 also the analysis provided by the Office of Planning in
6 terms of how I'm getting to where the standards have been
7 met. So I'm going to make a motion to approve Application
8 19704 as advertised and read by the Secretary including
9 the condition that was just added.

10 MS. GLAZER: Mr. Chair.

11 CHAIRPERSON HILL: And as OAG is now reminding
12 me, which they reminded me a moment ago, before I made
13 this motion again. So in terms of keeping the record open
14 from the letter from the Commissioner, if we did that, it
15 would end up being to where we would have to possibly
16 postpone this deliberation which we just deliberated --

17 (Laughter.)

18 CHAIRPERSON HILL: -- until the letter came in
19 and so based upon the testimony provided by the SMD and
20 the Commissioner that was here, I don't think we
21 necessarily need the letter because as the Commissioner
22 stated, there wasn't really anything in there that was of
23 content. And so I would just go ahead and the Board -- I
24 see you nodding, so I assume that's all right.

25 So we won't leave the record open for the ANC.

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1 So we don't need a letter. And so that being the case
2 again, I'm back to the beginning, which is go ahead and
3 make a motion to approve Application 19704 as captioned
4 and read by the Secretary including the condition that the
5 applicant had agreed to and ask for a second.

6 MEMBER WHITE: Second.

7 CHAIRPERSON HILL: The motion has been made and
8 seconded. All those in favor ayes.

9 (Chorus of ayes.)

10 All those opposed?

11 The motion passes.

12 Mr. Moy?

13 MR. GALLAGHER: Thank you all very much.

14 SECRETARY MOY: Staff would record the vote as
15 5-0-0. On the motion of Chairman Hill to approve the
16 application for the relief being requested along with the
17 one condition as mentioned. Seconding the motion was Ms.
18 White. Also in support, Mr. Shapiro, Vice Chair Hart, and
19 Ms. John. Motion carries.

20 For clarity for the staff, Mr. Chair, with this
21 approval and -- is the Board still allowing the ANC letter
22 into the record?

23 CHAIRPERSON HILL: No. And the reason why was
24 because the Commissioner was here testifying that the
25 letter didn't have any different content. It was just

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1 something the new chair wasn't clear as to how the timing
2 was provided, so the reason why we're not doing it is
3 because it would just then just postpone. We just
4 deliberated and we would have to wait again to deliberate.

5 SECRETARY MOY: I just wanted clarity for the
6 transcript. Thank you, Mr. Chair.

7 CHAIRPERSON HILL: And then can we do a summary
8 order?

9 SECRETARY MOY: Yes, sir.

10 CHAIRPERSON HILL: Okay, great. And so again,
11 thank you all very much.

12 MR. BROWN: Thank you.

13 CHAIRPERSON HILL: Since I know the next case
14 that we are going to hear is going to take a little bit of
15 time, we're going to take a quick two-minute break and
16 then we're going to start on that. Thank you.

17 (Whereupon, the above-entitled matter went off
18 the record at 1:18 p.m. and resumed at 1:28 p.m.)

19 CHAIRPERSON HILL: All right, let's get started
20 again. Before we do, I just want to clarify a couple of
21 things in terms of the order. So we all know what we're
22 going to do next, I believe, which is 19705. Then we are
23 going to go back to the order. So there you go. We're
24 going to go back to the order the way it was.

25 Okay, Mr. Moy, if you could call it, please?

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1 SECRETARY MOY: Thank you, Mr. Chairman. I see
2 everyone is at the table, seated at the table.

3 This is Case Application 19705 of Madison
4 Investments, LLC. This is captioned and advertised for
5 special exception under Subtitle K Section 813 from the
6 height requirements of Subtitle K Section 803.3, and from
7 the lot occupancy requirements of Subtitle K Section
8 804.1. This would construct a mixed use development in
9 the ARTS-3 Zone at premises 2122 14th Street, N.W., Square
10 203, Lots 96, 809, 10, and 1.

11 Mr. Chairman, there's a number of preliminary
12 matters regarding the number of motions. Just to start,
13 there's a party status request in opposition under Exhibit
14 39. There is the applicant's opposition to the request
15 under Exhibit 48. There's a motion to dismiss the
16 application by LDP under Exhibit 40; the applicant's
17 response to the motion to dismiss the application, Exhibit
18 52; and LDP's reply to the applicant's response to dismiss
19 under Exhibit 58. There may be more, but I'll leave it up
20 to the applicants.

21 CHAIRPERSON HILL: Okay, let's see. Could you
22 introduce yourselves, please, for the record?

23 MR. TODT: Jonathan Todt from Drinker Biddle &
24 Reath, LLP.

25 CHAIRPERSON HILL: Could you spell your name?

1 MR. TODT: Sure, J-O-N-A-T-H-A-N, last name,
2 Todt, T-O-D-T.

3 CHAIRPERSON HILL: Okay. And you were saying
4 something after that?

5 MR. TODT: From Drinker Biddle & Reath, LLP on
6 behalf of the Ayalas or the owners of 2118 14th Street.
7 They have authorized Madison Investments to --

8 CHAIRPERSON HILL: Okay, we're getting it. So
9 you're part of the applicant?

10 MR. TODT: Correct.

11 CHAIRPERSON HILL: Okay, I was just seeing if
12 you were party status or who you were. That's all right.

13 Next, please?

14 MS. MOLDENHAUER: Good afternoon, Meridith
15 Moldenhauer representing the applicant, Cozen O'Connor.

16 MR. MADANI: Barry Madani, Madison Investments.

17 CHAIRPERSON HILL: Can you spell your last name
18 for me?

19 MR. MADANI: M-A-D-A-N-I.

20 CHAIRPERSON HILL: M-A-D-A-N-I?

21 MR. MADANI: Yes.

22 CHAIRPERSON HILL: Okay.

23 MR. VARGA: Stephen Varga, Planning Services
24 Director, Cozen O'Connor.

25 CHAIRPERSON HILL: Okay, great. And, sir, I do

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1 appreciate your waiting. That was kind of you. I was
2 going to call you up, but it's always nice when you get
3 called up. Go ahead, please and introduce yourself?

4 MR. JOHNSON: I wasn't sure. Vernon Johnson
5 from Nixon Peabody and I'm here as counsel for LDP
6 Acquisitions, LLC which is the party that's requested
7 party status and has also filed a motion to dismiss which
8 is really a motion to dismiss or to stay this application.

9 CHAIRPERSON HILL: Okay. All right. So let's
10 see. Johnson, is that what you said?

11 MR. JOHNSON: Yes.

12 CHAIRPERSON HILL: Johnson. Okay. So before
13 we get anywhere, so I saw there was a bunch of people also
14 here, I guess, going to testify in support or opposition.
15 I'm just curious for a show of hands. Is anybody here in
16 support? Okay. Is anybody here in opposition? Okay.
17 I'm just trying to get a handle as to where we are. Okay.

18 So we read all the documents, the Board has.
19 And what I just kind of wanted to clarify to the counsel,
20 counsel, the applicants, everybody here, we're just going
21 to calmly go through this. We want to hear everything.
22 We want to hear about the zoning. And I guess what I'm
23 just trying to say is I would really appreciate if we can
24 just kind of calmly go through this and not get really --
25 wait a minute. I'll let you know when it gets really

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1 whatever I think it's going to get.

2 Okay, that being the case, there is a motion on
3 the table first for party status.

4 So Mr. Johnson, could you please explain why we
5 should grant you party status?

6 MR. JOHNSON: Yes, thank you, Mr. Chair. And
7 good afternoon, everybody. As I said, I represent LDP
8 Acquisitions, LLC which is a District of Columbia limited
9 liability company that is a contract purchaser of one of
10 the lots that's the subject of this application, Lot 10 in
11 Square 203 which has the street address of 2118 14th
12 Street, N.W. And the simple reason that LDP is entitled
13 to party status in this proceeding is that it has interest
14 at stake that would be significantly or uniquely affected
15 by this application.

16 This application literally concerns our
17 property in which we own equitable title, hold equitable
18 title. And there is a dispute going on in the Superior
19 Court across the street right now. There was a hearing on
20 Monday where we asked for a temporary restraining order to
21 direct that this application not go forward. That request
22 was denied at the time, but the case is still going on and
23 those issues will be decided.

24 CHAIRPERSON HILL: Right, and Mr. Johnson, the
25 issue is whether or not you guys actually do own the

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1 property.

2 MR. JOHNSON: We don't own record title to the
3 property, but we are a prior contract purchaser with
4 priority over the rights that Madison has.

5 CHAIRPERSON HILL: I'm sorry, but that's what -
6 - I should clarify. That's what is in the court across
7 the street.

8 MR. JOHNSON: Correct. Who ultimately will own
9 it I think will what will be decided.

10 CHAIRPERSON HILL: Exactly.

11 MR. JOHNSON: In that case, we do hold
12 equitable title and by virtue of the fact that we are the
13 first contract purchaser in the order. Madison came along
14 after us and took whatever --

15 CHAIRPERSON HILL: I got it. I got it. We're
16 just trying to -- that is what's getting decided across
17 the street.

18 MR. JOHNSON: Correct. Those issues are
19 obviously for the court to decide.

20 CHAIRPERSON HILL: All right, so Ms.
21 Moldenhauer, your client is in opposition to the party
22 status request. Can you clarify why?

23 MS. MOLDENHAUER: Yes, Your Honor. There are
24 five factors that the Board --

25 CHAIRPERSON HILL: Did you just call me Your

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1 Honor?

2 MS. MOLDENHAUER: I did.

3 CHAIRPERSON HILL: I have not -- I've been
4 promoted.

5 MEMBER HART: Please don't do that.

6 (Laughter.)

7 CHAIRPERSON HILL: I like that, Your Honor.
8 Can we just do that for the rest of this?

9 MS. MOLDENHAUER: Chairman Hill, Chairman Hill,
10 and members of the Board, there are five factors for the
11 Board to consider in granting party status and those five
12 factors specifically relate to concerns that a party
13 status may have about the request being applied for before
14 the Board.

15 In the initial request that I'll give you
16 files, as well as the five-page reply to our opposition,
17 nowhere in there do you hear or do you read anything that
18 is more standard for this Board in regards to we are
19 concerned about the relief being requested.

20 What you did hear though from opposing counsel
21 was that they are requesting relief based on a D.C.
22 Superior case. They are not the current owner now and I
23 have with me counsel for Ayala who is the current owner.
24 LDP is claiming an interest as an equitable owner, a
25 potential contract purchaser on the property.

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1 The Board of Zoning Adjustment regulations go
2 not to contract purchasers, but rather to the owner of the
3 property. And there is many cases, obviously, where there
4 are situations in which a contract purchaser applies to
5 the Board.

6 The regulations do not allow a contract
7 purchaser to file an application in and of themselves.
8 They cannot say here is a copy of my contract. I want to
9 file a BZA case. It falls within the owner's authority to
10 authorize that. The Board has even had instances in which
11 there was a past change in ownership from the Board where
12 there was a situation where ownership did change during
13 the course of a case, and the Office of Zoning even issued
14 a decision indicating that the regulations require that it
15 falls within the ownership.

16 And let me just read this to you. This is from
17 Case 19057. It was a letter to an attorney from Secretary
18 Moy indicating that the question then becomes if ownership
19 of the property changes, does the former owner remain the
20 applicant of record? Upon advice of counsel, the answer
21 would be no, per Section 11 DCMR 3113.3 which states that
22 the owner of the property for which the application is
23 made may file the application with the Board. It follows
24 that only the current owner can be the applicant.

25 CHAIRPERSON HILL: Okay. Okay.

1 MS. MOLDENHAUER: And so --

2 CHAIRPERSON HILL: I understand.

3 MS. MOLDENHAUER: So the issue that Ayala, who
4 has representation of attorney here --

5 CHAIRPERSON HILL: Right.

6 MS. MOLDENHAUER: --- is the current owner.

7 CHAIRPERSON HILL: Again, I understand. I'm
8 just trying to figure out whether these are things that
9 you guys are going to be arguing about across the street
10 again.

11 Okay, so does the Board have any questions for
12 either one of the people at this point? Okay.

13 So when the next thing on the table is the
14 motion to dismiss.

15 MS. GLAZER: Does that mean that you decided?

16 CHAIRPERSON HILL: I haven't done anything yet.

17 MS. GLAZER: Well, I think that you need to
18 continue regarding the request for party status before you
19 get into the motion to dismiss because it could be moot.

20 CHAIRPERSON HILL: Okay.

21 MS. GLAZER: But I'm not telling the Board it
22 should be moot. I'm just saying that I think there might
23 be some other areas on inquiry that you would get into
24 with the parties regarding the request for party status.

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

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1 Go ahead, please, Ms. Glazer.

2 MS. GLAZER: I would suggest you get some
3 factual information from the parties about the status of
4 the Superior Court litigation for one, and what the time
5 table is.

6 CHAIRPERSON HILL: Okay. All right. So again,
7 I was going to move on to that, but I'm not going to. So
8 I suppose we could -- I mean -- well, let me tell you
9 where I am thinking and I'd like to hear the rest of the
10 Board's thoughts, I suppose, right?

11 We read the record. I mean we've all read all
12 the things that are in the record. And so, you know, the
13 fact that whether or not you guys are going to be meaning
14 the party status persons, LDC, LDP, is eventually going to
15 be the owners or not is what's going to get heard over in
16 the courts, right, across the street. And so I don't want
17 to get involved in trying to make that decision now. So I
18 would more comfortable going ahead and approving party
19 status just because then we're covered, right? In case he
20 ends up -- they end up being the person who ends up owning
21 the property or one piece of the property.

22 And then in terms of the application, when we
23 get to talking about party status and their testimony, it
24 would be really just testimony towards the zoning which is
25 in front of us. So that's kind of where I am.

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1 Does the Board have any thoughts?

2 COMMISSIONER SHAPIRO: Mr. Chair, respectfully,
3 I don't come to the same conclusion. I mean for me, as I
4 read the arguments on both sides, strictly related to this
5 one issue, the preliminary matter, the application for
6 party status, I don't see how they meet the qualification.
7 I don't know why we would grant them party status. I
8 agree with the argument that they are just not qualified
9 in this way.

10 MEMBER WHITE: Well, they could, I guess, if
11 the Superior Court makes a finding in their favor,
12 correct? That's a rhetorical question, but you know, I
13 guess where I am right now is that there could be the
14 potential that they would need to be incorporated into the
15 process if the court rules in their favor. But the
16 problem is is that I have no idea what the timing is on
17 any of this. So maybe just to cover all bases we can at
18 least --

19 CHAIRPERSON HILL: I'm sorry, OAG had a comment
20 or a thought?

21 MS. GLAZER: Well, I think Board Member White
22 is picking up on my suggestion to find out about the
23 status of the Superior Court legislation, litigation,
24 excuse me, in order to see if a stay might be appropriate.
25 But to the merits of the question, I think one thing the

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1 Board needs to examine is the authorization by the owner
2 and there are items in the record that relate to that,
3 factual issues that are before the Board, that the Board
4 really needs to decide. I believe the applicant has filed
5 affidavits and authorizations from owners of the different
6 lots giving authorization to Madison. And so that's a
7 factual issue that is really before the Board right now.

8 CHAIRPERSON HILL: Well, wait, hold on a
9 moment. Mr. Hart?

10 MEMBER HART: Yes, I think I'd like to
11 understand what the time line is on the lawsuit as well.
12 I've looked at the letter of authorization which basically
13 has what is it, Exhibit 10, which basically goes through
14 each of the properties and each of the properties have a
15 letter that is the owner that gives Madison the authority
16 to speak on its behalf and we have a lawyer, the attorney
17 here for the owner of this one property.

18 I understand that the party status -- the party
19 that brought the party status motion has a dispute on
20 that, but right now, what's before us is there are letters
21 of authorization from the owner regardless if that's in
22 dispute or not, they are letters of authorization and that
23 tells us that the applicant has gotten the authority from
24 the owners to be able to proceed with this. If that
25 changes, then that changes, but it just seems like we have

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1 some information on there regarding that that satisfy, I
2 believe, our process.

3 The one thing I do want to understand though is
4 the -- how long this lawsuit is expected to take place.
5 So if we could hear a little bit more information.

6 MS. MOLDENHAUER: Could I?

7 CHAIRPERSON HILL: One second, one second. So
8 Mr. Johnson, I guess you're the person who came forward
9 with the lawsuit? The question, I guess, is what's the
10 status of the lawsuit right now or where is it in the
11 courts?

12 MR. JOHNSON: So we originally filed the
13 lawsuit in the fall against the Ayalas, who are the record
14 owners of the property. And Madison Investments which is
15 the applicant here, the record owners are not the
16 applicant.

17 Madison Investments has just sought and been
18 granted leave to intervene in the case. So they're now a
19 party to the case which they were not before. So now
20 everybody who is interested --

21 CHAIRPERSON HILL: Okay, so we read everything.
22 We totally did, right? So the time line, where are you in
23 the process with the courts?

24 MR. JOHNSON: You know, it's in court, so it's
25 always hard to predict exactly when and how it will be

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1 resolved with finality and then there are rights of
2 appeal. I mean it could easily take a year or more to
3 resolve a dispute like this and then there could be
4 appeals after that.

5 So in terms of -- I don't know what everybody
6 else's view is, but I don't know that you can really
7 predict how long it might take, but it could take a long
8 time.

9 CHAIRPERSON HILL: Okay, did you get your
10 question answered, Mr. Hart?

11 MEMBER HART: It's going to take a while.

12 CHAIRPERSON HILL: Right, so you got your
13 question answered. Did anybody have any other questions?

14 COMMISSIONER SHAPIRO: I may be repeating
15 myself, but and also to Board Member White's question
16 about what would happen if --- what the courts decide.
17 I'm not sure that's relevant to what's before us right
18 now. What's before us right now is simply this question
19 of whether they should be granted party status. And I
20 don't see the grounds by which they're qualified to meet
21 that requirement.

22 Now it is true that if the courts in some way
23 decide that they have partial ownership, we don't know
24 what's going to happen. We don't know how long it's going
25 to happen. I would imagine that this deal, as we know it,

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1 would be quite dead. But I'm not even sure that's
2 relevant to what we're taking up. We're only looking at
3 whether they're qualified to meet party status and I don't
4 see how they are regardless of what going on in the
5 courts.

6 CHAIRPERSON HILL: Ms. White?

7 MEMBER WHITE: My only comment would be that I
8 would have concerns with prejudice that could be created
9 for the applicant if we try to wait until the courts made
10 a decision, because that seems to be somewhat unreasonable
11 because these cases can take a year or two. So I don't
12 know. I don't know if there's any precedent, in this kind
13 of situation, for waiting for a ruling from Superior Court
14 that can take a long time.

15 MS. MOLDENHAUER: Can I address that?

16 CHAIRPERSON HILL: So just wait a second. So
17 as far as the party status, were you moved by anything
18 that either of our colleagues said?

19 MEMBER WHITE: Was I moved by it?

20 (Laughter.)

21 CHAIRPERSON HILL: Yes, meaning do you still --

22 COMMISSIONER SHAPIRO: Was there any emotional
23 impact?

24 MEMBER WHITE: Did it bring tears to my eyes?

25 CHAIRPERSON HILL: It seemed as though you were

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1 in favor of granting party status and then both our
2 colleagues, Mr. Hart and --

3 MEMBER WHITE: Yes, it moved me a little bit.
4 I think right now I'm more inclined not to go ahead with
5 party status because I don't think there is standing at
6 this point.

7 CHAIRPERSON HILL: Okay. Then okay, Ms.
8 Moldenhauer, it looks like you're getting your way, so I
9 don't understand what you have to say?

10 MS. MOLDENHAUER: I'd like obviously to make
11 sure that the record is full and complete on this issue
12 and I'd like to address two questions.

13 CHAIRPERSON HILL: Two questions. Okay.

14 MS. MOLDENHAUER: Two issues that were raised.
15 One in a case before the Board, Board Member White's
16 question. Ms. Goodman with Case 17353A, it was a
17 situation in which there were party status individuals in
18 a case that had on-going litigation as to whether or not
19 800 lots could be subdivided and this Board asked similar
20 questions about the timing of that litigation and then
21 ended up denying that ground and denying a request to
22 continue because it would prejudice the application and
23 was not specifically relevant to the jurisdiction or the
24 case before them.

25 The second thing would be that answering

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1 Commissioner Shapiro's question is that in regards to what
2 would occur even if there was a situation in which the
3 D.C. Superior Court ruled against our clients which we do
4 not believe is likely. This case is still a situation in
5 which the owner, the Ayalas, who has counsel here, provide
6 authorization. And counsel here could testify, confirm,
7 that the contract, even if it is still alive and valid,
8 would not limit them from authorizing this case from going
9 forward and that's really the meats of what this Board
10 should evaluate this on.

11 CHAIRPERSON HILL: Mr. Johnson, you had a
12 comment?

13 MR. JOHNSON: No, I just think that the idea
14 that somebody who holds equitable title to the property
15 has no interest, I mean I would take that up to the D.C.
16 Court of Appeals in a heartbeat. That just can't be
17 right. We have a right to be a party in this proceeding
18 because our interests are being implicated by what's going
19 on.

20 MS. GLAZER: Mr. Chair, I don't know if the
21 Board would like to call a brief recess to discuss this
22 matter?

23 COMMISSIONER SHAPIRO: Mr. Chair, I think OAG
24 would like us to call a brief recess.

25 (Laughter.)

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1 CHAIRPERSON HILL: That much is relatively
2 accurate. Okay, then we will go ahead and I forget how --
3 we're going to have an emergency meeting.

4 MS. GLAZER: Closed.

5 CHAIRPERSON HILL: I am going to make a motion
6 to have a closed emergency meeting, so we can get some
7 clarity from OAG. And I believe it has to be a roll call
8 vote, so I've made the motion.

9 COMMISSIONER SHAPIRO: Second.

10 CHAIRPERSON HILL: So the motion has been
11 seconded.

12 Mr. Moy, will you please take a roll call vote?

13 SECRETARY MOY: Yes, when I call a Board
14 Member's name, if you would be kind enough to reply with a
15 yes or a no.

16 Mr. Peter Shapiro?

17 COMMISSIONER SHAPIRO: Yes.

18 SECRETARY MOY: Ms. Lesyllee White?

19 MEMBER WHITE: Yes.

20 SECRETARY MOY: Chairman Hill.

21 CHAIRPERSON HILL: Yes.

22 SECRETARY MOY: Vice Chair Hart?

23 MEMBER HART: Yes.

24 SECRETARY MOY: We have a board member not
25 present. The motion carries.

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1 CHAIRPERSON HILL: All right, so let's adjourn
2 to the back room for a few minutes. Thank you.

3 (Whereupon, the above-entitled matter went off
4 the record at 1:52 p.m. and resumed at 2:16 p.m.)

5 CHAIRPERSON HILL: Okay, we're back. Mr. Moy
6 we don't have to do any introductions again or anything
7 like that, right? All right, I'd like to say the jury's
8 back with a verdict, but it's not. So let's see, Mr.
9 Johnson, correct? So Mr. Johnson, if you could just give
10 a little bit of a summary as to what, if you were to be
11 granted party status, what exactly you would be talking
12 about.

13 MR. JOHNSON: Well, first and foremost, we'd be
14 pursuing our motion to dismiss and our motion for a stay
15 which I think as a party we'd be able to file a motion and
16 pursue a motion in this proceeding. And that's really our
17 goal is to say that this shouldn't even be going forward.
18 It should either be dismissed or it should be stayed until
19 we can determine the rights of the parties and whether
20 they even have the right to do this.

21 CHAIRPERSON HILL: So your whole argument would
22 just be about whether or not to dismiss this. I'm saying
23 that's why you want party status.

24 MR. JOHNSON: Right.

25 VICE CHAIR HART: And who will you have as --

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1 who are you going to bring to testify to talk about it?

2 MR. JOHNSON: Well, we listed as a witness Mr.
3 Augur who's a representative of LDP. I don't know whether
4 it'll be necessary to call a witness on a motion to
5 dismiss. I think we've made the motion and it's really an
6 argument does the Board -- it is appropriate for you to
7 move forward and use your resources to review this matter
8 when there's a dispute across the street about whether
9 this is even properly before you.

10 CHAIRPERSON HILL: But your argument for the
11 motion to dismiss will be that you're an owner.

12 MR. JOHNSON: Well we hold the superior right
13 and interest in part of the affected property than does
14 Madison Investments. That's the argument.

15 CHAIRPERSON HILL: About ownership. I mean the
16 argument's going to be about ownership.

17 MR. JOHNSON: We hold equitable title.

18 CHAIRPERSON HILL: So it's all going to be
19 about ownership. I'm just trying to understand. Your
20 argument is going to be about ownership.

21 MR. JOHNSON: I mean I'm not sure ownership.
22 We hold equitable title, and across the street the court
23 will determine ownership.

24 CHAIRPERSON HILL: Okay, I understand. The
25 opportunity to purchase the property. Okay.

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1 MEMBER WHITE: But you can only submit an
2 application if you're actually an owner, correct?

3 MR. JOHNSON: Well if that's the case, the
4 owner's not here because Madison Investments is the
5 applicant.

6 VICE CHAIR HART: Or you were authorized or
7 given letters of authorization, which we have in Exhibit
8 10 which is what I discussed earlier. They are letters
9 that actually give Madison the ability to do that. I
10 understand that you are disputing that, but I'm telling
11 you that we actually have documentation that says that. I
12 understand that you're saying that you --

13 MR. JOHNSON: They didn't have the right to
14 give it. They didn't have the right to give it to
15 somebody else.

16 VICE CHAIR HART: I'm just telling you what we
17 have --

18 MR. JOHNSON: No, I understand, but --

19 VICE CHAIR HART: -- in our -- whether or not,
20 that's not up for us to determine. What we are looking at
21 is who is the owner and who has submitted authorization
22 for whomever the applicant to come before us. And when
23 I'm looking at it, it looks like that's what has been
24 given. So I understand that you dispute that, but that's
25 what you're looking at right now.

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1 CHAIRPERSON HILL: Mr. Shapiro?

2 COMMISSIONER SHAPIRO: Building on what the
3 Vice Chair just said, you know, this issue of whether or
4 not the letters of authorization are valid. You know, we
5 have our procedures in place. We have lots of precedent
6 for this. You know this goes a little bit directly toward
7 arguing the merits of this request, but I'm just not
8 seeing how -- I think we're subverting our own process if
9 we allow this request for party status.

10 Our job is not to take over the role of the
11 courts in this regard. If there's a battle over
12 ownership, or what did you say Mr. Johnson, equitable?

13 MR. JOHNSON: Equitable title. It's the
14 interest that our client holds.

15 COMMISSIONER SHAPIRO: Equitable title, the
16 courts can make that determination. But we're -- our job
17 is to address the zoning issues, and these are not zoning
18 issues before us.

19 CHAIRPERSON HILL: Okay, okay.

20 COMMISSIONER SHAPIRO: And there's precedent
21 for that. There's precedent that counsel for the
22 applicant is citing in the Goodman case. Our own counsel
23 mentioned a case and Ms. Glazer I can't remember the
24 specific case that you were bringing to our attention as
25 well where there was kind of a similar issue, but there

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1 were also zoning matters that were referred to in that
2 case. It wasn't just an ownership issue. I don't
3 remember the case.

4 MS. GLAZER: That was the Fitzgerald case.
5 That was a case where there was a dispute about ownership
6 from neighbors, but they also being neighbors had zoning
7 issues that were relevant.

8 COMMISSIONER SHAPIRO: Right, and it just feels
9 to us that, you know, that's the precedent for us.

10 CHAIRPERSON HILL: All right, okay. So it
11 sounds like the Board has made a decision here. So Mr.
12 Johnson we're going to deny you party status, and then it
13 does make again the motion to dismiss moot. And so when
14 the time does come however to speak in opposition, you
15 know, we'll hear a little bit more from you. And so there
16 you go. Would you like to comment to the Board? Okay.

17 MR. JOHNSON: I understand.

18 CHAIRPERSON HILL: Thank you sir. All right,
19 so okay, we're back here to your actual case. So Ms.
20 Moldenhauer, I assume you are going to be presenting?

21 MS. MOLDENHAUER: Yes we will, so we will be
22 requesting 60 minutes.

23 CHAIRPERSON HILL: Pardon me?

24 MS. MOLDENHAUER: 60 minutes. It's a big
25 project. We want to make sure that we are fully

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1 presenting all of the varying aspects of it. We will try
2 to obviously keep it as tight as possible, but we want to
3 make sure that the Board hears all the different aspects
4 of the case.

5 CHAIRPERSON HILL: Okay.

6 COMMISSIONER SHAPIRO: How about 15 minutes and
7 allow us space for questions as it goes along?

8 CHAIRPERSON HILL: Okay, so just again for the
9 record, we've denied party status. For the record then
10 therefore the motion to dismiss is moot. And now back
11 here to the applicant, I mean we still have to hear from
12 people. There's another case after this that's also
13 lengthy, and I think an hour is pretty long. Like I'm
14 trying to figure out how much time you really kind of
15 need. Really kind of need, like distill it down to where
16 we can hear all the key points and issues. And do you
17 think 40 minutes will be okay for you?

18 MS. MOLDENHAUER: We will try to do it in 40
19 minutes. You know we want to make sure. Obviously,
20 there's been indication in the record that there may be
21 questions about appeals. We want to make sure the record
22 is full. We know that the application so far is full, but
23 we do want to also address the 45-degree issue. That was
24 a question of OP, and so we want to make sure we address
25 that.

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1 CHAIRPERSON HILL: Okay. So let's start with
2 40 minutes, and I appreciate your asking for an hour. But
3 again, yes, so there's time constraints up here also that
4 I'm trying to work with, so we'll see how it goes. So go
5 ahead and begin whenever you like.

6 MS. MOLDENHAUER: I'll wait a moment and ask
7 all of our witnesses to come forward. We have additional
8 witnesses.

9 CHAIRPERSON HILL: Okay, if the people who just
10 came to the table, if you could introduce yourselves
11 please?

12 MR. BERTSCHINGER: My name is Tim Bertschinger
13 with Perkins Eastman DC.

14 CHAIRPERSON HILL: Please spell.

15 MR. BERTSCHINGER: B as in Bravo. B-E-R-T-S-C-
16 H-I-N-G-E-R. It's Swiss.

17 CHAIRPERSON HILL: And how do you spell it?

18 MR. BERTSCHINGER: Bertschinger.

19 CHAIRPERSON HILL: Oh, Bertschinger. Okay.

20 MR. BELL: Matthew Bell, Principal with Perkins
21 Eastman DC. That's spelled Bell.

22 CHAIRPERSON HILL: Yeah, I was going to say --

23 MS. PALMER: Ryan Palmer, Chief External
24 Relations Officer, Martha's Table.

25 CHAIRPERSON HILL: Okay, great.

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1 MS. EIG: Emily Eig with EHC Traceries. E-I-G.

2 CHAIRPERSON HILL: Okay, great. Thanks. Let's
3 see, and you're all experts in what? Or Ms. Moldenhauer,
4 do you want to tell us or do you want them to tell us?

5 MS. MOLDENHAUER: Yes, so we would be looking
6 to admit Ms. Eig as an expert in historic preservation,
7 and her resume is in the record. Mr. Varga is an expert
8 in planning and land use. And then we also have here for
9 questioning, not part of our case-in-chief, we have Mr.
10 Erwin Andres from Gorove-Slade who's an expert in traffic
11 if the Board has questions about that.

12 CHAIRPERSON HILL: Okay. I think both Ms. Eig
13 and Mr. Varga have been admitted as experts before, and so
14 okay. And the other people here again, I'm sorry, that
15 are sitting at the table?

16 MS. MOLDENHAUER: Obviously they are our
17 architects. We felt that we didn't need to qualify our
18 architects as --

19 CHAIRPERSON HILL: I just didn't know what they
20 were. They didn't say what they were.

21 MR. BELL: We're just architects.

22 CHAIRPERSON HILL: Okay, you two are architects
23 -- all three of you are architects?

24 MR. BELL: Us two. She's from Martha's Table.

25 CHAIRPERSON HILL: Okay. I missed that part,

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1 sorry. All right, so we're back at the 40 minutes.

2 MS. MOLDENHAUER: I believe there are one or
3 two individuals that have not been sworn in.

4 CHAIRPERSON HILL: Okay, if anybody didn't get
5 sworn in, if you could please stand and take the oath
6 administered by the Secretary to my left, Mr. Moy.

7 SECRETARY MOY: Do you solemnly swear or affirm
8 that the testimony you are about to present at the
9 proceeding is the truth, the whole truth and nothing but
10 the truth?

11 (The witnesses are sworn in.)

12 CHAIRPERSON HILL: Okay. That person had to
13 move around the thing to actually look at -- apparently it
14 works better if you look at Mr. Moy when swearing in.
15 There's some power associated with line of sight. It's a
16 powerful thing. I'm sorry. Go ahead, 40 minutes.

17 MS. MOLDENHAUER: Thank you very much. We'll
18 just jump right into our presentation. The property is
19 located here, is identified in red hashes. It is the
20 ARTS-3 Zone and it is a full block from 14th of V and W.

21 As you can see here, the property is both
22 located in the Historic District as well as in the ARTS-3
23 overlay, and this just shows both of those on this slide.
24 We've already gone through our team, but this just
25 identifies as individuals that we both have present as

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1 well as individuals in the audience that might be able to
2 testify.

3 I will now turn it over to Martha's Table to
4 just give a brief statement and inflection.

5 MS. PALMER: Thank you. Good morning Chairman
6 Hill or Your Honor if you prefer. Good afternoon members
7 of the Board. My name is Ryan Palmer. I'm Chief External
8 Relations Officer with Martha's Table.

9 I'm here today because Martha's Table is the
10 owner of 2114 14th Street NW and 2120 14th Street NW,
11 which are part of Madison Investments, LLC's application
12 to the Board of Zoning Adjustment. Martha's Table signed
13 a binding purchase and sale contract to sell the 14th
14 Street properties to Madison Investments.

15 Before I get into more detail on the sale, I
16 just wanted to offer some brief background about our
17 organization. At Martha's Table we believe that every
18 child deserves the opportunity for their brightest future
19 and a deeply engaged family community committed to their
20 success.

21 As a non-profit for over 38 years, we've
22 supported the Washington D.C. community by increasing
23 access to quality education programs, healthy food and
24 family supports. This year, we're turning the page on our
25 long history on 14th Street as we prepare to move to two

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1 new locations. Our new headquarters in the Fort Stanton
2 Hills area of Ward 8, which will open in the summer, and a
3 satellite location at the Maycroft in Columbia Heights set
4 to open this fall.

5 The move to Ward 8 represents a return to our
6 founding vision as a community-based organization standing
7 directly with families and located in a neighborhood in
8 need of our support. Between the new headquarters and our
9 continued presence in Ward 1, we will increase enrollment
10 in our education and food programs to over 40 percent to
11 reach nearly 15,000 families every month and deepen our
12 impact in every area.

13 Most importantly, proceeds from the sale of our
14 14th Street properties to Madison Investments will allow
15 us to provide continued services for the Ward 1 community,
16 innovatively increase community impact east of the
17 Anacostia River, and stabilize the long-term financial
18 health of our organization.

19 In 2017, Martha's Table had an open public
20 bidding process with a right to purchase the 14th Street
21 properties, and after the close of the bid period we
22 analyzed the bids and ultimately selected Madison
23 Investments. As I mentioned earlier, we entered into a
24 purchase and sale contract with Madison Investments in May
25 of 2017 for both 2114 and 2120 14th Street NW.

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1 As it relates to this zoning case, Martha's
2 Table authorized Madison as the contract purchaser and
3 Martha's Table's agent to apply to the BZA for zoning
4 relief as to the 14th Street properties. We have been
5 working closely with Madison Investments since the bidding
6 process, and we have a vested interest in ensuring that
7 the zoning case proceeds without delay.

8 As such, on behalf of Martha's Table, we
9 respectfully request that the Board move forward on this
10 application and consider the merits of Madison
11 Investment's case. Thank you.

12 MS. MOLDENHAUER: At this point I'll turn it
13 over to Mr. Madani to walk through the case from Madison.

14 MR. MADANI: Good afternoon. I was going to
15 call you excellency just to be different.

16 CHAIRPERSON HILL: Okay, okay, I'm sorry I made
17 the joke.

18 MR. MADANI: Chairman Hill, members of the
19 Board, my name is Barry Madani, I'm a principal together
20 with my brother Sia, of Madison Investments. We are a
21 family-owned business based in the District.

22 We have completed several projects in and
23 around the 14th Street corridor. Madison is the purchaser
24 of the properties in said application. Obviously Martha's
25 Table, as you know, is the current resident there and the

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1 seller.

2 I'll talk a little bit about the project. We
3 are excited about the visual we created for this site.
4 It's going to be a truly mixed-use property with a
5 residential component, retail, office, and some space for
6 the arts and entertainment.

7 We have with Perkins Eastman worked to create a
8 pedestrian-friendly design highlighting 14th Street.
9 Design is also going to activate and enliven the alley for
10 pedestrians' retail. We have an office lobby and a second
11 entrance to residences there as well.

12 We'll obviously be meeting the inclusionary
13 zoning for IZ and affordable housing. I'll talk a little
14 bit about the arts component as well. We're
15 incorporating, obviously being in an ARTS overlay zone, we
16 are incorporating several arts elements which is in the
17 spirits of the zone.

18 You're going to hear later from the architects
19 obviously and the Historic Preservation experts of the
20 design elements that contribute the intents of the ARTS
21 Zone, but I'm just going to highlight a few other points
22 that are relevant to the project.

23 Storefronts along the alley are going to be
24 ideal for the arts and creative-type uses. We've talked
25 with some of the Commissioners about how we can engage the

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1 arts community to come in and use those. We're hoping to
2 attract tenants for that space, and that's our intent.

3 We're exploring the concept of public park
4 installations along the sidewalk, although this will
5 obviously require us to work with DDOT and the Public
6 Space Committee.

7 We are incorporating visual art screens on the
8 first level. We're working with a company, a local
9 company, that's been created here called Number F. We're
10 actually previewing the system which streams live visual
11 art to screens within the lobby, and we can program it to
12 basically collect and display art from local artists.

13 The top of the historic building is also very
14 unique space that you'll see from the design, and our
15 intent is to use that for arts and entertainment space.
16 And we kind of envision hosting sort of sculpture
17 exhibitions and other kinds of art exhibitions that can be
18 in place and the public can come and view those.

19 I'll talk a little bit about community outreach
20 we've done. We've been open and transparent with the
21 community. It's always our goal when we do a development.
22 We have obtained 36 letters of support, many of those from
23 residents in close proximity. We've held seven public
24 meetings with neighborhood community members to discuss
25 the project.

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1 We kicked off outreach on January 16 with an
2 informational presentation to the ZPD, the subcommittee on
3 zoning, planning and development. The subcommittee had
4 some additional questions and comments that we welcomed
5 and made some adjustments to the design.

6 On January 31st, we held our first meeting at
7 the John Wesley AME Zion Church and introduced the
8 community to Madison and the project plans. We fliered
9 many of the nearby local buildings and residences, and the
10 meeting was relatively well-attended.

11 On February 7th, we met separately with the
12 owners at -- tenants and owners at Union Row, which is the
13 building directly across the street from us, for a couple
14 of hours. Invitations were also extended to the Meridian
15 Hill Neighborhood Association and owners and tenants from
16 the Luna Condo which is directly adjacent to the site
17 across the street from W. The meeting was well-attended,
18 and we answered a lot of questions from the audience.

19 On February 20th, we attended the second
20 subcommittee meeting which the subcommittee voted
21 unanimously to support all three areas of our relief that
22 we are requesting.

23 On February 20th we also met with the Meridian
24 Hill Neighborhood Association for a couple of hours to
25 answer their questions.

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1 On February 26th we met with the owners and
2 tenants from the Hamilton Condo which is the building
3 directly across the alley and our most adjacent neighbor.
4 Our project was well-received by the owners and tenants
5 from the Hamilton. Most of their questions and concerns
6 were related to trash, loading and garage access.

7 Those in attendance didn't have any issue with
8 the building height or the 45-degree plane requirement. I
9 mention this because Hamilton is also the building that's
10 going to be the most affected by this building
11 particularly when it comes to air and light. Many
12 residents from the Hamilton were very supportive of our
13 project and showed up to voice their support of the ANC.

14 On March 1st we attended the full ANC
15 obviously, and the ANC voted unanimously with one
16 abstention to support two of the three areas of relief,
17 the lower occupancy and the total height.

18 Now even though we received unanimous support
19 for all three areas of relief at the subcommittee, the
20 head of the subcommittee said that he's going to follow
21 the OP's recommendation to deny the 45-degree plane relief
22 and the ANC in suit voted to adopt his recommendation.

23 So we look forward to, you know, working and
24 continuing to work with the community on this project.
25 We're excited to get this project approved and under

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1 construction. We think it's going to be a huge benefit to
2 the neighborhood and the greater Washington area. Thank
3 you.

4 MS. MOLDENHAUER: I won't take that long as Mr.
5 Madani indicated 36 letters of support, and DDOT has no
6 objection that is in the record. But there are obviously
7 a lot of comments in the record about different issues.
8 We'll just indicate that those are issues with the public
9 space committee and will be obviously attending the public
10 space committee to address those and the purview in April.
11 I'll now turn it over to Ms. Eig.

12 MS. EIG: Good afternoon. Emily Eig. Briefly,
13 we conducted extensive research on the buildings. These
14 buildings are not your typically historic buildings in
15 that they have been altered and repaired and altered
16 again, and had portions demolished over the years.

17 Major changes that took place were after the
18 1970s before the Historic District was designated and
19 Martha's Table moved in and rehabbed buildings that were
20 in very poor condition. But as a result, a lot of
21 historic fabric was removed in order to allow them to
22 function.

23 We've worked with the HPO to determine the
24 contributing and non-contributing buildings, and what
25 lacked or do not lack historic integrity. And we believe

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1 that this proposed design is an excellent balance between
2 preservation, planning, goals and zoning regulations.

3 I'd like to just briefly -- we have four
4 buildings that are being retained. 2108 and 2110 have only
5 really have facades. Behind them is the Martha's Table
6 construction that was done in the 80s. 2114 and 2116 have
7 been altered many times, but it is intact in its exterior
8 and its floorplate. And 2124 is also its exterior wall
9 and its floorplate, and part of its exterior, the front
10 facade. But we have actually drawings for two of the
11 buildings that will allow us to re-create their
12 storefronts or some variation thereof.

13 This project is unusual in that it has
14 buildings that go all the way back to the alley that have
15 historic significance rather than just being add-ons, and
16 not the entire alley frontage, but the building that is
17 one in next to provisions 2102, and at 2114 and 2116.
18 This has a very exciting component of the project which is
19 to reactivate the alley and to rehabilitate the historic
20 facades that exist there.

21 The last thing just to give you an idea, the
22 colors indicate that green is non-contributing to the
23 Historic District. If we go from left to right, first
24 there is no building at all under the one that's closest
25 to B Street, and the other buildings are very much out and

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1 have been identified formally.

2 Working with HPO, we were able to determine
3 that the buildings that are in red lack historic integrity
4 now in their re-evaluation. And that the ones that have
5 historic integrity, you'll see that there's the small
6 portion of blue that is the facade portion. That's what's
7 existing there. We're not removing anything. That's
8 historic. That's all there is. The large big piece of
9 blue which is the central piece, and then this small
10 building that is next to what is a gas station, and they
11 will be retained as shown here. So that is the end of my
12 green report.

13 VICE CHAIR HART: Ms. Eig, one quick question,
14 just out of curiosity. There's one full building that
15 goes from the alley to 14th Street that has historic
16 integrity, but there's a little line that goes to the
17 south of that?

18 MS. EIG: In the center that -- the one that's
19 closest to Provisions?

20 VICE CHAIR HART: The one that she's circling
21 here.

22 MS. MOLDENHAUER: I'm circling it right now.

23 MS. EIG: Oh, that's because there were
24 actually two buildings that came in together, and the only
25 thing that's left is that historic wall. That's it.

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1 These are one of the most, I use the professional word
2 mish-mash, but there are many different pieces that were
3 put together if they had something that was going to
4 stand. So we have a second floor that has a piece of
5 historic wall, but beneath it is all concrete being used.
6 And that particular wall is intact, so we did look at
7 every single wall.

8 VICE CHAIR HART: And the southernmost
9 building, are the walls also on that building?

10 MS. EIG: I'm sorry, which one?

11 VICE CHAIR HART: The southernmost building,
12 closest to D Street.

13 MS. EIG: Oh that one.

14 VICE CHAIR HART: Those walls look like they're
15 purple too, are they historic?

16 MS. EIG: They are. They are historic walls,
17 but the front of this has been completely stripped of any
18 ornament whatsoever, and that's when working with HPO that
19 they felt that it did not have integrity and should not be
20 considered contributing anymore.

21 VICE CHAIR HART: Thank you.

22 MS. MOLDENHAUER: Sure please, go ahead.

23 Question Ms. White?

24 MEMBER WHITE: Just a quick question. Looking
25 at that slide, where was Martha's Table? Where did you

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1 exist? Were you a part of that -- this line of buildings
2 there?

3 MS. PALMER: If I may, we are most of these
4 buildings, but I'm pretty sure this green, that's us, I
5 think where our playground is?

6 MS. EIG: Yeah, the playground.

7 MS. EIG: The orange is us, and the orange is
8 not us. That's the garage, and then the green one --

9 MEMBER WHITE: So you're not relocating in this
10 site?

11 MS. PALMER: No, ma'am. Our headquarters is
12 moving across town and then we're moving up to 15th and
13 Columbia for a much smaller space.

14 MEMBER WHITE: 15th and Columbia, okay. And
15 then the other question I had is I wasn't clear on that
16 45-degree step-down requirement that OP was mentioning in
17 their report. I didn't quite understand how you were
18 addressing that.

19 MS. MOLDENHAUER: The Perkins Eastman, the
20 architect of the project, is going to be going through
21 some images and really walking through that with you in a
22 moment.

23 MEMBER WHITE: Okay, sounds good.

24 MR. BELL: Good afternoon. I'm Matt Bell --

25 CHAIRPERSON HILL: One minute, there's a

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1 question.

2 COMMISSIONER SHAPIRO: Before we get there, a
3 question again Ms. Eig, if you can go back one slide.
4 What's the difference from my purposes between a non-
5 contributing to Historic District and lacks historic
6 integrity? Is that a term of science or argument?

7 MS. EIG: No, what it is is that the Historic
8 District nomination itself identified non-contributing
9 resources and that's what is in green. However, in
10 looking at the condition of the buildings today with the
11 Historic Preservation Office, we determined that the other
12 ones that are red were, in fact, were no longer historic
13 patterns for integrity. I use for instance the one where
14 you have the blue --

15 COMMISSIONER SHAPIRO: If I can Ms. Eig, so
16 those were originally designated in some way, shape or
17 form, and now it has been reconsidered?

18 MS. EIG: Yes, I guess that's the way to say
19 it, yes. Because there was just a list, and I think that
20 if you look at the one with the blue, where the double
21 building is, all that is there is a facade. And when the
22 survey was done, there was an understanding that
23 everything behind it was brand new.

24 COMMISSIONER SHAPIRO: I'm with you. I'm just
25 thinking of the terms from my purposes, I don't need to

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1 distinguish between green and orange. They're both non-
2 historic.

3 MS. EIG: Right. The HPRB will, we hope in
4 this process, confirm the non-contributing status of this
5 as we proceed.

6 COMMISSIONER SHAPIRO: Of both those categories
7 as you laid out, okay.

8 MS. EIG: Yes.

9 COMMISSIONER SHAPIRO: Thank you Ms. Eig.

10 CHAIRPERSON HILL: Please go ahead.

11 MR. BELL: Okay, I'm Matthew Bell with Perkins
12 Eastman. I'm going to describe for you the concept of how
13 we got there and what are some of the unique aspects of
14 this design. And then my colleague, Mr. Bertschinger who
15 is our project designer and lead project architect, will
16 walk you through some of the zoning issues, and we have
17 some diagrams that hopefully make a lot of this clear to
18 understand.

19 Aside from the fact that there are historic
20 buildings on this location which we are integrating very
21 robustly into the site, there are some issues relative
22 specifically where this lot falls that requires some very
23 clear explanation about why we've provided it where we
24 have with the design.

25 The 14th Street context, I'm sure you're all

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1 aware of, is a wonderful place. It's seen a lot of
2 development in recent years. It has a very unique flavor
3 in the sense that it has a lot of historic buildings, a
4 lot of new buildings, new buildings that are woven in with
5 historic fabric, it has small buildings, and it has large
6 buildings. And this is the character of some of the
7 buildings, probably some of these come before you for BZA
8 consideration or perhaps with the Zoning Commission.

9 One of the things that's important to
10 understand is that we are both within the greater U Street
11 Historic District and within the ARTS-3 overlay, and that
12 is a unique thing. Unique in the sense that we are a
13 place where the ARTS overlay is on our western frontier,
14 on our western boundary, and we have historic facades on
15 the eastern side. So we are a little bit unique in the
16 context in that regard because a lot of the other
17 buildings either are historic facades in there, or they're
18 new construction, but we happen to have both there.

19 And I don't Meredith if you can point out where
20 that boundary line is. I think it's pretty easy to see on
21 this. I will point out too, that some of the ARTS overlay
22 district here on the next slide, if you go to the next
23 one, you can see the way in which the sort of tan color
24 goes a little bit to the west and a little bit to the
25 east. But in our location, it's very tight to the western

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1 property line of our site, western boundary of our block.

2 And you can see here as well the character of
3 the architecture here where we have, you know, two, three,
4 and in some cases one-story buildings woven in with seven,
5 eight, nine-story buildings. And in fact, this is a
6 character that is both legacy of the history of 14th
7 Street as a place where there was a lot of car showrooms
8 and retail activities, and a lot of things. And then
9 today, where it's become a little bit of a destination for
10 retail and for residential uses. And the character of the
11 architecture we believe is supporting that in a very nice
12 way, and we think that the building we're bringing to you
13 today will do a great deal to add to that context.

14 I should say as far as the foundational idea I
15 think, go to the next slide, one of the things that we're
16 doing is we're bringing to you a building proposal, but
17 really it's -- in a way, one way to think of it is a
18 series of streetscapes, because it's an important
19 character of the city here to get the streetscape right.

20 So you can see here in this isometric drawing,
21 you can see the high and lows of the buildings going up
22 and down the street. You have the Reef Center just to the
23 south of us. You have Union Row, a very recent large
24 project across the street. You have some small buildings
25 further on. You have some small buildings that abut the

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1 Louie there. And I will point out as well, and I don't
2 know if Meredith can show it, but the ARTS overlay line
3 for the Louie is much further to the west. It doesn't
4 abut the Louie. So some of the issues that we confront in
5 terms of both dealing with the preservation and also the
6 ARTS overlay are unique to our site.

7 If you go to the next slide, what you can see
8 is a little bit small, but you can see what we're doing is
9 taking the buildings that Ms. Eig has helped us to
10 identify as significant resources, and featuring them in
11 streetscape and integrating them into the block in a way
12 that both gives variety. A lot of buildings up and down
13 14th Street are short buildings next to tall buildings,
14 and we have the same thing going on here in the block. So
15 the DNA of what we're bringing to you is something that is
16 very unique to 14th Street and we think will be a terrific
17 addition.

18 I would just take a short tour around the site
19 now and give you a sense of the flavor of this. This is
20 from the northeast corner. What you see is W Street in
21 the foreground here looking south down 14th Street, and
22 you can see the way in which the facades that Ms. Eig was
23 referring to earlier are integrated into the varied
24 streetscape of the building as we have designed it with
25 the bulk of the major connective tissue mass of the

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1 building pushed back from the street, but some pieces of
2 our building coming forward and being part of that
3 streetscape.

4 So it's a bit of a rich sort of constellation
5 of elements where we're both pushing back to make
6 reference to historic facades, but also bringing some new
7 pieces where there are not historic facades out to the
8 street front, so we do have that up and down character
9 that is one of the wonderful things about 14th Street to
10 the south.

11 Next slide, this is looking W Street. You can
12 see the way the building steps down to the building next
13 door to it on W Street. You can see this is sort of
14 looking east out toward 14th Street and the buildings on
15 the opposite side of 14th and W. You can see the building
16 articulated with a couple of different ways so that it
17 really fits in the flavor of the width of facades along
18 that street, variety in materials and massing.

19 Next slide. And then the character a little
20 closer in on 14th Street. We've been working with Trace
21 Reeves to identify the historic resources and the
22 character of the store fronts and put some in the back.
23 For example, the two-story building there to the right
24 that the arrow is on, will be putting the historic
25 storefront of that back as well as treating, doing

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1 research and treating the storefronts on the existing
2 historic buildings. And doing research to help identify
3 what those should be, as well as introducing new
4 storefronts for lively retail area in our building.

5 The next slide shows more of what the
6 pedestrian experience will be like. This gives you the
7 sense of walking down 14th Street. One of the most
8 important things about any urban building is how it
9 addresses the street wall at grade or the first couple
10 stories. And you can see here we'll have a variety of
11 retail. We're introducing pieces. The building in the
12 center is the historic garage. We're introducing a one-
13 story piece north of that and a variety of storefronts
14 there to provide that lively streetfront with different
15 kinds of retail and arts uses in there. And you can even
16 tell the way in which the massing of building sort of goes
17 up and down like it does in other parts of 14th Street.

18 Going around the corner down to the corner of
19 14th and V, here you can see a little bit more of that
20 massing as it steps. The Provisions building on the
21 corner is the building with the P-14 on it. That will be
22 staying. We have a bay window that Mr. Bertschinger will
23 explain a little bit a bay that extends over that. But
24 you can see again, the character of that street frontage
25 and the way in which the skyline is animated by these

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1 various pieces of different height.

2 Going around down V Street looking up into the
3 alley, you can see the massing as it turns the corner. I
4 think it was referred to earlier about enlivening the
5 alley. We have an entry there, an entry to office and
6 residential uses. This will be a really cool place for
7 people to come into the sort of artsy side of the
8 building. This is the Arts District and we think this
9 will be a neat identifying characteristic. We are
10 preserving two of the facades along the alley in referring
11 to that, and with some lively activity in comings and
12 goings it'll make it somewhat unique in the neighborhood.

13 So right now there's a detail of that, one more
14 picture, right, a couple more pictures of that. As we
15 walk up the alley, you can see the entry there just past
16 the guy with the guitar. Next slide, yeah there it is, an
17 entry into the lobby that will be into office space and
18 also residential lobby. Some retail frontage there for
19 art uses on the alley side and then the massing of the
20 garage facade with the existing Martha's Table building
21 that will be retained.

22 And with that, I will turn it over to Mr.
23 Bertschinger to walk through the building and some of the
24 details related to the relief we're requesting.

25 MR. BERTSCHINGER: Good afternoon. My name is

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1 Tim Bertschinger. I'm going to run through lots of
2 building plans and program with you, and then look at a
3 couple diagrams to explain some of the zoning constraints
4 on the site.

5 The plan you see before you here is our below-
6 grade level for parking. I will just say we are meeting
7 the requirements for vehicular parking and bicycle
8 parking. We're also providing shower at this level. Our
9 ramp access is off W Street which is subject to public
10 space review.

11 Go to the next slide, and we're looking at the
12 ground floor level. And this is one where we're really
13 looking to provide mixed-use floor with a lot of amenities
14 for the neighborhood that meets the ARTS District design
15 guidelines.

16 So this is a mixed-use floor. The majority of
17 the retail space is oriented towards 14th Street. A
18 portion of it also fronts on an alley at the west side of
19 the project. One thing you can notice is that our lobby
20 access is pulled off from 14th Street. We really wanted
21 to provide continuity of that activity along 14th Street.

22 So we have two cores which I will explain a
23 little bit later. The first core in our primary lobby
24 access is located off W Street. Our second core is to the
25 south edge of the site and we are providing a mixed-use

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1 entry there for both office and residential tenants off of
2 the alley.

3 Along the alley we also have loading access and
4 trash activities, which we are coordinating with the
5 Hamilton residents. Then we also have in the middle of
6 the site a lobby to amenities space which provides access
7 to the rooftop of that existing historic resource in the
8 garage, which will be used for arts and exhibition. Go to
9 the next slide.

10 So we also have a mezzanine floor where we're
11 providing creative office space. This would be accessed
12 off the alley through the lobby at the ground floor.

13 Looking at our second floor, this floor we're
14 requesting lock coverage relief. We're at roughly 88
15 percent. The reason why is we're providing consistent use
16 at the garage on both levels of retail, so that extends
17 into our first floor of residential use.

18 MR. BELL: When Tim says the garage, he means
19 the historic garage at the center. It's colored red. We
20 call it the garage. Maybe we could it call it the
21 historic garage from now on just to make sure it's clear.

22 MR. BERTSCHINGER: So I'll note that on this
23 level we provide already a number of points of setback
24 relief for historic purposes on 14th Street. We're also
25 providing extensive setback of -- we only have a single

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1 floor of use along the alley as well. So those areas to
2 either side of the historic garage are roughly 60 by 35
3 feet and we have two on either side.

4 On the next floor, this is our first full
5 residential floor. One thing you will notice is that
6 we're actually providing an open space over top of the
7 historic garage. This is to facilitate both the use of
8 that garage as the arts and exhibition space, and also to
9 provide roof area for other District requirements.

10 I will note again we are providing relief along
11 the alley which is 35 feet deep. And then along the front
12 of the building, along 14th Street, you'll notice that we
13 are now at this level stepping further and providing
14 further relief for those historic assets.

15 As we go to the next floor, this is our fourth
16 level and here you can really see that the building is
17 bridging above that historic garage below at the center of
18 the site. Here we're continuing to set back following
19 14th, and we providing full relief all the way along the
20 alley except for the two ends of the building.

21 As we go to level five, we continue to maintain
22 those setbacks. At level six, we provide additional
23 setbacks along 14th Street. And as we come to the seventh
24 level, we're providing again more setback both along 14th
25 Street. But I was going to point out that we're providing

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1 setbacks along V Street, not just the dimension of the
2 Provisions building which we're retaining, but we're also
3 providing a setback of the seventh floor allowing the
4 building to step up in height as we get to the last level,
5 which is our penthouse level.

6 So our penthouse level contains both the
7 majority of our mechanical equipment and some residential
8 uses, both amenity and dwelling units. The penthouse is a
9 12-foot height. This is driven by mechanical equipment
10 coordination. You'll note that we're providing all
11 required penthouse setback relief, and in some areas
12 providing relief beyond that required.

13 And our final plan level is our elevator and
14 stair equipment overrun, so we are requesting an
15 additional 5-foot 3-inches relief beyond the top of the
16 penthouse, this all to meet the restraints of the
17 equipment. And I'll also note that we are providing
18 beyond the minimum required setback for penthouse setback
19 requirements.

20 CHAIRPERSON HILL: Ms. White, you have a
21 question?

22 MEMBER WHITE: Am I correct in -- I'm looking
23 at the fact that OP, and I guess they don't address it,
24 had some problems with the setback relief that you were
25 asking for, and I just wondered have you worked through

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1 that particular issue with them? The other question is,
2 how many units are you doing and what percentage is under
3 the IZ rules?

4 MR. BERTSCHINGER: In our proposal here today,
5 we have 242 units, and we are conforming with the IZ
6 requirements for the site.

7 MS. MOLDENHAUER: And Office of Planning just
8 to clarify was supportive of the height relief that's part
9 of the relief in regards to the penthouse setback height,
10 but their most concern was of the 45-degree angle. We
11 have shown them some additional diagrams that Mr.
12 Bertschinger is going to walk through right now, but we'd
13 also like to walk through with the Board to further
14 explain the 45-degree request.

15 MR. BERTSCHINGER: So we have a couple
16 elevations here, and I think we'll go through this quickly
17 because Matt already spoke well to the character of the
18 site. We'd like to point out on the alley elevation that
19 we're providing activation at the south end of the alley
20 where we don't have an immediate neighbor.

21 We did this for a reason. One, it sits between
22 two of the historic resources. The other is we don't have
23 an adjacent neighbor so we're not concerned about
24 necessarily the noise and activity disrupting units at
25 grade. We also believe this really tends to activate the

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1 alley, improves the design character and improves safety
2 through occupation of the alley.

3 On our V Street elevation, I'd like to point
4 out that we've made design modifications in response to
5 community feedback. We originally had a single block that
6 spanned 120 feet, and we've worked to break down the scale
7 of this elevation. So not only steps up in height, but
8 also in terms of the width of the block it breaks down to
9 proportional components to the rest of the project.

10 So this diagram, we've added some additional
11 information since our original application in response to
12 the OP report. Some things I would like to point out here
13 are the yellow areas showing areas where we're providing
14 setbacks in response to historic preservation
15 requirements.

16 The areas which are hashed in orange or red
17 depending on what your monitor is showing, shows the areas
18 which are impacted by 803.3.B which is the bulk plane or
19 angular plane setback requirement. That setback
20 requirement is really in response to the adjacency of the
21 site to an RA District. So the idea there is we're going
22 up 50 feet, we're providing a 45-degree angular setback
23 with the intent of providing light and air to the
24 immediate neighbor.

25 If you look at the dashed line on that plan,

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1 you can see that's the location where the angular plane
2 intersects the building at the roof level, so that
3 obviously the penthouse level extends beyond that. But
4 you can see the majority of the project really doesn't
5 impose itself into that area or that bulk plane. We did
6 this intentionally, and the diagrams as we go through will
7 show how we're mitigating the impact on the neighbors.

8 So the next diagram here is the elevation that
9 shows the impact of the angular plane on the W Street or
10 the north elevation of the building. The areas hashed in
11 orange or red again show the areas of impact. I will note
12 that the angular plane intersects with our building core
13 overrun, so this is something that we'll address in some
14 following slides.

15 So this is a building section. It's kind of
16 everted. 14th Street is to your right, the alley is to
17 your left. Again showing the areas that are hashed as
18 being areas that are impacted by that angular plane.
19 Again, I will point out that the building core is impacted
20 by that. And so this is a particular area of concern for
21 us because in order to conform with the penthouse setback
22 requirements for that core element, we would need to move
23 it substantially further to the east of the project.

24 So one of the things we did, is we did a study
25 to look at flipping that core orientation across to the

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1 other side of the building. You can see that now that
2 core is really sitting right adjacent to those historic
3 preservation setbacks. And as we get into the next
4 slides, we will show you some impacts of the plans.

5 So in our garage, this impacts us negatively by
6 intersecting with where our drive-by would be located. As
7 we look at a typical floor plan, a more efficient layout -
8 -

9 CHAIRPERSON HILL: I'm sorry can you, just one
10 second, where does it affect where the drive-by will be
11 located?

12 MR. BERTSCHINGER: I'm sorry, I'm trying to
13 rush through these.

14 CHAIRPERSON HILL: That's all right.

15 MR. BERTSCHINGER: So if you notice the areas
16 in blue, those are areas of the historic resources that we
17 are preserving on the site. They are obviously above the
18 garage at the ground level. There's an area in pink and
19 an area in orange, the adjusted location as it's noted,
20 would be a location that we would move the core to in
21 order to provide compliance with that bulk plane or 45-
22 degree angle setback requirement.

23 COMMISSIONER SHAPIRO: So, Mr. -- so what you
24 have here is what you would have to do if you responded to
25 OP's 45-degree setback?

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1 MR. BELL: It shows the adverse impact.

2 MR. BERTSCHINGER: So if we go to the next
3 slide, we show a typical floor plan and this shows how the
4 core begins to push forward to the front of the building.
5 And if we go to the next slide, we can show how at the
6 penthouse level that really begins to impose itself on the
7 building. We believe this to be negative not just for us
8 in terms of the layout of the building, but also in terms
9 of the design quality requirements of the ARTS district
10 because this puts the penthouse overrun in a location
11 where it's visible from the street which is something
12 we've been successful so far in avoiding.

13 This next slide just shows the same impact on
14 the south end of the site or the V Street elevation.
15 Because we have two cores obviously this affects both ends
16 of the building, so this is an equivalent diagram.

17 MR. BELL: I just want to point out one thing.
18 What I said earlier is really important here. We really
19 have two issues. You can see the 45-degree angle from the
20 arch abutting the other zone on the left side, and then
21 you can see the setback in yellow for the historic facades
22 on the right. So we're really sort of trying to thread a
23 building between these two conditions so that we can
24 preserve the facades because they're part of the character
25 and part of the whole idea of this place.

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1 And at the same time, you'll see with the
2 shadow studies that Tim's going to show in a second, that
3 this really is a very, very significant design feature in
4 terms of really minor impact.

5 MR. BERTSCHINGER: So these are equivalent
6 again, so the next slide shows the location of the core to
7 be moved. I think this is probably maybe the most
8 effective slide of really looking at this issue, because
9 it shows that the condition that we have towards the
10 center of the building, which comprises more than 50
11 percent of the run of the alleyway or the frontage to the
12 west sites about 300 feet.

13 So if you count both Provisions and the
14 courtyard along the alley were providing of about 180 feet
15 of this condition where we're setting the building back
16 actually beyond the requirement, I think sometimes the
17 best way to get people to believe that you're really doing
18 something is to show that you have an interest in doing it
19 as well.

20 So, you know, when we considered this, we just
21 didn't just consider the impact on the Hamilton. We also
22 looked at this from the prospective of activating the
23 alley. In order to do that, we really need to provide
24 light and air to that space to provide a high-quality
25 environment. So our design intent here is really to

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1 minimize the impact on light and air for that space.

2 So if you go to the next slide, we prepared
3 some addition sun studies. Initially we provided only
4 kind of a typical sun study action and plan. We provided
5 these in response to OP's report to provide additional
6 information to evaluate the impact on the Hamilton. We've
7 also provided some additional times.

8 So to explain what you're looking at, on the
9 right-hand side you see our proposed design and its impact
10 on the Hamilton building. To the left, you see the impact
11 of a by-right solution following our kind of design with
12 the courtyard. There's also a dashed red line. That
13 dashed red line shows the potential full impact of the by-
14 right envelope.

15 So comparing the two, one thing you will notice
16 is that the number of windows in the proposed solution
17 tend to be equivalent to or fewer than the by-right
18 impact. So here we show, this is the middle of summer
19 condition at 7:00 a.m. in the morning. You'll have a low
20 angle with the sun rising. At 9 o'clock you'd begin to
21 get a little bit of an impact, and by 11 o'clock you
22 really have sun coming around into the alley, and there's
23 really little difference between the two conditions.

24 The next slide we're showing going into the
25 afternoon, at noon, 2:00 p.m. and 4:00 p.m. At this

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1 point, the sun has moved beyond the point of our project
2 impacting the alley for the adjacent property.

3 So looking at this next slide, we're looking at
4 kind of prevailing conditions throughout the year which is
5 Spring and Fall. You can see at 7:00 a.m. the impact is
6 the same. As we come towards 9:00 a.m. as the sun gets a
7 little bit higher in the air, the by-right solution or
8 envelope has the potential to impact the entire building;
9 whereas our proposed solution preserves light and air to
10 units at the top floor.

11 As we get closer to 11 o'clock, you can see the
12 conditions are again equivalent. Looking at the
13 afternoon, same condition. And looking at the winter,
14 December 21st, you can see that between 7:00 and 9:00 a.m.
15 in the morning, there's really little difference because
16 of the low angle of the winter sun.

17 As we get closer to 11 o'clock where the sun
18 approaches a north-south orientation, there is essentially
19 an equivalent impact, although different units are
20 impacted between by-right and proposed solutions.

21 VICE CHAIR HART: I've got a couple of
22 questions. I do appreciate the stepping through all of
23 this. It's helpful to see all of it. I did have a couple
24 of questions about some of what you just showed. And
25 actually this one is fine. You're talking about the

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1 matter-of-right envelope. How many units would you use
2 with the matter-of-right -- what's the difference between
3 the matter-of-right envelope in terms of the number of
4 units versus what you're proposing? Or is there a
5 difference between the two?

6 MR. BERTSCHINGER: Well I think the answer is
7 kind of two-fold. You know one is if we just simply turn
8 them off the building between 10 and 12, but I think we
9 would probably just find ways to add them back which would
10 still perform, but may fill up so to that portion of the
11 courtyard.

12 VICE CHAIR HART: No, what I'm asking is, in
13 this instance you have actually -- the image that you have
14 here -- you're showing what the matter-of-right is. So
15 you're saying that if we just give the matter-of-right, we
16 would have X number of units. And I'm trying to figure
17 out how many units is that.

18 MR. BERTSCHINGER: In terms of the number of
19 units we're impacting?

20 VICE CHAIR HART: The number of units -- if you
21 were building, you have a setback on, I guess it's
22 somewhat of a court on the alley side on levels five
23 through seven, four through seven?

24 MR. BERTSCHINGER: Levels two through seven.

25 VICE CHAIR HART: Okay, so you have a court

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1 that's there. If you filled those in and actually had
2 units, how many units would you be gaining? Or what's the
3 difference between the units that you would be including
4 in that proposal versus what you are, I guess, losing with
5 -- I'm just trying to get losing -- if you were to meet
6 the 45-degree angle requirement. I'm trying to get to --
7 I don't quite know what that difference is, what that
8 delta is. And I'm not sure if you understand the question
9 I'm asking.

10 MR. BERTSCHINGER: I think I understand it. I
11 think as -- in looking at our client's interests, we would
12 attempt to recoup the units we lose in complying. But the
13 impact on the alleyway would be negative compared to the
14 one that we have today. Because we wouldn't be able to
15 maintain a single floor, along with the majority of the
16 frontage with the alley. Does that make sense? I think
17 we would be forced to add units below the setback.

18 MS. MOLDENHAUER: I think what the difference
19 between is an absolute unit comparison, and I think what -
20 - I think that it's not part of the design. It's actually
21 to improve the overall design of the project and to
22 enhance the alley, and it's not just a question of unit
23 for unit.

24 VICE CHAIR HART: What I'm trying to get to is
25 you're putting forward a supposition that the impacts from

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1 a matter-of-right development on the shadows would be X.
2 And you're showing where that line might be. And I'm
3 asking, because you're putting that forward, then there
4 should be some way of saying well that's an actual
5 legitimate design that you all could put forward. And I'm
6 just trying to get to what that is.

7 MS. MOLDENHAUER: It's a massing diagram
8 design. It is not a fully-studied matter-of-right design.
9 It's a massing diagram that is showing that, you know,
10 what would occur from a massing of a by-right scenario
11 with a 45-degree plane.

12 VICE CHAIR HART: Because, I mean, I understand
13 what you're showing in all of these. And I mean I think
14 that the matter-of-right line is a little bit disingenuous
15 because it is a massing diagram and it doesn't actually
16 have -- this is what you actually would be capable of
17 doing, or at least what you could be putting forward.

18 I mean, I'm concerned that west of this there
19 would be impacts and that the zoning was set up so that
20 there would be setbacks so you would have less impacts,
21 and I encourage you and I think you've done a good job in
22 terms of the courtyard that you've created. But I do, you
23 know, looking at the concerns on impacts to the west, I
24 think that that 45-degree angle is something that I would
25 like to see you all move forward with, or at least

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1 understand what that give-and-take is.

2 Because maybe the parking lot, you may not need
3 to do it, but it just seems like the apartment building,
4 it is impactful for at least several of the floors even in
5 your shadow studies on the building to the west. So, you
6 know, not necessarily a question. I'm just trying to
7 understand what it is that is --

8 MR. BELL: Can we just go to 57 for a second
9 here? You know, I think that we would -- we made a
10 judgment call in terms of what's the best thing for
11 design. Right? And we have obviously these facades on
12 the western and eastern side, and we have a setback issue
13 with them obviously, and we were encouraged to pull the
14 buildings to the street on that part of the building where
15 we don't have historic buildings, so we have that, but we
16 are setting back those historic buildings.

17 I think one of the things that was a revelation
18 to us is this slide here that the by-right envelope, if we
19 did push that center bar all the way to the west to where
20 it could be by right, I guess we felt like this was a
21 better compromise was to have the courtyard which would
22 actually get -- because we would do that. You know, we
23 would find a way to do that. Because if that's what we'd
24 be allowed, that's what we would do there in the middle
25 drawing of 57.

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1 So I think we were encouraged by the design
2 because it actually showed that by setting our courtyard
3 further back in that double-level corridor in the right
4 location, it actually had lessened the impact than a by-
5 right design.

6 Now have we designed a full building at by-
7 right? In that regard, we don't have a full building
8 designed there. But I can tell you that --

9 VICE CHAIR HART: I mean you're just looking
10 and saying that the height, if you follow the height, this
11 is where --

12 MR. BELL: Where the shadow would be, sure.

13 VICE CHAIR HART: -- it would be located.
14 Regardless if that is actually true because you may or may
15 not get at that height. I mean, I don't want to belabor
16 the point. I'm just saying that I think that the matter-
17 of-right envelope should actually have something that
18 shows that there is a distinct possibility that that would
19 actually be the case. I'm not exactly sure that if you've
20 made your point there. You're saying a massing, this is
21 what the massing is. I'm saying that the massing doesn't
22 necessarily say that there are going to be units that
23 actually could be located here. You're not really sure,
24 because you actually haven't done a definitive look at
25 saying that this is how the units might actually, you

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1 know, be set up so that they would --

2 MR. BELL: Yes, we were showing this just based
3 on what we knew in terms of the massing. We haven't
4 designed. You're asking for a full building design and we
5 understand that.

6 MR. BERTSCHINGER: I think we can say
7 definitively that if we could find a place to replace the
8 lost units, that it would be on the west side of the
9 project to ensure the historic setback requirements.

10 MR. BELL: That's where -- we know we have to
11 be mindful of the facades on 14th Street. That's a
12 reality.

13 CHAIRPERSON HILL: Sure, go ahead.

14 COMMISSIONER SHAPIRO: I actually have a number
15 of questions and I'm not sure whether to have them finish
16 their presentation or should we dive in or what.

17 CHAIRPERSON HILL: Let's let them finish their
18 presentation, because, yeah. If some of your questions
19 will be addressed from this side, then go ahead. So you
20 can just please continue on.

21 MR. BERTSCHINGER: So I'll pass it back to Ms.
22 Moldenhauer.

23 MS. MOLDENHAUER: Then I will turn to Mr. Varga
24 to just briefly -- we have a written statement from Mr.
25 Varga that we'll provide in the record, and he also has a

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1 report that obviously he will go through at this point.

2 Thank you.

3 MR. VARGA: Thank you Chairman Hill and members
4 of the Board. I've pared this down significantly in the
5 interest of time. My name again is Steven Varga, Cozen
6 O'Connor. I've reviewed the application, performed
7 planning and zoning research on the property. You've
8 heard a lot about the character of the neighborhood so I
9 won't go into that other than to say the project offers
10 similar massing and height to existing mixed-use
11 developments that are nearby.

12 I'm going to focus my presentation on the ARTS-
13 3 Zone elements of which there are nine. Can I draw your
14 attention to G in particular.

15 CHAIRPERSON HILL: Are you looking at your
16 exhibits somewhere Mr. Varga?

17 MS. MOLDENHAUER: He's referring to the zoning
18 regulations, subsection G.

19 MR. VARGA: Excuse me, I'm sorry, within my
20 testimony. So subtitle K-800 contains those elements of
21 which G is, Strengthening the Design Character and
22 Identity of the Area by Means of Physical Design
23 Standards. So here, the setback requirement of subtitle
24 K-803.3(b) serves as a tool to facilitate the intent of
25 this purpose statement.

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1 So under normal circumstances, this design
2 regulation provides a reasonable way to insure the intent
3 of the regulation is met. However, in this particular
4 instance, due to the RA zone, due to its presence in the U
5 Street Historic District, the tool is too blunt as
6 mentioned before given the challenging nature of the
7 site.

8 The historic requirements set the building's
9 bulk back along 14th Street NW and V Street northwest
10 frontages. Again, at the same time, the presence of the
11 RA zone to the rear triggers that step-down requirement.

12 The culmination of these interests prevents the
13 application from satisfying the regulations without
14 impacting the design of the project as a whole. In my
15 opinion, this project does a good job of addressing the
16 physical restraints and reconciling these challenges.

17 Due to the fact that the bulk to the rear as
18 proposed will have negligible shadow effects to the
19 residentially zoned property to the rear is opposed to the
20 matter-of-right baseline. Therefore, it's my opinion that
21 the intention of the design regulation is satisfied even
22 by granting special exception relief from the corners of
23 the project along that 45-degree.

24 Again, I emphasize the point that the project
25 must be considered holistically, and that it all must hang

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1 together to enhance the pedestrian view, to balance the
2 setback and preservation goals, while also reducing impact
3 to the residential buildings in the immediate vicinity.

4 I also draw your attention to the general
5 provisions of the special purpose zones, the purpose of
6 which is to provide for, and I quote, "single large sites
7 that require a cohesive, self-contained set of regulations
8 to guide site design and building height and bulk."
9 Again, just to emphasize the point that the project must
10 all hang together and to satisfy the varying requirements
11 of the zone.

12 In my estimation, the project does satisfy the
13 purpose and intent of the ARTS Zone despite the physical
14 constraints imposed by the properties location in the
15 Historic District and adjacency to the RA zone. The
16 project satisfies the ARTS special exception test as well
17 which is to preserve the "health, safety, convenience, or
18 general welfare of persons living, working or visiting the
19 area." I urge you to approve their application.

20 MS. MOLDENHAUER: Thank you Mr. Varga. We have
21 closing remarks. I can jump through them, and I'm going
22 to kind of focus on the 45-degree angle plane given that
23 we have ANC support, and ANC support on the other two
24 areas of relief that we're requesting.

25 I think that it's important as Mr. Varga and as

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1 our team from Perkins and Ms. Eig have talked about is
2 that the ARTS Zone has nine intended purposes. And the
3 special exception, it's not a variance, it's a special
4 exception for approving the 45-degree zone indicates that
5 the use or the location and the size need to advance the
6 purposes in that the project substantially advances the
7 purposes of the ARTS Zone.

8 I think one of the reasons we asked for so much
9 time today was because it really is, as Mr. Varga
10 indicated, a holistic project and you have to view all of
11 these varying factors. One of the purposes is to provide
12 a use, a combination of both office, retail and
13 residential. I think this is one of the only projects
14 that have all three of them go to the purpose of the ARTS
15 Zone.

16 The ARTS Zone talks about activating 18-hour
17 activity. The discussion of pulling back in the center of
18 this C-shape design and activating the alley go to the
19 specific purposes of the ARTS Zone. Activating the lobby
20 for the office off of the rear alley of adaptively reusing
21 older buildings which go to Section H of the ARTS Overlay
22 purpose.

23 Also the location of the historic buildings and
24 the proposed setback that we're asking for relief here, we
25 think substantially advance the purposes of the ARTS Zone.

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1 The preservation of the buildings as well as obviously
2 highlighting and complementing the ups and downs on 14th
3 Street go to the purpose B and H of the ARTS Zone, as well
4 as creating some of those physical challenges with setting
5 back that 45-degree angle.

6 Then the question of the features, size,
7 intensity and location substantially advance the ARTS. As
8 we talked about, we have this C-shaped bar which create a
9 greater than relief. And again it's a holistic situation
10 where we are more than complying on the center of the
11 building to create more light and air, both for the alley
12 to enliven that northern portion and the southern portion
13 of the alley where there is no residential building versus
14 complying with and obviously asking for smaller areas
15 really on the corners of the site.

16 This obviously is going to encourage the
17 purpose of the ARTS Zone in Sections A and B which have to
18 do with activating and adding to retail and entrances, and
19 dedicating that space for art gallery entrances and
20 exhibits, as well as a high quality of an environment on
21 the alley.

22 The next part of this special exception is that
23 these features and intensities would not adversely affect
24 the neighboring property. We believe that as we've shown,
25 even if you take the design on its own, that's a small

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1 degree of change, and we went through some of the shadow
2 studies. You're talking about some of the windows which
3 already would be impacted by a matter-of-right, and then
4 having that degree of relief just to go slightly above.

5 Also the Hamilton, a lot of the relief that
6 we're requesting and the change in the shadow studies is
7 on portions of that flat-facing portion of the wall on the
8 Hamilton. As you can see, let me just go back here to
9 some of these images. If you look here, this portion here
10 of the Hamilton is a flat brick portion of the wall as
11 well as this portion of the Hamilton is a flat brick wall.
12 So we are trying to again have a -- the least impact on
13 and have the least amount of -- and no adverse impact --
14 adverse against. There is a question of there will be an
15 impact, but the question is it will not rise to the level
16 of an adverse impact on adjacent properties.

17 We also believe that the design elements
18 advance the safety and health and convenience and welfare
19 in persons living and working in the area. We have talked
20 about enlivening and providing more light to the alley,
21 which obviously improves the conditions, obviously
22 bringing a high-quality design that incorporates and
23 speaks to the 14th Street character, as well as jobs and
24 retail opportunities along the 14th Street corridor, all
25 along that and complying with the other ARTS Zones.

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1 Section B of special exceptions standard talks
2 about the architectural design of the project will enhance
3 the urban design features of the immediate vicinity in
4 which it is located. Provided, if an historic district is
5 involve, the BZA shall refer the application to the
6 Historic Preservation Office for review.

7 We believe that the request here obviously has
8 been shown, I think especially from those diagrams that
9 Mr. Bertschinger walked-through, that a lot of the setback
10 is constraining the site which really leads to the roped-
11 back 45-degree plane request that we're having.

12 And so the special exception relief in the ARTS
13 under section B, points you directly to that. And one of
14 the things that we also identified was that if we were
15 forced to kind of identify and evaluate alternatives, that
16 that would have a negative impact on the preservation
17 goals of the ARTS district here because it would then
18 create possibly a move of the core which would then be
19 closer to the historic facade in the historic 14th Street,
20 which would create more visibility of that and create
21 challenges.

22 This is not a variance but it is a special
23 exception, and we believe that based on all of the
24 holistic factors here, that we do satisfy that
25 requirement. We have also studied a number of other cases

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1 that have gone to the Board on this 45-degree angle.

2 There is a 17850 from JBG on 14th Street which
3 obtained relief from this section, and they specifically
4 talk through that balancing of the factors. 18632, which
5 is at 14th and Wallach, which they commended kind of the
6 U-shaped design which maintained light and air, and it
7 also referenced the preservation aspect of it.

8 Also 14th Street, 18477, which OP was
9 supportive of, and they referenced those factors and the
10 portion of the setback as well. And 17594, which was on K
11 Street, which also sought relief and obtained relief as
12 well, and OP submitted an application of support. And
13 17969, and then a zoning commission case which OP
14 supported which evaluated the 45-degree setback of case
15 1220.

16 Based on all of those, we believe that the
17 property and the project is at harmony with the purpose
18 and intent of the zoning plan, and would not have an
19 adverse impact on the relief.

20 These are some of the special conditions that
21 we believe that we pursue as we walk through a little bit
22 more. But one thing I would just say -- I can address
23 this at a later point -- we also are requesting specific
24 conditions. If the Board wants us to walk through those,
25 we can, but we think that might be better at a later date

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1 after we go through OP and answer any questions.

2 CHAIRPERSON HILL: Okay, great. Commissioner
3 Shapiro, do you want to start?

4 COMMISSIONER SHAPIRO: Thank you Mr. Chairman.
5 Just a few questions. You mentioned, I think it was Mr.
6 Madani -- I can't remember, mentioned that you were
7 talking about art screens and electronic signage, but I
8 didn't see that in any of the elevations that you
9 presented.

10 MR. MADANI: It's going to be part of the
11 interior of the lobby which we're going to integrate with
12 the retail.

13 COMMISSIONER SHAPIRO: Okay, thank you. Also,
14 the P-14 building, and I'm not sure how I missed this. Is
15 that existing or is that being recreated?

16 MR. MADANI: That's an existing building.

17 COMMISSIONER SHAPIRO: I thought that you -- I
18 forgot your name.

19 MS. PALMER: Ryan Palmer.

20 COMMISSIONER SHAPIRO: I thought that that was
21 the building that was currently -- it was a vacant lot and
22 was being used for --

23 MR. MADANI: The adjacent lot is vacant.

24 COMMISSIONER SHAPIRO: So it's just going to be
25 a really wide sidewalk then?

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1 MR. MADANI: The Provision-14 building remains
2 in place, and then the next building in to the north,
3 that's a vacant lot that belongs to Martha's Table.

4 MS. MOLDENHAUER: So the area observed right
5 now, this is Provision 14. That will remain where it is.
6 It's a historically contributing building that will remain
7 exactly as is. This portion right here is a vacant lot
8 which is currently used by Martha's Table for their
9 outdoor children's play area.

10 COMMISSIONER SHAPIRO: I'm with you. Thank
11 you.

12 MR. BERTSCHINGER: Can I correct the record
13 real quickly that there's provisions. There's a building
14 that belongs to Martha's Table which is non-contributing
15 at 14th Street, and then beyond that is a playground which
16 is a vacant lot.

17 COMMISSIONER SHAPIRO: That's fine. I just
18 thought you were talking about being closer to the street,
19 so we're fine. Drop it. I have a lot of questions about
20 the location of the lobby. And I'm just curious around
21 why the lobby isn't on 14th Street. You have two other
22 locations for it. And please, a piece of this is around,
23 I imagine a piece of this is why you want to maximize the
24 retail opportunities along the street. It's not just
25 because it's a wonderful design, it's also I imagine a way

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1 to increase revenue.

2 MR. MADANI: We've looked at putting in on 14th
3 Street. It disrupts some of the retail experience that's
4 going to be on 14th Street, and also because of the
5 preservation of some of the historic buildings, particular
6 the center piece.

7 We also appreciate that the high-yielding rent
8 on 14th Street is going to help subsidize some of the
9 retailers that are going to be on the alleyway, and that's
10 going to be able to be better used for the arts and
11 creative uses.

12 COMMISSIONER SHAPIRO: Yeah, I mean it's just
13 hard for me to evaluate this because -- first of all, I
14 think it's a really interesting project and I appreciate
15 the attention to the arts details and the way you've
16 incorporated the historic elements, and I really am
17 interested in the activation of the alley, and there's all
18 sorts of wonderful pieces to this.

19 Though I feel like it would be more helpful for
20 me if it was a little bit more straight-up about that. A
21 number of these elements are about maximizing revenue, and
22 that's a piece of the process. So some of these things I
23 feel like it's a little bit obscured behind "this is
24 required for the integrity of the design" when I'm not so
25 sure it is.

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1 MR. BERTSCHINGER: Well I think there is
2 certainly an argument that it helps it financially with
3 the project. We also -- we want all four edges of the
4 project to really be activated, to have great
5 streetscapes, great design quality, great environment.
6 You know, and being able to activate W Street, which is a
7 residential street, and being able to bring that character
8 of the street beyond across the alley and onto our project
9 is one of the motivators in having the main residential
10 lobby there.

11 You know, one of the things we're looking at
12 with public space design is to continue the width of the
13 sidewalk which is narrower, and bring some of the, sort of
14 like a planted area in front of the building there similar
15 to how the Hamilton that has kind of a stoop that comes up
16 to the front door. We want to continue that into our
17 project, and sort of as we widen the sidewalk in front of
18 the retail, and then turn around the corner on 14th.

19 So in a way it's a way of having a nice
20 gradation of those conditions turn around the corner and
21 continue down the street.

22 COMMISSIONER SHAPIRO: Okay. And can you go
23 over one more time briefly around the roof area above the
24 historic garage and the intention behind that? What
25 practically, technically, mechanically, programmatically,

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1 what's going to happen to the garage roof, the historic
2 garage roof and that courtyard?

3 MR. BERTSCHINGER: So we're evaluating the roof
4 structurally. The building's a post-and-beam structure so
5 the roof is not essentially, you know it's not a
6 diaphragm. So we could remove it. We're trying to retain
7 it, but it will require reinforcement. One of the
8 components of the project is a substantial storm water
9 management component, so we will need to provide a green
10 roof in a lot of areas of the roof. So that area may, you
11 know, be required -- to meet that requirement we may need
12 to provide green roof there.

13 I think Madison really looks at the space as
14 being a place that is, the access is controlled but it's
15 open to the public. That it becomes a location for art to
16 be exhibited, to be experienced, you know, sculpture
17 garden; something of that variety.

18 Then, and we want to pull some of that
19 activation off 14th Street to sort of mitigate some of the
20 noise. But we really do see it as an active component of
21 the arts, you know supporting ARTS District and supporting
22 arts in the project.

23 COMMISSIONER SHAPIRO: I appreciate that. And,
24 you know, there are all sorts of argument to be made for
25 why this would be an interesting amenity. I'm going back

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1 to the financial argument again which is a piece of the
2 issue here that it would be extremely difficult to build
3 five stories of building above that roof.

4 MS. EIG: May I answer? One thing that was
5 made very clear to us by the Historic Preservation Office
6 was that the retention of that building in its entirety
7 and not to build on top of it. They wanted to have that
8 sense of it. I think this was a clever solution was to
9 bridge it.

10 COMMISSIONER SHAPIRO: So you're saying staff
11 recommendation --

12 MS. EIG: Yes, they were --

13 COMMISSIONER SHAPIRO: -- staff recommendation
14 was to not build above it or to make sure that you
15 maintained the integrity of the building as it is?

16 MS. EIG: Well maintaining the integrity of the
17 building as it is as a forum, that you could read that
18 forum.

19 COMMISSIONER SHAPIRO: I appreciate that Ms.
20 Eig. So how do you build five stories above that building
21 if you have to maintain the integrity of that building?

22 MR. MADANI: They were simply asking to
23 maintain the integrity of the building, and the bridge
24 design idea actually was created to celebrate the actual
25 building. And so if by setting -- the bridge actually

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1 sets back from the building and also sits above the
2 building. It also creates a canvas of protection from
3 rain and the elements for that particular space. So it
4 actually creates a really unique opportunity for us to
5 celebrate that space and use it toward the arts, and you
6 know, to have like a sculpture garden put into place and
7 you know have that open to the public. And that could be
8 accessed through the alleyway. We have an elevator that's
9 going to be -- being able to take people up and they can
10 access it.

11 COMMISSIONER SHAPIRO: I'm with you. It sounds
12 like a very creative feature. It just also feels, again
13 similarly, it also feels like it also would be pretty
14 expensive to build above it.

15 MR. BELL: It's like so many things though. It
16 solves several different problems. It came from an idea
17 of both featuring the historic garage building and also
18 breaking the massing up. Instead of having a continuous
19 facade across that, by making an architectural gesture
20 there it allows the two masses that are set back to raise
21 two connected by a feature, which is a bridge.

22 And I think Madison, you know, we did talk
23 about the pros and cons of the cost of that and
24 everything. But what it yielded was this unique space.
25 It yielded setting the garage piece off. There is a big

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1 opening of Union Row across the way, so in a sense it's a
2 little bit of a response to Union Row which we thought
3 would be a nice kind of feature to have as a cityscape,
4 and it'd break up the massing.

5 So it does -- it's not like it solves one
6 thing. It's several different things that we felt it was
7 doing a good job for us for.

8 COMMISSIONER SHAPIRO: Okay, thank you for
9 that. I think this is my last question. This is related
10 to setback. Looking at slides 46 and 47, so excuse my
11 ignorance, what I'm looking at is an extremely small bit
12 of the core. And extremely small bit of the core that
13 would be affected by this 45-degree zoning setback
14 requirement. Is that right? Am I reading this correctly
15 or am I misreading this?

16 MS. MOLDENHAUER: I think what you're saying is
17 you're seeing this small portion of the core that would be
18 affected. Is that what you're saying?

19 COMMISSIONER SHAPIRO: Yes.

20 MS. MOLDENHAUER: And my response to that would
21 be that is the area that is inside the 45-degree angle.
22 However, all of this would be affected by obviously a one-
23 to-one setback requirement if you comply with the 45-
24 degree angle here and here, and did not have a roof below
25 to setback from. And so we are meeting all of our one-to-

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1 one setbacks on our penthouses. And so by -- it's a
2 Chinese doll on a very delicate -- and once you move one
3 thing it affects everything else from a zoning
4 perspective.

5 And so if you were to comply, you would then
6 not be compliant with your penthouse setback requirement,
7 and which is why you would then obviously not be meeting
8 your one-to-one setback from a zoning perspective. So
9 then it would be another area of relief that you're
10 requesting which we do believe at times the Zoning
11 Commission and the Board find to be obviously an element
12 that is strictly required for compliance where you look to
13 be flipping the core.

14 COMMISSIONER SHAPIRO: Well the argument that
15 you've made around the complications of flipping the core
16 make sense to me. You made a judgment around which kind
17 of relief you were asking for. And, you know, it feels to
18 me that one option that we could look at is -- well, if
19 you need a little bit of penthouse one-to-one relief
20 versus the 45-degree setback relief, that's something to
21 factor in.

22 I don't know how you redesign this, but I'm not
23 seeing an argument for cutting that off beyond that you've
24 designed it in a different way and are asking for
25 different relief.

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1 MS. MOLDENHAUER: And it is a special exception
2 relief. And we believe that obviously it goes to the
3 question of -- in a lot of the cases I identified and I
4 named that have gone before the Board, and the Board and
5 OP have supported, it's a question of looking at the
6 multiple factors both that create a challenging condition
7 as well as how the overall project enhances the ARTS
8 goals.

9 COMMISSIONER SHAPIRO: But if you flip this and
10 the relief you are asking for was that small one-to-one
11 penthouse relief, it would not affect the activation. As
12 far as I can see, it wouldn't affect the activation of the
13 public alley at all. Because it's just higher up in the
14 project.

15 MS. MOLDENHAUER: I don't know how I can answer
16 the hypothetical. I'm not --

17 COMMISSIONER SHAPIRO: We have architects for
18 experts. They might have --

19 MR. BERTSCHINGER: Kind of like a Russian doll.
20 You keep opening and keep going down. You know I think we
21 would also seek to keep the number of units the same. So
22 one of the things we would do is we would add additional
23 height along the alley where we are allowed to add it, to
24 add those additional units back into the project which
25 then may not impact the 45-degree plane that 50 feet, but

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1 it would add additional height along the alley would
2 reduce access to light and air in that location.

3 COMMISSIONER SHAPIRO: I mean that's a question
4 for Mr. Madani. Am I pronouncing your name right?

5 MR. MADANI: Yes.

6 COMMISSIONER SHAPIRO: You know, that's a
7 financial issue which is does he get the IOR if you cut
8 back the number of units, and the answer would be no. But
9 from a design perspective in meeting the requirements of
10 the special exception, that's a little bit less our issue.
11 That's all I have for now Mr. Chair.

12 MR. MADANI: I was just going to say I think
13 the idea here is that it presents a better design with our
14 goals as well, and has less of an adverse effect on the
15 immediately adjacent neighboring sites, so we elect that
16 this is the best solution for everyone.

17 CHAIRPERSON HILL: Okay, I have some questions.
18 Do you have some questions Mr. Hart and Ms. White?
19 Because mainly what I think we're going to do real quick
20 is we are going to take a quick break. The people that
21 are here in the audience, so what happened where you've
22 kind of seen some of it. Like we'll go to the Office of
23 Planning. We'll then have the ANC. We'll then have
24 testimony from people in support and opposition, and then
25 there's a lot of questions and things like this.

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1 So just curious, if we took testimony next, who
2 would then leave? Okay, so you made it -- well you don't
3 have to promise -- but I'm just saying, if we take
4 testimony -- we'll take testimony next, okay. And then,
5 at least the testimony, you guys can stick around if you
6 want, but I'm just trying to be as accommodating as
7 possible. So we're going to take a quick break because
8 I've got to go to the bathroom.

9 (Whereupon, the above-entitled matter went off
10 the record at 3:41 p.m. and resumed at 3:51 p.m.)

11 CHAIRPERSON HILL: Let's get started again. I
12 think that the secretary mentioned that Ms. Palmer, you
13 were going to have to leave relatively soon.

14 MS. PALMER: Yes.

15 CHAIRPERSON HILL: And good for you. And that
16 if we have any questions directly for Ms. Palmer, I mean,
17 the only thing that would start to come up again is just
18 ownership, you know. So I don't really have any
19 questions. Does anybody have any questions for Ms.
20 Palmer?

21 No? Okay. All right. So there you go. All
22 right. So the people that wish -- so is anybody from the
23 ANC here? Okay, great.

24 Mr. Commissioner, if you can come on up. We're
25 going to do the ANC support and opposition just so we can

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1 kind of get that out -- you know, hear that because then
2 if people need to leave they can.

3 And so -- there you go -- and so did you get
4 sworn in earlier?

5 MR. ACKERMAN: I did.

6 CHAIRPERSON HILL: Okay. Great. And let's
7 see, if you could introduce yourself and start there.

8 MR. ACKERMAN: Sure. My name is Nathan
9 Ackerman. I'm an ANC commissioner for 1B04.

10 CHAIRPERSON HILL: It's Ackerman, right?

11 MR. ACKERMAN: It is.

12 CHAIRPERSON HILL: Mr. Ackerman, Commissioner
13 Ackerman, I've seen you before.

14 MR. ACKERMAN: Yes.

15 CHAIRPERSON HILL: So I was sitting here, I
16 was, like, why is he here? Is there a problem? I wasn't
17 sure. But that's good. You're a commissioner so you're
18 used to this.

19 Okay. All right. So Mr. Commissioner, I'm
20 going to give you five minutes to speak because that's
21 what the ANC gets, and you can begin whenever you like.

22 MR. ACKERMAN: Sure, thanks very much for the
23 opportunity to speak to the Board.

24 So just to reiterate quickly, our ANC did vote
25 to support the relief that was sought on lot occupancy and

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1 height.

2 However, although the ZPD committee did vote to
3 support all of the relief, they subsequently before we
4 went to our vote found out some information from the other
5 Department of Planning, Office of Planning, that made us
6 withhold our support for the 45 degree angle relief that's
7 been sought. So I want to first convey that.

8 So secondly, the ANC, as a whole, is excited
9 about seeing these properties developed. And I would say
10 in general just the vision that has been articulated by
11 Madison is supported by our ANC as a whole with a few --
12 and then, of course, with a project of this magnitude,
13 there are always many points of contention which we have
14 been hearing often in opposition within our community. So
15 I'll get into a little bit of that in a few minutes.

16 Now, the ANC commissioner whose SMD that this
17 project is in was unable to come today. But he did want
18 me to be sure to share some of the concerns of his
19 constituents that live right there and make sure that they
20 know that you'd like these matters to be discussed today.

21 One of them was the scale of the project in
22 general. And I'm speaking on behalf of ANC Commissioner
23 Jon Squicciarini's constituents in this case.

24 The scale of the project -- there was concern
25 over the scale of it. They would like to see it reduced

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1 to six floors, which in their view is five floors and a
2 penthouse.

3 They believe the project should be stepped down
4 or reduced in size because the elevation actually
5 decreases, I think, from W to V and they see that as a
6 reason why there's the space that's gained by that
7 elevation, that topo change. And they see that possibly
8 there could be room to negotiate some scaling back of the
9 massing as a result of that.

10 And they also wanted to make the point, or at
11 least put it up for discussion, the idea that they support
12 the proposed number of parking spots as acceptable to them
13 if the project is reduced in size to six floors. So I
14 wanted to get that quickly out of the way.

15 Now, speaking as an individual ANC commissioner
16 from an abutting SMD, so my district is right here up
17 against this project to the north side. And I've lived in
18 the area for 20 years.

19 The reality is the way many of the community
20 members feel is that losing Martha's Table is obviously
21 something -- if this helps them in their mission and this
22 project is helpful in delivering essential services that
23 they've been delivering for a long time, that's one reason
24 to be in support of this project for sure. And we're
25 happy that we were able to hear from a representative from

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1 Martha's Table today.

2 We do believe that if relief is given that
3 consideration that has value, has considerable value since
4 there's 12 units affected by this 45 degree angle issue
5 alone, that respect and consideration is given by this
6 Board for really making sure that the intent of the arts
7 overlay is respected.

8 We have seen in other cases where there has
9 been discussion about commitment to arts and yet it hasn't
10 necessarily been realized when the projects are completed.

11 In this case, the folks that I have met with
12 from Madison have been verbally committed to this. I
13 would love to see the specifics of how that unfolds with
14 regard to guarantying creative space and what that really
15 means and that that space will be available and set aside
16 in some formal fashion for people in our community who
17 feel like they can't afford to be a member of the creative
18 community, have space that they can create their
19 paintings, their prints, their jewelry, you know, whatever
20 they're doing that's contributing to the nature and the
21 character of our community.

22 Now, I heard earlier one of the
23 representatives, or principal from Madison, say the
24 decision to take the entrance off of 14th Street would
25 free up space that would subsidize space in the back

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1 alleyway, which we're very excited about.

2 If this activation of the back alleyway
3 happens, this takes an area that has been no friend to
4 anyone walking at night through that area and turns it
5 into something that is hopefully safer and better for our
6 community. And we're excited about that.

7 However, what does that really mean? What is
8 your power, I guess, to make sure that this subsidizing of
9 the back area for creative use actually comes into
10 reality and is defined as this project moves forward?

11 So I come here not only to make a statement
12 about that, but to also learn and hopefully community
13 members here who are also confused about what this means
14 for actually ensuring that the arts components are part of
15 this project as the approvals move forward. And I'm
16 probably up to my five minutes at that point.

17 So if I have more time, let me know, please.

18 CHAIRPERSON HILL: Oh, you can finish whatever
19 your statement was.

20 MR. ACKERMAN: Okay. The only other thing I
21 would say, too, is that, with regard to the -- we've seen,
22 as an ANC, different reiterations of where the parking
23 entrance will be for this project.

24 First, I think it was on W and then we heard it
25 was going to be in the alleyway. And now, you know, it's

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1 gone back and forth. So I had to call the Office of
2 Planning to get some clarification about what the position
3 was about this.

4 And in terms of latent space, the reason I
5 bring this up is because the community for a long time,
6 and I don't exactly how many years, but decades, has
7 enjoyed the latent space at the corner of 14th and W
8 because it's been essentially an open space where the
9 parking lot was for the gas station. This project,
10 obviously, would remove that.

11 And we're very happy with what the community
12 would gain from this project. But one thing that came up
13 when I met with the ANC commissioner whose SMD this is in
14 was the idea had it been considered that the entrance --
15 with 240 units, I guess it is, 242, where we will see
16 traffic from Ubers.

17 We will see traffic from folks, you know,
18 getting dropped off, food deliveries and things like
19 people coming and going from the garage, and W Street is a
20 one-way street and a narrow street. It will absorb some
21 of this traffic if the entrance is on W.

22 So we have thought, well, is it possible to
23 come up with a plan where -- there's already a pull off, a
24 cut-off, a cut away from the W side to enter the gas
25 station as it is.

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1 Could there be a scenario in which the
2 developer pull back the envelope of the building a little
3 bit from the north side so there actually is a driving
4 area where we cannot stop traffic, which is exactly what
5 we've been seeing in our neighborhood in areas where cars
6 come to a stop to wait to pick up someone or drop someone
7 off and then a whole line of traffic gets pushed back
8 behind them. People start honking their horns and getting
9 excited about it.

10 So when you consider which entrance makes sense
11 in the ultimate, you know, plan that moves forward, I
12 would hope that you please consider creative options,
13 which might mean sacrificing a little bit of space from
14 the building to allow cars to pull over like the Roosevelt
15 Building has on 16th and Florida, for example, and many
16 other buildings that have been developed.

17 I realize that the developer sacrifices some
18 space to make that happen, but there was a long time in
19 this city where that was a solution that kept the impacts
20 of the development from spilling over into the streets and
21 obstructing traffic.

22 So that's just one point that I wanted to make
23 personally as the ANC commissioner, but not for the ANC as
24 a whole. Thank you.

25 CHAIRPERSON HILL: Okay. Does anybody have any

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1 questions for the commissioner? Sure, please.

2 COMMISSIONER SHAPIRO: A brief question.

3 Commissioner, thank you very much for the late hour as
4 well. So your request on behalf of the ANC is that there
5 would be some kind of specific set aside for studio space,
6 some kind of subsidized studio space for artists?

7 MR. ACKERMAN: That's correct. After I met
8 with the representative from Madison, I had a meeting with
9 Stacey Price, who is the founder of Think Local First, who
10 operates the space called Made in DC down there by the
11 Dupont South Metro stop. It's a great space. I asked her
12 what she envisioned for being spaces moving forward that
13 she might need.

14 So, really, it's a matter of making
15 introductions between folks like that and the developers
16 who have been willing to hold those meetings. And I think
17 I've already been doing some of that.

18 But, yes, how does one go about the idea of,
19 you know, defining what that means? Is it a below market
20 rate rent for X square footage of space in this
21 development that the community can look forward to seeing
22 happen?

23 Remember what we did over at -- what happened
24 over at Atlantic Plumbing when that site came onboard. I
25 realize it was a PUD, which is different than what we're

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1 looking at now. But they did create and set aside a few
2 drastically below market spaces on their less than ideal
3 side of that development for commercial space.

4 And I know folks who operate that space are
5 doing graphic work and design work that they would not be
6 able to have in the neighborhood if that hadn't happened.

7 I'm thinking it's called Cherry Blossom
8 Creative. You can certainly reach out to them. I met
9 with them before I came down today to ask how that had
10 worked out, if it was really meaningful for them. And it
11 was a huge, huge, benefit for them.

12 And I'd love to see that kind of thinking come
13 to our neighborhood as well. So that's why I wanted to
14 raise the point.

15 COMMISSIONER SHAPIRO: Thank you. Thank you
16 very much for that. Thank you, Mr. Chair.

17 CHAIRPERSON HILL: Okay. Anybody else? Sure.

18 MEMBER WHITE: Just a quick one. So, I mean,
19 in general you're supportive of Madison, but the ANC has
20 not issued a formal vote yet on the project because you'd
21 like to see more concessions with respect to the arts
22 commitment and pickup and drop off and those kind of
23 things. I think you named a couple of other things, maybe
24 the entrance being possibly on W Street and things like
25 that.

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1 MR. ACKERMAN: The ANC has supported at our
2 last meeting the relief sought for both the lot occupancy
3 relief and the height relief.

4 And we had voted to withhold our support for
5 the 45 degree angle of relief that's been sought today.
6 Those are the matters that were considered at our last
7 vote. And that's how we came down.

8 CHAIRPERSON HILL: Okay. I'm sorry.

9 MEMBER WHITE: No, that's okay.

10 CHAIRPERSON HILL: I guess my only thought is
11 that I don't think we're going to decide this today. And
12 so -- surprise. And I do think that the applicant is
13 having a difficult time or there is a lot of discussion
14 about the 45 degrees.

15 So I don't know if there's something that, you
16 know, you guys can talk about at the ANC that if they got
17 -- if there was something in terms of an agreement, you
18 know, condition for the arts or whatever, that maybe you
19 can get the 45 degree support from the ANC, that might be
20 helpful to your case. But I'm just kind of making a
21 suggestion or thought.

22 Okay. Do you have any comments for the
23 commissioner? No would be fine. Sure. Go ahead.

24 MS. MOLDENHAUER: One is that we were not able
25 to present the additional information that Tim

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1 Bertschinger presented today regarding the more detailed
2 shadow study and some of the impact from the Historic
3 District to the subcommittees in regard to the 45 degree
4 angle. Is that correct?

5 MR. ACKERMAN: Me, personally, the first time I
6 have seen these latest drawings and changes in relation to
7 that 45 degree setback, it's the first time I've seen them
8 today.

9 MS. MOLDENHAUER: And so we would then, you
10 know, be willing to possibly go back and present these and
11 have additional discussions on that 45 degree angle issue
12 with the subcommittee and then with the ANC.

13 MR. ACKERMAN: With the permission of the chair
14 of our ZPD Committee, who I think would consider that
15 request, but I can't speak for anybody. That seems like a
16 reasonable approach.

17 CHAIRPERSON HILL: Okay, great. Thank you,
18 Commissioner. Thanks for staying. Thanks for coming
19 down. Anybody here wish to speak in support? Please come
20 forward. Please come forward.

21 You can just take that, that's fine. Did you
22 both get sworn in? Okay. Mr. Moy? Could you please
23 swear -- could you please stand and raise your right hand?
24 Is there anybody else who was here that didn't get sworn
25 in that wants to get sworn that wants to get sworn in?

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1 Just take a look at Mr. Moy and do what he does.

2 I'm sorry. Are you here for support? Okay.

3 You can sit down if you haven't been sworn. Just this
4 young lady here, please. Thank you.

5 (The witness is sworn in.)

6 CHAIRPERSON HILL: Okay. All right. Okay. So
7 I guess -- so, as members of the community, you get three
8 minutes each. Okay? The clock is going to be in either
9 there or on the top.

10 And all you have to do is introduce yourself
11 and where you live and then begin whenever you like. And
12 I'm going to start over here and move kind of that way.
13 Okay?

14 MS. CORT: My name is Cheryl Cort. I'm
15 speaking on behalf of the Coalition for Smarter Growth.

16 CHAIRPERSON HILL: Okay. I'm sorry. So if
17 you're with a group, then you get five minutes.

18 MS. CORT: Five, okay.

19 CHAIRPERSON HILL: Okay.

20 MS. CORT: We are the leading nonprofit in the
21 Washington, D.C. region dedicated to making the case for
22 smart growth. Our mission is to promote walkable,
23 inclusive and transit-oriented communities and the land
24 use and transportation decisions, policies and investments
25 needed to make those communities flourish.

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1 We're pleased to express our support for this
2 thoughtfully designed proposal that retains the historic
3 street frontage of nearly an entire block of 14th Street.

4 The project offers a welcome addition of 242
5 new homes in a growing and very popular neighborhood.
6 It's close to major bus lines, metro stations and it's in
7 walking distance of hundreds of thousands of downtown
8 jobs. Many grocery stores and other services are also
9 nearby.

10 In short, it's a terrific place to add new
11 housing opportunities. I'm personally very familiar with
12 the site because I live just outside of 200 feet on the
13 1400 block of Florida Avenue. I bought my house in 2000
14 and have lived there since 2000.

15 So I'm particularly excited both as a supporter
16 of smart growth and a nearby neighbor to welcome this
17 thoughtful adaption and transformation of this block.

18 We commend the proposed building, making a
19 number of good use and design decisions. We appreciate
20 the thoughtful integration of historic structures into a
21 new larger mix of uses, using the ground floor for retail,
22 adding an interesting small office component in the rear.
23 And activating the alley off of V Street is an intriguing
24 and beneficial use.

25 The off-street parking is reasonable, only

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1 exceeding the minimum required by a few spaces given how
2 walk, bike and transit accessible this neighborhood is,
3 less parking would be appropriate. But we are willing to
4 say that this is a reasonable amount of parking.

5 One design element that concerns us is the
6 revised plan to provide a curb cut and driveway on W
7 Street. Even though the site has a -- you know, it's
8 right next to a 15 foot alley, we concur with DDOT that
9 the curb cut and driveway are unnecessary and undesirable.

10 Consolidating incursions across the public
11 sidewalk is a great benefit of this redevelopment,
12 specifically at the corner of W Street, which is a gas
13 station right now. And the vehicle access is supported by
14 the alley.

15 Pedestrians are best served by restricting
16 vehicle access to the alley and careful design can foster
17 safe interaction in the alley between vehicles and
18 pedestrians. But making the alley more pedestrian
19 friendly is not an argument for providing unnecessary curb
20 cut and driveway across W Street.

21 And pertaining to the question of pickup and
22 drop off and deliveries, you could just do it on W Street
23 with a no parking zone, a no parking entrance, or even
24 there is some work done by going to metered delivery sites
25 so that you could actually control it rather than just

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1 whoever parks there and waits to be ticketed.

2 Lastly, so if we're talking about additional
3 costs we'd like to impose on this BZA case, I'd like to
4 make my own pet issue, which is affordable housing.

5 While there is some suggestion for other ways
6 that we could ask additional contributions in costs of the
7 developer, I would actually make sure that we're cognizant
8 of the opportunity to provide as much affordable housing
9 as possible.

10 We appreciate that the developer, in a BZA
11 case, I usually do PUDs, but this is a BZA case. And I
12 know we don't have the same sort of opportunity to extract
13 a lot from the developer, but they had originally actually
14 said that they were going to comply with IZ rules and
15 provide 10 percent at 60 percent median family income
16 rentals.

17 But then they were, like, oh, wait, it turns
18 out the law says 8 percent, not 10 percent, so they will
19 continue to comply. They will provide 8 percent.

20 So I'm just here to say if we're talking about
21 asking for more benefits from this project through a BZA
22 case, certainly, let's not forget about the opportunity to
23 ask for more affordable housing. Thank you.

24 CHAIRPERSON HILL: Okay. Great. Thank you.

25 MS. HILLER: Hi. My name is Shannon Hiller,

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1 and I am a resident of the Hamilton, which is that
2 building you see in a lot of pictures over this shadow
3 study. And I'm also here representing our board because
4 I'm the one who could get here from work.

5 So I wanted to offer what I would say is our
6 qualified support. We completely support the ANC
7 recommendations. So since the ANC subcommittee has
8 reminded Madison to reach out to the community, they have
9 made a good faith effort to do so.

10 And we feel like their attempts to build a real
11 relationship with our building, which will last through
12 the development of the project, are genuine. And we hope
13 that they will continue as this building will have a big
14 impact on our residents.

15 So obviously we would prefer a shorter
16 building, but we recognize that they have the right to a
17 higher building. And in general, we support the design.
18 Like others have mentioned, it's better than something
19 else that could have been put there and has been put in
20 other areas of the corridor.

21 We'd like to correct the comment that we made
22 earlier. It's not that no one raised sunlight concerns.
23 I think lots of folks, not my unit specifically, but for
24 the people whose units are affected, obviously a small
25 difference matters. And so that's one reason why we

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1 support the ANC recommendation on the 45 degree angle.

2 But we do appreciate overall the efforts that
3 Madison has made to address other concerns we have with
4 the building. For example, addressing the loading dock
5 that immediately abuts our building.

6 And actually, in contrast, for our building,
7 having the garage entrance right next to our building and
8 having a lot of traffic coming through that alley is not
9 our preference.

10 We'd prefer to maintain the curb cut on W as it
11 is with the gas station. And we think that will be best
12 for building. And the way that traffic flows to the
13 alley, which is already a little bit sketchy, we think the
14 improvement of the garage entrance on W, while not
15 considered here, is what we're also supporting and
16 supporting with DDOT.

17 So overall, as I said, you know, we take their
18 commitment to continue to work with us on this project
19 seriously. And we'll certainly hold them to it as the
20 development goes forward.

21 There are elements of the design that I have
22 highlighted that we do hope are adjusted a little bit to
23 affect to our building. But overall, we believe this plan
24 is workable and something we want to continue to work with
25 them on and appreciate their previous and continued

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1 engagement with our building.

2 CHAIRPERSON HILL: Okay, great. Thank you.

3 Sir?

4 MR. GAYO: Hi. My name is Steve Gayo. I've
5 owned my home on the 1300 block of D Street, which is just
6 in front of Union Row, since 2012. And I office out of
7 the -- we work on the 1300 block of Florida Avenue.

8 So my live/work lifestyle has been very close
9 to and around this block for a long time. And I lived
10 actually on 16th and V and made the walk back and forth
11 that you mentioned.

12 Councilmember Ackerman mentioned that this walk
13 past the alley will be a welcome improvement with this
14 building here being activated.

15 I just want to voice my support for the project
16 and the 45 degree setback that they've requested. I think
17 that the developer has been extremely willing and creative
18 with the community and worked through -- and I apologize.
19 I jumped off of a conference call to make sure I got this.
20 Of course, it was timed for the minute that I had to jump
21 here.

22 But they've been very creative and willing to
23 work with the community. I think even as discussed here,
24 there are so many different constraints. But we have a
25 small family-owned development company. It's not a huge

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1 corporation from out of town that doesn't care about the
2 community. I know that they live and work in and around
3 DC as well.

4 So I think that we're lucky to have such a
5 great partner in the development of this block. I think
6 that Martha's Table was a wonderful component of the
7 community. And knowing that they're well provided for in
8 the development of this is fantastic.

9 And the activation of the entire block of 14th
10 Street going around to the alley is a welcome improvement.
11 And giving the support for the zoning relief that they're
12 requesting, I think, goes a long way towards the developer
13 continuing to work with the community and meet their needs
14 and their other concerns.

15 CHAIRPERSON HILL: Okay, great. Does the Board
16 have any questions for the witnesses? Okay, sure, go
17 ahead, please.

18 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.
19 Just a quick question. I forgot your name. I apologize.

20 MS. HILLER: Shannon.

21 COMMISSIONER SHAPIRO: Shannon. What was the
22 temperature for your association on the activation of the
23 alley? Is that something these folks are excited about or
24 concerned about or? I mean, we've heard other positive
25 comments about that. I just wanted to get a sense of

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1 where your thoughts were.

2 MS. HILLER: Lukewarm. I think in general
3 people are happy to have a more secure alley. We talked a
4 lot of specifics with Madison even about where would, you
5 know, reducing the evening light in the alley, so ways
6 that we could not have spotlights on our building.

7 Our biggest concern was really that to activate
8 the lower part of the alley, they were shifting some of
9 the delivery to our side of the alley, which we don't want
10 delivery trucks coming and going. And they talked about
11 some of the ways they're mitigating that. And so we will
12 continue that discussion.

13 In general, Martha's Table uses the alley a
14 little bit. But we don't want it to become, like, too
15 loud or to deal with those things. And we're not
16 particularly concerned that this design would do that.

17 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

18 CHAIRPERSON HILL: Okay. Anybody else? I
19 guess, just real quick, I don't know if the 8 percent and
20 all of that, you know, for the IR stuff, I mean, the
21 affordable housing, if they have to lose the 45 degree, I
22 think you don't have to worry about that anymore.

23 And I served on my condo board. And it really
24 is a difficult job, particularly to come and represent
25 people that don't want you here representing them, and so

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1 meaning you're not representing everybody's opinion. But
2 I appreciate you coming down. And, sorry, I have no
3 comment for you just because.

4 Do you have anything Ms. Moldenhauer?

5 MS. MOLDENHAUER: No questions.

6 CHAIRPERSON HILL: Okay. All right. So then
7 if the opposition people could come on up. And I don't
8 know, Ms. Moldenhauer, if you want to move or -- I guess,
9 let me see how many I got. I thought there was more.

10 MR. NICYNSKI: The ranks have thinned.

11 CHAIRPERSON HILL: Right. I guess so. I'm
12 sorry.

13 PARTICIPANT A: We lost a supporter, too.

14 CHAIRPERSON HILL: Oh, okay.

15 SECRETARY MOY: We can bring up people --
16 (Simultaneous speaking.)

17 CHAIRPERSON HILL: All right. Okay. No,
18 that's fine. Well, thanks for staying and waiting. And I
19 know that -- so in any case, we're trying to do our best.

20 So if you could, please, as mentioned before,
21 you have three minutes each. And so if you could go ahead
22 and state your name. And the clocks are up there and you
23 can begin whenever you like.

24 MR. SHAPIRO: My name is Ken Shapiro.

25 CHAIRPERSON HILL: You need to push the button.

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1 I'm sorry.

2 MR. SHAPIRO: My name is Ken Shapiro. I live
3 at 1405 W in the Lumen Building, which is right at the
4 corner of 14th and W on the north side of the street.

5 First, I want to thank Mr. Ackerman with
6 respect to the comments that he made about the size of the
7 building and some of the other issues that he raised,
8 particularly the arts purposes.

9 If you listen carefully, and I'm sure you did,
10 to the presentation that was made, there were terms used
11 like envision, have in mind, so forth and so on. We would
12 second the hope that there could be something firmed up
13 about that commitment because as it stands right now, it
14 seems they'll be able to do whatever they want.

15 Similarly, I still don't understand what's
16 going on on the roof. But what I envisioned, if I use the
17 word that they use, is they're going to turn that into
18 some sort of a restaurant. They said they're going to
19 have art exhibits. I don't know what's going on up there,
20 but there certainly is a lack of clarity.

21 But ultimately, the real objection of most of
22 the people who live in our building and also Union Row,
23 you will notice that in talking about the amelioration of
24 the loss of light, there was absolutely no mention made of
25 the effect on W Street. All they talk about is the

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1 Hamilton. Not one word about what happens on W Street.

2 That building is immense. It's going to
3 obliterate the light and the aspect of the city that we
4 currently have all along W Street. And there is going to
5 be a tremendous amount of shading.

6 And there is no setback. For some reason the
7 rest of the building has setback, but there is no setback
8 on W Street. So all of this is problematic.

9 The other important point, I think, is the
10 driveway access, alleys are for alleys. They're for
11 deliveries, not W Street, which is already nearly
12 impassable. And even if you were to make a no parking
13 district, you're going to get double parking. And that
14 street is going to be blocked up in a way that's going to
15 absolutely impede the flow of traffic down W Street.

16 In our view, the entrance to the garage should
17 be in the alley and that's where deliveries should be and
18 that's what alleys are for. It's not necessarily
19 inconsistent with having businesses there as well, but it
20 doesn't belong on the street.

21 Ultimately, what we come down to is the
22 following. There were rules in place. This building is
23 going to be immense. It's going to be huge. There's no
24 reason for them to be granted the relief that they're
25 asking for.

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1 As someone raised before, what it is about is
2 maximizing money. And they're perfectly entitled to do
3 that. That's what their perspective should be. But
4 there's no reason to impose on the neighborhood.

5 And there was something that somebody appearing
6 in support of the citizens. I went to those meetings.
7 There were two people who supported it. There are dozens,
8 if you read the letters -- they're not here today -- of
9 people who oppose it for exactly the reasons we're talking
10 about.

11 The rules are the rules. Why is there a need
12 to give them any relief? That building should be six
13 stories. And if they add what they're going to add it's
14 going to be 12 feet plus the elevator and equipment above
15 it. It's going to be much bigger than it is portrayed in
16 those photographs.

17 That's about it.

18 CHAIRPERSON HILL: Okay. Thank you. Sir?

19 MR. NICYNSKI: My name is Joseph Nicynski. I'm
20 a board member for the Lumen Condominium, 1405 W Street.
21 And it's N as in Nancy, I-C-Y, N as in Nancy, S-K-I. I
22 would actually like to request five minutes. I do have
23 some additional testimony and notes from a previous
24 meeting hosted with Madison I feel would be relevant to
25 the discussion. So if possible, if I could get five

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1 minutes instead of three?

2 CHAIRPERSON HILL: Why don't you just go ahead,
3 and we'll see how far you get.

4 MR. NICYNSKI: All right. So, again, Joe
5 Nicynski. Thank you everybody for your time. I am
6 opposed to any of the exceptions being proposed by Madison
7 that will be negatively impact the neighborhood. These
8 exceptions include, you know, height, step back, the 45
9 degree angle where the parking garage entrance is proposed
10 to be on W Street.

11 These will negatively impact the neighborhood
12 for a variety of reasons, but my largest concern is
13 actually with the garage exit/entrance on W Street. This
14 is already a high traffic street with a bike lane.

15 This would now pose problems beyond increased
16 traffic, and it could potentially endanger the life of
17 cyclists. As an avid cyclist who rides their bike to work
18 almost every single day, there are a lot of cyclists that
19 have to deal with double parked cars. Somebody that's
20 actually been in multiple bicycle accidents, two or three
21 of those occurring when drivers were exiting a parking
22 garage or taking a turn without looking. And having a
23 garage on W would certainly, like, increase the potential
24 of that happening.

25 So the entrance to the lobby is on W. So I

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1 think we all understand why. I'm going to use the term
2 economical sense a couple times throughout this.

3 When I first met Madison, it was actually at
4 the meeting in January of this year. The garage entrance
5 was discussed, and the developers heard their reasoning
6 and received push back from several residents in the
7 neighborhood of anything located on W.

8 During this meeting, I actually proposed, why
9 don't we put this at the T section at the back of the
10 alley where you can access it from V, from 15th or W?

11 The architecture team from, what was it,
12 Perkins Eastman, kind of seemed like they had never
13 thought of that. And I was surprised that architects and
14 engineers would not think of this idea. I'm not an
15 architect by trade or in any way whatsoever. I can barely
16 draw a stick figure. So I was really surprised by that.

17 So then we moved up to the parking spaces.
18 Originally, during the meeting, their legal counsel -- I
19 think it was Perkins Eastman here, said they were doing
20 about 75 to 80 spots.

21 Then their legal counsel broke that down to
22 doing 41 residential, 15 commercial, 2 office space and 4
23 for art, which totals 62. Depending on the number 75 to
24 80, that's an 18 to 23 percent difference in terms of,
25 like, what they proposed versus what was then shared and

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1 broken down. It seemed like there was a lot of aligned
2 but not alike throughout this presentation.

3 It gave me a little bit of concern on the
4 credibility and transparency that Madison was offering in
5 that meeting. It just raised question marks for me, you
6 know, the garage being located on W, the engineers and
7 architects not thinking of that and the parking space
8 issue. It just didn't paint a good picture for me.

9 You know, one resident actually asked a
10 question about whether or not Madison did a traffic study,
11 which would be required by DDOT for that garage entrance
12 at W. They assured they had not.

13 A couple statistics, there were 818 cycling
14 deaths in a 2015 study as performed by the Pedestrian
15 Bicycle Information Center. This site is funded by the
16 U.S. Department of Transportation and Highway
17 Administration.

18 Of these 818 deaths, 71 percent are in urban
19 areas and 20 percent of those deaths occur between 6:00
20 p.m. and 8:00 p.m. That is the time of evening when
21 people are coming home from work on their bicycle and
22 you're leaving your garage or going out for the night. So
23 I would think that right -- a traffic study must be done
24 if we're going to be thinking about the garage entrance on
25 W Street.

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1 You know, and I just think about one other
2 instance after the meeting, Mr. Madani -- am I pronouncing
3 that correctly?

4 MR. MADANI: Correct.

5 MR. NICYNSKI: And I had a discussion about,
6 you know, the arts space. I am really big into the arts
7 both personally and I have some great friends that are in
8 the local community of art in small business.

9 And I had asked him a question about, you know,
10 the 4,000 proposed feet of art space and, you know, how
11 they would make that acceptable to the community if
12 Martha's Table had any former students or kids that came
13 out of that program to come do some art stuff there.

14 And he used this term economical sense several
15 times in our discussion. You know, I had asked him, you
16 know, what about the spacing? And he said, you know,
17 we'll figure whatever makes the most economical sense.

18 He did share one -- he has a good friend, I
19 think it was Zhivago, maybe, who was a gentlemen that he
20 knows that's a reputable artist, I think. He's not from
21 DC, but --

22 CHAIRPERSON HILL: Okay. I'm sorry. I'm just
23 going to ask you to wrap it up just a little bit because -
24 -

25 MR. NICYNSKI: Yes. Okay.

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1 CHAIRPERSON HILL: I'm asking you to wrap it up
2 because I have a reason but --

3 MR. NICYNSKI: Yes, so information. So I look
4 at that, like, right to Mr. Shapiro's questions earlier, I
5 think economical sense is something that was moving
6 throughout that presentation today. And I think they're
7 looking to think of it as economical sense with some nice
8 dressing on top.

9 But I do think that if we're going to be
10 looking at this, we need to think about the neighborhood,
11 the community. The garage entrance on W cannot be
12 something that stands. And I do think we need to have a
13 firm-up on what the access to this art space is going to
14 be.

15 Also to the woman that was sitting here
16 previously, I did ask her a question about increasing low
17 income housing, if they're going to be given exceptions.
18 Again, the term economical sense was used.

19 CHAIRPERSON HILL: Okay. Okay. Great.
20 Please.

21 MS. BERBER: Good afternoon. My name is
22 Elizabeth Berber. I live on W Street as well, 1405 W
23 Street at the Lumen. I am a hardworking mother, a single
24 mother, with a gorgeous baby that walk the streets of
25 Washington, D.C. every day.

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1 W Street has come along as a beautiful street.
2 And do you remember in old times no one wanted not even to
3 walk by. It's a residential area where more of the
4 Victorian houses right now are becoming condos and more
5 families are moving in.

6 During the day, even, day cares, you know, the
7 children walk in our streets. I'm very concerned about
8 the safety that we will have if it's granted permission to
9 the entrance of the parking garage for the 80 spots
10 Madison Investment would like to build using W Street.

11 I want to tell you that it's safety. I think
12 it's going to create a lot of gridlocks because from 14th
13 Street there is no entrance to W Street. So if someone
14 was to park in Madison Building, they would have to go all
15 the way around to Florida Avenue.

16 It's going to impact 15th Street. It's going
17 to impact U Street, New Hampshire, name it. W Street is
18 going to be just a complete mess.

19 The difference in V Street it is that the alley
20 entrance, it's behind the restaurant, Provision 14. That
21 right now they explained to us, you know, and I think so
22 it's a beautiful project, all the art, you know, they're
23 planning to do. But we don't know if this is viable or
24 not, I mean, because our community is going to be really
25 affected by what's going on.

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1 That will be my safety issue, the parking
2 entrance on W Street. But also I'm really concerned, I
3 don't understand why in an elevated street already, 14th
4 and W, we need more elevation. Why is the need to have
5 that?

6 So probably, you know, Mr. Hart asked this
7 question to them, how are you going to impact that if you
8 have five story building or six story building? How many
9 units are we talking about? That's an answer, you know,
10 that I want to know as well. So that will be my second
11 concern.

12 My third concern is what it's going to look
13 like because we don't know about the design yet. We know
14 that, you know, they're going to take care about
15 preservation on 14th Street, but the design it is going to
16 be, you know, something that is not going to go to the
17 history of W Street is? I mean, what do they want to
18 create? I don't know what they want.

19 But safety, it's a real concern on W Street.
20 The whole community is really concerned.

21 CHAIRPERSON HILL: Okay. Okay, thank you.
22 Sir?

23 MR. NESHO: Thank you for the opportunity and
24 thank you for this very, very long hearing. My name is
25 Dritan Nesho, last name N-E-S-H-O. I'm a board member at

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1 the Lumen as well as a resident. Both my wife and I own
2 an apartment each within this building.

3 It's a building of 18 units, probably more than
4 30 inhabitants. And I think the fact that you have four
5 people here that managed to sit through this very, very
6 lengthy presentation on the part of the applicant is an
7 indication of the temperature in our building.

8 And I'd like to reiterate some missing elements
9 in this very lengthy presentation, which should have not
10 been overlooked.

11 They were mentioned by my cohabitants in the
12 Lumen, but it's worth going through them again. The first
13 one is a lack of an impact assessment on traffic.

14 They are routing traffic through a residential
15 street and through 15th Street rather than routing traffic
16 through the commercial street, which is 14th Street. It's
17 a very, very wide street and would provide much more easy
18 access to and fro the building from there.

19 Second to that is the lack of impact assessment
20 of the lighting and how it affects the Lumen Condominium.
21 Again, this building would be two stories higher than our
22 building. It would cast a very, very long shadow.

23 And if we're going to consider the impact on
24 all of the condominiums and all the residents around it,
25 let's do it in an equitable way rather than in a selective

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1 way as was done in this presentation.

2 In addition to that, I'll reiterate a point
3 that Elizabeth just made. It was very instructive to me
4 to sit through several hours of your deliberations. when
5 you talked about circumstances where the Code is very,
6 very vague and not particularly prescriptive in terms of
7 what to do.

8 And I think context matters when making this
9 decision on this particular application. Within a two
10 block radius of this particular plan project, there have
11 been nine major developments, and I'm happy to list them.
12 But they're very, very visible as you can see from their
13 architectural drawings, which are 200, 300 plus units.

14 We are running the risk of crowding the
15 intersection of 14 and U to a point where it will be not
16 only harmful in terms of traffic and in terms of the
17 infrastructure that exists in order to handle all of the
18 people that live here, but also from a safety perspective,
19 bikers, cars, pedestrians and things of this sort.

20 There are a lot of units there. And if we look
21 at the character of that intersection, the character of
22 this neighborhood, it won't exist anymore after this
23 development.

24 You have Union Row on one side. You have
25 another huge development on one side flanked by four or

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1 five developments, a block south, a block north and
2 everything.

3 And so this is a citizen issue. It's also a
4 voter issue, right? I wonder where public opinion really
5 stands on this issue. And as a polling expert, I can tell
6 you that assemble of 36 people, selected in whatever way
7 was selected, probably not in a scientific way, doesn't
8 hold up.

9 You actually need to have a proper study of
10 where people fall and how people react to this
11 development. Well, I have 30 seconds, but I'll just say
12 that I'm also concerned a little bit about the placement
13 of the cultural space.

14 If the developer was so concerned about the
15 cultural space and preserving the cultural element of that
16 block on 14th Street, now why is it being placed in the
17 alleyway, tucked away from everything else?

18 I mean, it's very, very clear both in the way
19 that this building has been designed and in the way that
20 this space, the accessible space on 14th Street, W Street,
21 V Street, has been designed. It's very, very clear that
22 is around economic sense or it is around optimizing the
23 value that the developer gets.

24 So one proposal I would add is put more
25 cultural space on 14th Street itself and add a 45 degree

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1 slant also on W Street to do a fair and equitable
2 treatment of all the people that are being affected by
3 this very, very large construction that's being planned.
4 Thank you.

5 CHAIRPERSON HILL: Okay. Thank you. Okay.
6 The reason why I'm also trying -- I want to make sure I
7 heard everybody's -- unfortunately, I have a family
8 situation so I'm going to have to leave. And so I want to
9 make sure I took the testimony from everybody.

10 And so I do want to make sure that I get some
11 questions here and then I wanted to talk to what I would
12 be interested in seeing from the applicant in terms of us
13 -- and we were probably going to get to this point anyway
14 in terms of we were going to have a continued hearing. So
15 I think that is going what's going to end up happening.

16 So first of all, does anyone have any questions
17 here for the witnesses? Okay. My colleague just
18 mentioned that also -- I know we haven't even gotten to
19 Office of Planning yet.

20 So does the applicant have any questions for
21 the witnesses?

22 MS. MOLDENHAUER: No. We'll respond to
23 everything in rebuttal.

24 CHAIRPERSON HILL: Okay. All right. Okay.
25 Thank you all very much. So --

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1 MR. NICYNSKI: Can I share one quick thing? I
2 actually do appreciate the facade look of the building. I
3 think that's great. I didn't want to completely sound
4 like I trashed it. But I do some of the work that they're
5 doing in retail and in the neighborhood. I think it's
6 great.

7 CHAIRPERSON HILL: Okay. Okay. And just as
8 far as comments, just in general, like, I mean, I guess we
9 all have to take a look at the report from the Office of
10 Planning in terms of how they're assessing the project,
11 that might be appropriate.

12 So, Ms. Moldenhauer, I'm going to turn this
13 over. We're going to still keep going here. I'm going to
14 watch this later. But what I would be interested in kind
15 of understanding when you come back to us is there was --
16 and in your shadow study you kind of mentioned, like,
17 matter of right.

18 And it was a little confusing even for me,
19 like, I don't really understand where you're getting that
20 line, like, if you can show me something that is whatever
21 you think the matter of right thing is that you're trying
22 to put together, I think that if you -- and I mentioned
23 this already a couple of times this morning, the most
24 difficult hurdle you have right now is the 45 degrees,
25 right?

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1 And so, you know, if you want to -- if you do
2 end up continuing or whatever you guys end up doing, I
3 mean, that's what I would be more -- again, a continuing
4 interest in hearing an argument towards.

5 But if there was something that you did get
6 from the ANC, that is if the 45 degrees were approved by
7 them and that, you know, there was -- I think regardless
8 if the applicant could put something together that kind of
9 articulates whatever the arts thing is, you know, whatever
10 you think, if you could just put it in some kind of
11 exhibit or something that articulates what it is you're
12 trying to propose for the arts.

13 But the matter of right issue is what I'm
14 trying to understand, right? Like, you know, what --
15 because a lot of what the opposition is also talking about
16 is, you know, maybe they don't understand how big you can
17 make it anyway, you know, and how many people are going to
18 be there anyway? You know, and so that's kind of what,
19 you know, you're able to do without having to come before
20 us at all. Right?

21 But then there's a lot of discussion about this
22 V Street -- W, thank you, W Street, the entrance, and
23 whether or not there is something to be done with that. I
24 don't know, you know, but I'm sure my colleagues will have
25 a lot of other things that they have questions about.

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1 And I don't know -- and then just a quick
2 question, I suppose, as far as the traffic study, like,
3 you guys didn't do a traffic study or have to do a traffic
4 study, right?

5 MS. MOLDENHAUER: So we are not asking for any
6 parking relief. We do have Erwin Andres from Gorove-Slade
7 present who has studied the site and is looking at that
8 because we obviously will be going to Public Space
9 Committee who has proper jurisdiction to evaluate whether
10 or not the W Street curb cut and access will be
11 appropriate or whether an alley access would be
12 appropriate.

13 And so obviously our position would be that
14 that determination is not a determination that this Board
15 would make rather a determination that Public Space
16 Committee would make.

17 We have filed an application for that seeking
18 the W Street curb cut and going before them on April 22.
19 We will have talked to the ANC and will be attending an
20 ANC Transportation Committee meeting on March 15. And so
21 one of the conditions I mentioned earlier was a condition
22 to allow us to modify the floor plan based on whatever
23 approval Public Space provides.

24 And obviously, again, that will be something
25 that -- and we will have Erwin Andres come forward from

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1 Gorove-Slade address some of the maybe higher level
2 concerns and provide some testimony during our rebuttal.
3 But just to quickly answer your question, Commissioner
4 Hill, before you have to leave.

5 CHAIRPERSON HILL: Okay, great. Thank you.
6 And then last comment -- yes, I guess, that's it. Okay.
7 Thanks you all.

8 MS. MOLDENHAUER: My question now would be for,
9 is Chair Hart, will he hear a rebuttal or will OP --

10 VICE CHAIR HART: I actually want to hear from
11 OP first.

12 CHAIRPERSON HILL: And I do apologize. I'm
13 going to go through the whole thing, and I'll watch it.

14 VICE CHAIR HART: Goodbye, Chairman Hill,
15 Your Honor. Thank you very much for that, Ms.
16 Moldenhauer. I think we'll go to -- I know we've kind of
17 gone out of sequence. So I think we'll go to the Office
18 of Planning first and let's see what Mr. Mordfin has to
19 say.

20 MR. JESICK: Hi, Mr. Hart, Matt Jesick,
21 Office of Planning.

22 VICE CHAIR HART: It's been a very long day
23 evidently. I'm sorry.

24 MR. JESICK: I did want to start off by saying
25 the Office of Planning generally supports the project, the

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1 overall redevelopment of the 14th Street corridor. In
2 fact, we supported relief to the lot occupancy on the
3 second floor and the total height, including the
4 penthouse, which would be a couple feet over the maximum.

5 We did have a problem, however, with the 45
6 degree setback relief that was requested. And the
7 criteria that the zoning regulations provide for
8 evaluating relief in the arts zones, there are two main
9 criteria, 813.1A and 813.1B. Those say in A the uses,
10 buildings or features will substantially advance the
11 purposes of the arts zone and B, the architectural design
12 of the project will enhance the urban design features of
13 the immediate vicinity.

14 And we found that the requested relief failed
15 on those points. Regarding the purposes of the arts
16 zones, one of the primary -- or excuse me, one of the
17 purposes is strengthen the design character and identity
18 of the area by means of physical design standards.

19 And one of the primary tools that the zone
20 gives us for regulating the physical design of buildings
21 is the step down when a arts zone abuts a residential zone
22 as is the case here.

23 So we felt that the relief being sought would
24 be contrary to that purpose. As the applicant noted,
25 there have been times in the past when we've supported

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1 relief from that section. Generally, though, when we have
2 seen relief to that provision, it's been very small or
3 minor and even a matter of inches or a foot where the
4 corner of the building protrudes into that bulk plane
5 setback.

6 I can't recall a time when we've seen an entire
7 sort of mass of the building going into that setback. So
8 typically those have been much more minor intrusions.

9 Regarding the design, the architectural design,
10 will enhance the urban design features of the immediate
11 vicinity, we felt that the design would negatively impact
12 the urban design on the west side of the building.

13 Again, where the zone anticipates, there will
14 be a transition between higher development on 14th Street
15 and lower development in the surrounding neighborhoods.

16 Just a couple of other points. We do agree
17 also with Board member Hart and Chairman Hill, that the
18 shadow studies might be somewhat confusing.

19 There is a red line that was shown that
20 represents a hypothetical matter of right building mass,
21 but it's unclear if that volume could even be achieved
22 given the allowable FAR. The FAR of this building is
23 already very close to the maximum that could be achieved.
24 So, you know, whether that red line is even representative
25 of an actual project is unclear.

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1 In discussing the 45 degree setback, the
2 applicant also suggested that the core would have to be
3 moved if they were to fully comply with that setback. And
4 they showed one potential alternate location for the
5 building core.

6 There could be many locations for the building
7 core that may or may not meet the setback on the rear and
8 may or may not be visible from 14th Street. So I think
9 the arguments that they presented, you know, might fall,
10 you know, more appropriately into a variance argument for
11 a setback if it came to that.

12 We also agree with -- I believe it was
13 Commissioner Shapiro who talked about the building being
14 squeezed. The applicant talks about HP, historic
15 preservation, concerns on 14th Street squeezing from that
16 side, the arts step-down provision squeezing from the
17 rear, and, therefore, the building volume gets pushed and
18 pulled in different directions.

19 But you're not guaranteed an FAR in any zone.
20 The FAR is a cap. You're not guaranteed an FAR or a
21 number of units. So that's something else that we
22 struggled with when evaluating this case.

23 All that being said, we have continued to
24 dialogue with the applicant. We will continue to do that
25 if the Board requests. So we look forward to working with

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1 them to address any concerns. Thank you.

2 VICE CHAIR HART: Thank you, Mr. Jesick. Does
3 the Board have any questions for the Office of Planning?
4 I know I have some, but.

5 MEMBER WHITE: My only comment was that I'm
6 glad that they're continuing to have dialogue on the
7 setback issue because that seems to be a major factor with
8 this case. So I look forward to more dialogue with
9 respect to that so that they can come to some resolution
10 with you.

11 VICE CHAIR HART: Thank you, Board Member
12 White. So regarding this 45 degree setback, one of the
13 things that you noted was that the FAR is very close to
14 the allowable FAR now.

15 So that may be, you know, that would be --
16 making changes to the design may or may not make that line
17 that they showed on the shadow study kind of come to
18 fruition. It's kind of a hypothetical that they were
19 showing us.

20 And that's kind of what I was just leading to
21 that it seemed like a hypothetical. I wasn't really sure
22 what that was actually trying to show us beyond this is a
23 mass and that mass would be at a particular height and
24 that was it.

25 But can you talk a little bit about how close

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1 they are actually to the FAR?

2 MR. JESICK: Yes. On Page 2 of our report at
3 the bottom, it looks like they are at 5.28 FAR and the
4 maximum permitted is 5.3.

5 VICE CHAIR HART: Okay. And also with regard
6 to the movement of the, I guess, building corridors, they
7 don't have to -- one, they don't have to mirror each other
8 so they could actually look different.

9 But they could move where the stairs are and
10 keep where the elevators are? I mean, there are changes
11 that can be made on the plans that could push some of
12 these pieces outside of that 45 degree setback.

13 MR. JESICK: It certainly seems to us that
14 there are many options for how it could all be arranged.
15 There may be building code requirements that I'm not
16 familiar with also. But, yes, it seems like the applicant
17 has lots of design options as to where the core could be
18 located.

19 VICE CHAIR HART: In the cases that you noted
20 of other -- in other cases that the Office of Planning has
21 supported the relief, does the Office of Planning do that
22 often? Or is that something that -- for this particular
23 relief, the 45 degree setback, the applicant cited a
24 number of cases -- I can't recall how many -- but it
25 sounded like you were saying that there was less relief

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1 that was being requested in those cases.

2 MR. JESICK: That's certainly my recollection.
3 I couldn't quantify the exact number of times that has
4 happened. Just judging from the case numbers that the
5 applicant cited, it sounded like that had occurred over
6 many, many years. So, again, I couldn't really quantify
7 it for you.

8 VICE CHAIR HART: Thank you. Does the
9 applicant have any questions for the Office of Planning?

10 MS. MOLDENHAUER: So, you did say in your
11 report on Page 4 that when OP reviewed the relief in the
12 past that it was minor. So I was wondering did you look
13 at the prior cases in which OP recommended some support?

14 MR. JESICK: I can recall one. It might have
15 been just last year or two years ago, which is the Barrel
16 House Liquors site at 14th and Rhode Island.

17 MS. MOLDENHAUER: But you didn't do an
18 exhaustive study of all six cases that I referenced?

19 MR. JESICK: No.

20 MS. MOLDENHAUER: And so then you didn't look
21 at, then, the potential actual degree of relief that OP
22 supported in the other six cases?

23 MR. JESICK: No.

24 MS. MOLDENHAUER: So when then you say you're
25 relying on the past cases, it was on that one case that

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1 you were looking at?

2 MR. JESICK: Well, that was my recollection and
3 the recollection of other staff.

4 MS. MOLDENHAUER: And then one of the things
5 that you were saying that you've been dialoguing about and
6 will continue to and look forward to having those
7 conversations. In your report, you say OP, you know, in
8 those other cases, there was some physical constraint on
9 the site, and then now I'm paraphrasing that, led you to
10 support the 45 degree angle.

11 And would you say that what we have shown
12 refers to the difference between this site and other sites
13 in the arts overlay where this site has both the arts
14 overlay abutting next to a residential zone and the
15 historic properties in the middle of it to be a challenge
16 from a design perspective?

17 MR. JESICK: I didn't see the connection,
18 necessarily, at this point in time given the information
19 that I've had a chance to review that that was a
20 challenge. It seems like it's a design problem that can
21 be overcome.

22 MS. MOLDENHAUER: This isn't a variance test.
23 It's a special exception. This isn't a question of can it
24 absolutely be overcome? It's a question of, you know,
25 would the design enhance the arts zone, the arts

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1 requirement? Is that the case? It's not a can this be
2 done, yes, or can it be done, no?

3 MR. JESICK: That's correct. And our
4 conclusion was that the design did not enhance the
5 purposes of the art zone.

6 MS. MOLDENHAUER: And so in that regard, you
7 then looked at all of the different purposes of the art
8 zone and you did not find that we enhanced preservation on
9 the site?

10 MR. JESICK: The HP staff has indicated that
11 they generally support the preservation direction for
12 preserving the buildings on 14th Street.

13 MS. MOLDENHAUER: And is the project enhancing
14 the activity of the site for pedestrians?

15 MR. JESICK: I would say it's mixed given the
16 proposed curb cut on W Street.

17 MS. MOLDENHAUER: In regard to the primary
18 access on 14th Street, is it enhancing and providing an
19 increased benefit to the pedestrians on 14th Street?

20 MR. JESICK: It's a potential increase in
21 pedestrian amenity above the current condition.

22 MS. MOLDENHAUER: What we'll do obviously is
23 we'll walk through those with you at a later date as we
24 supplement the record in regards to kind of how we think
25 it does actually address those nine criteria. Thank you.

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1 No other questions.

2 VICE CHAIR HART: Thank you. Now I'm trying to
3 remember where we are. We kind of bounced around a little
4 bit. I think we're --

5 MS. MOLDENHAUER: Rebuttal?

6 VICE CHAIR HART: Yes. We want to see if we
7 have any other questions that we have for the applicant
8 before we get to the rebuttal.

9 MS. MOLDENHAUER: I also want to know if you've
10 identified DDOT's report on the record, its agency
11 reports?

12 VICE CHAIR HART: I had seen the -- I'm sorry.
13 Yes, at 42? I mean, DDOT's recommendation was that they
14 had reviewed the Applicant's request and determined that
15 based on the information provided, DDOT had no objection
16 to the approval of a special exception request through its
17 BZA application.

18 However, DDOT strongly objects to the location
19 of the curb cut on W Street Northwest and will not support
20 its approval during the project's Public Space permitting
21 process.

22 DDOT looks forward to working with the
23 applicant to move its parking garage entrance back into
24 its original proposed location in the alley. That's what
25 their recommendation is on their report dated February 22,

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1 which is Exhibit 42.

2 So I didn't know if you had any questions for
3 the applicant.

4 MEMBER WHITE: My question is about the DDOT
5 report. Several witnesses talked about having an interest
6 in doing some type of traffic study.

7 And I don't know whether or not this project
8 qualified for that. But I wondered whether or not DDOT
9 had taken a look at any aspects of traffic patterns and
10 how this project was going to impact the day-to-day in
11 terms of parking, traffic, cyclists, pedestrians and that
12 kind of thing.

13 VICE CHAIR HART: I'll let you all answer that.
14 I'm not going to answer that. I don't know what that --

15 MS. MOLDENHAUER: I will turn to Erwin Andres
16 of Gorove-Slade.

17 MR. ANDRES: Good afternoon, members of the
18 Board. Erwin Andres with Gorove-Slade Associates. For
19 this case, DDOT did not require any traffic studies to be
20 done for a few reasons.

21 One, there's no transportation relief required
22 for this. There's no parking relief, no zoning relief.
23 And two, the evaluation of the access as DDOT had
24 identified in their letter is typically done through the
25 Public Space application process.

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1 So as part of there, if there is any additional
2 traffic studies that they would need to evaluate the
3 appropriateness of the curb cut location, then that's
4 typically when they would ask for it.

5 Now, we have done some preliminary estimates of
6 traffic related to this project. And it's interesting
7 that, you know, people forget that there's actually a
8 significant amount of development on the site.

9 And one of the big proponents that's actually
10 driving a lot of traffic to the site today is the gas
11 station. You know, it's there, and people drive by it.
12 They don't realize, you know, how much traffic it
13 generates.

14 And based on -- we've done a comparison of the
15 amount of traffic that's generated by all of the lots that
16 are currently within this application and the proposed
17 development, and the proposed development actually
18 generates less traffic during the peak hours than what's
19 on there today.

20 The only difference is that the access
21 configuration is different because in fact there is access
22 on 14th Street for the gas station.

23 Typically, DDOT would, you know, I'm going to
24 qualify this, but they basically not ever provide any new
25 curb cuts along 14th Street for new developments. Again,

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1 this is my opinion, but the prospect of any new curb cuts
2 on a street like 14th Street is slim to none.

3 And so with respect to where we locate curb
4 cuts would be either in the alley or on the minor streets.
5 There are some extenuating circumstances with respect to
6 the architecture of the building and the underpinning of
7 the existing historic structures that makes it difficult
8 for us to locate the driveway in the alley.

9 And that's why we located it first in the alley
10 and then worked our way to moving it to W Street because
11 of some of the structural constraints and the practical
12 difficulties of having the driveway in the alley. Because
13 the team did acknowledge that, you know, and they know
14 that DDOT typically likes their driveways in the alley.

15 And so given that, you know, that is my brief
16 summation of some of the transportation and traffic issues
17 that you've heard today. And, like I said, you know,
18 we've typically dealt with these issues that don't have
19 specific transportation related relief in DDOT's
20 permitting process so.

21 MS. MOLDENHAUER: Thank you.

22 VICE CHAIR HART: Pete.

23 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

24 Let me pick up on Board Member White's questions a bit,
25 Mr. Andres. And this might be more of a question for Mr.

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1 Bell.

2 So why not -- tell me again, briefly, what are
3 those practical difficulties that make it from your
4 perspective impossible to locate the garage, not the
5 historic garage, but the new garage entrance on the alley?

6 MR. BELL: So that's very narrow. And what
7 we're trying to achieve is a straight run into the garage.
8 And Tim can walk through this. We did look at it. And
9 remember we're preserving the historic market building.

10 And when the ramp came in from the alley, there
11 were a number of issues about getting the clearance far
12 enough down underneath where that building is there. So I
13 don't know, Tim, if you want to take the cursor and
14 explain that. Maybe you can hop in here.

15 But in order to get also an efficient garage on
16 one level there and not have to go down two levels to make
17 the parking ramp work because when you put the ramp in the
18 alley you get a longer ramp because it has a bend in it.
19 To try and get the parking on one level, the straight ramp
20 is the simplest way to do that. And do you want to add
21 some stuff, Tim, because I know you wrestled with this?

22 MR. BERTSCHINGER: Well, I would say that, you
23 know, we did start the design looking at the access for
24 parking being off the alley. We've looked at it actually
25 in multiple spots along the alley, you know, in response

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1 to some of the questions.

2 And we did hear those comments in meetings
3 about can the access be on V Street? Can it be off the
4 center of the alley?

5 You know, some of the constraints on the site
6 might go to the first floor or on V Street we have a
7 building that spans the entire block. And that's a
8 historic block. So we're not going to, you know, cut a
9 hole in that to put a parking access there.

10 And then the second building that we're keeping
11 in its entirety on the site is aligned with the T
12 intersection at the alley. So that also becomes an
13 inappropriate place in terms of preservation.

14 MR. BELL: And that was suggested by a
15 community member. And we can't do it. We can't drive a
16 ramp through the historic building.

17 MR. BERTSCHINGER: Right. So what that does is
18 it puts us in a position where we're really evaluating a
19 location along the south side of the alley, the north side
20 of the alley or along W Street because, you know, we
21 agreed, you know, with Erwin that looking at a curb cut on
22 14th is certainly not in keeping with the character of
23 preserving the quality of the streetscape.

24 So we started by looking at the alley location,
25 the alley access at the north end of the alley. So one of

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1 the impacts that it has on the building is the ramp is
2 relatively long, you know, about 17 feet to make up and
3 then in the ramp.

4 So running that along the edge of the building
5 and curbing it down into the drywall results in a large
6 black wall on W Street, which we felt from a design
7 perspective is a fairly negative aspect to introduce onto
8 the street in that location.

9 We also hear from community members in our
10 first community meeting a lot of resistance to that idea
11 of the access at the alley and that there was a preference
12 for moving that to W Street.

13 At that point, we evaluated looking at the
14 access on W Street and placing it or really looking at
15 pulling it as far away from the 14th Street intersection
16 as possible.

17 You know, Erwin mentioned that they are using
18 curb cuts on the site. There are actually three. There's
19 one on 14th, one at the intersection of and 14. And the
20 second in the current location that we're proposing a curb
21 cut for.

22 Looking at the garage building in the gray, one
23 of the conditions we're constrained by is the underpinning
24 of that garage building.

25 So to be able to provide the supports for

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1 excavation, so we're going to keep that building in place.
2 We're not, you know, going to store it offsite somewhere.
3 So in order to keep that building supported during
4 excavation and as we build the design, we need to be
5 cognizant of where those underpinning locations are.

6 So in needing that garage access further down
7 the alley, what we find is coming in on that ramp and
8 turning in, we start to run into conflicts with where that
9 underpinning exists.

10 So what that does is it essentially leaves us a
11 location at the south end of the site. You know,
12 obviously introducing a garage access there along with --
13 so to kind of ameliorate the loading conditions and trash
14 pickup that the Hamilton residents have expressed is that
15 we're really beginning to lose a lot of that front edge
16 and that ability to activate the alley at that south end.

17 MR. BELL: So it's fair to say that like a lot
18 of things with this project, it's not just one thing.
19 It's not simply a matter of flipping the fire stair and
20 the elevators. You have to look at the whole project and
21 see how the whole thing goes together because there are a
22 lot of constraints pushing on it from different
23 directions.

24 So while it's easy to say you could move this
25 here and there must be a lot of different ways to do, in

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1 actual fact, once you get into all of the different
2 functional things such as the ramp and the fire stairs and
3 the fire exits and things, you have to take all of that
4 into consideration.

5 VICE CHAIR HART: So are you actually saying
6 that there are no other options for this?

7 MR. BELL: We think this is the best one.

8 VICE CHAIR HART: But are there no other
9 options though?

10 MS. MOLDENHAUER: I mean, I would --

11 VICE CHAIR HART: Hold on. Hold on a second.
12 What I'm trying to get to is that I understand that there
13 are implications for moving things. I understand that
14 there are reasons for why you've put pieces or aspects or
15 elements of the building where you have.

16 But I got to say, I really don't believe that
17 there is one option. And what I'm trying to get to is I
18 would like for you to be able to show me another option
19 where you don't have as much of an impact on -- and in
20 this case I'm looking at the 45 degree issue because I
21 think that that issue is more than what I think we would
22 be allowing. And I think that there needs to be some
23 further study that really looks at how to address that
24 issue.

25 And I really have a hard time believing that

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1 there is the one option that we're seeing and that's the
2 only option that's there. I understand that there are
3 going to be impacts.

4 I'm saying that you're before us because we're
5 trying to look at this and see whether or not we believe
6 that the impacts that you are proposing are kind of
7 justified or we should be allowing. And I'm saying that
8 I'm not sure if I agree with that.

9 MR. BELL: As a professor of architecture, I
10 would never say there's only solution to anything. I
11 would always be seeking the best solution.

12 MS. MOLDENHAUER: Let me just, obviously,
13 Commissioner --

14 VICE CHAIR HART: Hold on. Yes, Mr. Shapiro.

15 COMMISSIONER SHAPIRO: I just want to continue
16 with my question.

17 VICE CHAIR HART: Thank you.

18 COMMISSIONER SHAPIRO: So are you -- remind me,
19 are you building -- the number of spaces that you are
20 building, are you overbuilding or underbuilding from
21 what's required? I just don't remember.

22 MR. BERTSCHINGER: We're providing
23 approximately, like, 5 to 10 additional spots.

24 COMMISSIONER SHAPIRO: Above what's required?

25 MR. BERTSCHINGER: Yes.

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1 COMMISSIONER SHAPIRO: So, I mean, you know, I
2 know this area like you know this area. It's hard to
3 imagine that losing 5 or 10 spots is actually going to
4 have much impact on the project. Because, I mean, you're
5 building what is essentially a pedestrian oriented -- yes,
6 I mean, more pedestrian oriented here. You know, the move
7 in the district is to get rid of parking minimums anyhow.

8 So the argument that -- I hear you loud and
9 clear that it's a complicated garage to build ramps. But
10 the argument that the reason why it's complicated is
11 because you are losing spaces doesn't make as much sense
12 to me.

13 MS. MOLDENHAUER: May I just address the fact
14 that I knew that we're having this conversation as
15 community members have pointed out. But at the end of the
16 day, the Public Space Committee is the one that will
17 evaluate where the location of the ramp is.

18 We're not asking any relief on parking or
19 loading or access points. So the relief we're here today
20 is about lot occupancy and about the height and about the
21 setback.

22 From Board Member Hart's perspectives,
23 obviously, those are issues that we will be supplementing
24 on. But a perspective from the Board, you know, the DDOT
25 is the one that has -- and it's really not DDOT, it's

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1 actually the multi-member board of the Public Space
2 Committee -- has the jurisdiction to determine and
3 evaluate options and where this curb cut goes or does not
4 go.

5 What we're asking this Board for is simply the
6 flexibility to evaluate that, to discuss options, to
7 discuss our case with the Public Space Committee and then
8 to determine where they, you know, in their wisdom based
9 on traffic studies and other things, determine where it
10 should go.

11 COMMISSIONER SHAPIRO: Thank you. Actually,
12 it's helpful to hear. Mr. Chair, I'm going to turn to
13 you. Perhaps I am wearing my Zoning Commission hat to
14 this Board and thinking about the design implications,
15 which are fair game when we're evaluating projects. And
16 is it accurate to say that we're getting into weeds that
17 aren't really our weeds when we're looking at these design
18 issues related to parking?

19 VICE CHAIR HART: I think that the applicant
20 has kind of raised this on a number of occasions now that
21 these things are interrelated so that the way in which you
22 impact something can relate to how many parking spaces you
23 get. Where the drive aisle is will impact where, you
24 know, where the retail is. These things are changing --
25 what they've raised is that these things are interrelated,

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1 and I think that it's fair game.

2 COMMISSIONER SHAPIRO: That's helpful. And Ms.
3 Moldenhauer, to your point, you've talked about how
4 important it is to activate the alley. And Mr. Andres,
5 you even brought up that one of the concerns around sort
6 of loading the traffic onto the alley might affect the
7 pedestrian experience in the alley.

8 And I think this is a bit of an apples to
9 oranges comparison, but I'm thinking of the worth and the
10 wonderful way in which -- I forget the term that's used,
11 but it's kind of an integrated street.

12 MR. BERTSCHINGER: Woonerf. We like that term,
13 woonerf.

14 COMMISSIONER SHAPIRO: Yes. And the Dutch
15 term, yes. So, you know, you're proposing a version of
16 that is how I experienced what you presented of the alley.
17 I don't know if that's overtly what you're proposing or
18 just what it feels like.

19 MR. BERTSCHINGER: That's fair.

20 COMMISSIONER SHAPIRO: So perhaps to be more
21 explicit with that might be help with the design because
22 it might address some of the concerns. I mean, it
23 actually helps me to think about this in a different
24 light.

25 And then perhaps there is a way to find that

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1 alley, that garage entrance even if it's two ramps, you
2 know, an ingress and egress that's separate. Because
3 there's not going to be a whole lot of auto traffic coming
4 in and out of that anyhow.

5 MR. BERTSCHINGER: We agree. And I just want
6 to respond to two of the comments. You know, the first is
7 that we met with staff at DDOT already, and we have
8 produced alternative studies for access, which we can
9 provide for review.

10 And the second is that the number of parking
11 spots really isn't a constraint that we feel is a driver.
12 It's mostly related to the existing condition, the
13 historic preservation element, which really does cut the
14 space of the garage in half in terms of how we can access
15 it.

16 We need to bias the way we get our ramp in the
17 garage away from the center of the garage space. And this
18 orientation actually allows us to minimize the impact on
19 the streetscape because we have to have a curb cut, but we
20 can also reduce the amount of historic paint wall space
21 that would be necessary in order to accommodate a
22 differently oriented access off of the alley.

23 COMMISSIONER SHAPIRO: And have you looked at a
24 separate ingress and egress?

25 MR. BERTSCHINGER: We have not evaluated that.

1 COMMISSIONER SHAPIRO: Okay. And you're
2 smarter at this than I am, but my gut is that it's at
3 least worth considering.

4 MR. BERTSCHINGER: I believe so.

5 VICE CHAIR HART: Thank you. Ms. Moldenhauer,
6 I'm trying to -- let me just put this out. I don't know
7 if -- I think that we're headed for a continued hearing.
8 I mean, it sounds like we are.

9 And I don't know if you want to do your
10 rebuttal now or if you wanted to wait until we have the
11 rest of the hearing? I would think it would make sense --
12 and I will look at my Board members as well -- to see
13 whether or not you would rather do that. But it's just an
14 idea.

15 MS. MOLDENHAUER: Well, it might end up -- it
16 makes more sense to just wait because it sounds like
17 there's going to be some follow-up information and
18 homework that's going to need to be done specifically on
19 the setback issue. But then there's some other questions
20 that I may ask them to provide some supplemental
21 information.

22 So a rebuttal, it might be a little too early
23 at this point. They may have a better, more thoughtful,
24 quality rebuttal if they are able to incorporate
25 everything that they end up with in the final analysis

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1 after working with OP.

2 COMMISSIONER SHAPIRO: I'm inclined in the same
3 direction, Mr. Chair. I mean, I think if she is so
4 inclined to do the rebuttal, she can do it. But I just
5 think that this is part of a longer conversation.

6 And I would agree it's pretty clear we're going
7 to be continuing this in any case and continuing what
8 hopefully is a productive discussion around this.

9 VICE CHAIR HART: And I think that it can be a
10 focused continued -- not focused. There's another term
11 for that.

12 MS. MOLDENHAUER: Limited scope.

13 VICE CHAIR HART: Thank you, limited scope.
14 I'm not smart from here. A limited scope hearing for that
15 and I think that I want to kind of limit it to the 45
16 degree setback issue. But let me kind of bleed into some
17 other things so, I don't know, if I could get your
18 thoughts on that how you --

19 COMMISSIONER SHAPIRO: I completely see about
20 the 45 degree setback. I'm back and forth on the issue of
21 this W Street access point. I think Ms. Moldenhauer makes
22 a fair point that there are ways in which it affects this
23 project that may be a little bit out of our purview.

24 I'm curious about it. So, you know, I don't
25 want to have the conversation completely go away. In

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1 fairness, that's for me to be curious so --

2 VICE CHAIR HART: How about we do this? How
3 about we do this? We can focus on the 45 degree setback
4 issue and what can be done to minimize the impact or
5 minimize the amount of -- I say amount, but really how
6 much is in that 45 degree area to the greatest extent
7 possible and ask for some, I don't know if it's -- I mean,
8 we've raised so many things about this parking thing.

9 COMMISSIONER SHAPIRO: I think we should let
10 that -- I'm okay with letting that go.

11 VICE CHAIR HART: That's fine. I just want to
12 make sure that -- what I was trying to get to was whether
13 or not we could have some finality -- not finality, but if
14 we could have some better information from the applicant
15 on what it is that they would be prepared to do after
16 looking at, I don't know, various options?

17 Like, say they wanted to do an ingress and
18 egress, you know, have them split, which would maybe
19 reduce the size of the curb cut? I don't know. I mean,
20 I'm just trying to get to a this is what we could actually
21 get from the Applicant. Any thoughts on that?

22 COMMISSIONER SHAPIRO: I mean, DDOT has already
23 stated that they're not willing to support this as is.
24 That's because it's before the Public Space Committee.

25 So I don't think it's going to be a waste of

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1 your time to help educate us around this as well because
2 essentially you're going to have to do it again for the
3 Public Space Committee.

4 So, you know, I don't want it to feel like a
5 negotiation, but it does feel like that's our process as
6 well. I mean, the DDOT report is a factor in our
7 consideration.

8 VICE CHAIR HART: Yes. I mean, it's not -- we
9 don't give it great weight, but it is a factor in how we -
10 - you know, the OP report, we do give great weight to.
11 And, of course, they're not necessarily looking at that
12 aspect of it, but they've been focused on the zoning
13 portions of it. Yes, Ms. Moldenhauer.

14 MS. MOLDENHAUER: So just two points. One, I
15 mean, obviously, I appreciate your recommendation to limit
16 the scope to the 45 degree angle. Maybe we could limit
17 the garage to any area where we think that might actually
18 impact or be one of these kind of holistic factors. That
19 would be my recommendation if that would be okay.

20 And then two, I just wanted to -- I agree with
21 you in the reasons for delaying our rebuttal. But I would
22 like potentially for the benefit of those individuals,
23 since all of the individuals present that testified in
24 opposition were all from one building, the Lumen, and no
25 other building, and so the question is, I just want to

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1 rebut that information and show how we do have in our
2 current record information on that impact.

3 And just maybe allow them to have a CB present
4 and hear that if the Board would -- I think there were one
5 or two other -- I want them to be equal. If the Board
6 would provide us with just a moment to show where in our
7 current filings we have addressed that if that's --

8 VICE CHAIR HART: I think that would be
9 appropriate and given that they spent the time here to
10 actually come here.

11 MS. MOLDENHAUER: That's what --

12 VICE CHAIR HART: I would give them the
13 opportunity to do that so.

14 MS. MOLDENHAUER: That's what I was asking.

15 VICE CHAIR HART: And you actually have to come
16 to -- you can't speak. They can't hear you on this.

17 What the applicant is proposing to do is just
18 to go through -- for a few moments go through what it is
19 that they say is the response to some of the questions and
20 concerns that the persons in opposition raised as part of
21 their -- or I should testified to as part of their
22 testimony earlier. Yes, Ms. White?

23 MEMBER WHITE: And I just had two other points
24 of clarification that I would love to have because people
25 keep asking about it and that's just where you are on the

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1 inclusionary zoning issue? If you could just clarify how
2 many units we're talking about there.

3 And if you could supplement it with if it's
4 available some potential, how do I say, tenants that could
5 potentially fulfill the arts component of what you're
6 trying to do?

7 I don't know if you've started discussions or
8 if you have letters of interest or anything of that
9 nature. If you don't have it, you don't have it. But I'm
10 just very curious because this is kind of an arts type of
11 zone project so.

12 MS. MOLDENHAUER: And so on one whole -- so let
13 me just address this question right now. On the IZ
14 requirement, it is 8 percent for concrete and steel. And
15 so that would be -- the delta or the difference has been
16 refined. And so it is 8 percent. And so, yes. And so we
17 obviously will comply with the requirement and that was --

18 MEMBER WHITE: Percent for concrete and steel.

19 MS. MOLDENHAUER: For concrete and steel.

20 MEMBER WHITE: So does that include the
21 penthouse?

22 MS. MOLDENHAUER: And then there would be an
23 extra so obviously part of the benefit of approving the
24 support for the relief we're requesting is that you would
25 also be approving and providing additional square footage

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1 that would go towards habitable space that would be part
2 of an extra relief that would be funded towards the
3 housing trust fund.

4 And so we can quantify that for you as well to
5 both one, you know, the amount that would be contributed
6 towards the housing trust fund with --

7 COMMISSIONER SHAPIRO: The estimated amount.

8 MS. MOLDENHAUER: -- estimated amount, yes.
9 Because obviously the taxes could change, but it is the
10 estimated amount.

11 MEMBER WHITE: Thank you.

12 MS. MOLDENHAUER: So we will supplement that
13 and have that as well. Your second question --

14 MR. MADANI: I can speak a little bit to that.
15 So we have been reaching out to the different groups and
16 discussing the possibilities of how to utilize the art
17 spaces.

18 I think that I know people are saying there's
19 no solid commitments because there are at this point no
20 solid plans. There is an intent. I can tell you that I
21 myself am an art major even though I have an engineering
22 degree as well. So I'm a developer with a leaning towards
23 the arts.

24 You know, the discussion has been sometimes
25 surrounded around creating a space that can be leased to

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1 artists who can create artwork within that space. It can
2 be leased at a nominal cost, and they create art work that
3 can be sold out of that space.

4 Again, we talked about using the roof of the
5 garage building for an art space that can host, you know,
6 sculpture gardens and other such things and private
7 events, you know, surrounding the arts.

8 You know, I hope -- you know, I refute the
9 gentleman's versions of our discussions that it was all
10 based around economic gains. But I will tell you that
11 that's been the intention from the beginning. From the
12 outset of the creation of this building was to brand it
13 with an arts element, was to create the marketing and
14 appeal of the building around an arts element.

15 And, you know, we have even, you know, gone so
16 far in another project down the street at Locust Circle,
17 you know, we have used our construction banner spacing and
18 shared that space with street artists and invited them
19 with the banners to come and produce their artwork by
20 indicating on our signage that they are permitted to draw
21 on it.

22 It has been a successful project. A, it's
23 encouraged arts in the neighborhood. It's also prevented
24 our banners from being tagged, which has been helpful.

25 MEMBER WHITE: Well, do you have any

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1 commitments?

2 MR. MADANI: Well, we're going to be working
3 Commissioner Ackerman. And he and I are going to be in
4 touch to see how we can bring local artists into the fold
5 and be creative about how we can use this property, too,
6 to advance the arts.

7 VICE CHAIR HART: And I would just ask that as
8 you're working with Commissioner Ackerman -- and I
9 appreciate Commissioner you coming down and also still
10 staying here -- but you raised a couple of things.

11 One was the kind of what -- sorry, I'm looking
12 at notes a couple pages back. One was the possibly adding
13 a condition in the -- actually, I think two conditions.
14 Is the intent of the arts overlay district being
15 respected? He kind of hinted at that. Maybe if you could
16 flesh that out a little bit more for the continued
17 hearing. That would be helpful.

18 As well as he raised an issue about the subsidy
19 for the retail in the alley and whether or not there was
20 some sort of subsidy, you know, aspect to that.

21 If we could understand -- if you could try to
22 come together on that to understand that a little bit
23 better. Flesh that out as much as you can because, you
24 know, again, I don't know if we would be granting it. But
25 if we were, I think there may be some conditions that may

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1 connect into that.

2 But if you could do that, that would be helpful
3 for us. Now, Ms. Moldenhauer, you said that you were
4 going to do a partial rebuttal.

5 MS. MOLDENHAUER: Yes. So just quickly, I will
6 just address the Lumen comments. So one, there was a
7 comment about a concern about a restaurant use. We've
8 specified the uses that we're asking for here. It's arts
9 and entertainment use for that area.

10 And there obviously -- that would be -- I think
11 that was a comment would there be arts on that space? We
12 have identified the use. That's part of our BZA case.
13 It's also how we've calculated our parking.

14 Second, they had questions about clarifying and
15 making assertions of statements of parking requirements.
16 The comments that were made had to do with the parking
17 requirements that were obviously, as indicated, a little
18 bit lower than what we were providing. And that was where
19 there was a difference between the two numbers. One was
20 what we were required to do and one was the range that we
21 were proposing.

22 The other question that was raised were
23 questions about, you know, why aren't we pulling back off
24 of W Street? And the answer there is that there's no
25 legal requirement to.

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1 The Lumen is in the arts zone so it does not
2 have the same 45 degree setback requirement because that
3 is only when you abut the RA zone.

4 The Lumen actually is a building that was
5 subject to multiple zoning relief that this Board
6 approved. They got lot occupancy relief. They got
7 parking relief. So those individuals have all received --
8 owners of a condo building that will benefit from this
9 Board granting relief.

10 And then in addition to that, I will just point
11 to the PowerPoint slide. These are exhibits that are in
12 Exhibit 34A2 in our record and also were part of the back
13 of our decks.

14 And I will turn now quickly to Tim to identify
15 that we do have in our record and we have studied and
16 thought about potential shadow or lack of shadow and
17 impact on the Lumen. And Tim, I'll just ask you to rebut
18 that comment. Thank you.

19 MR. BERTSCHINGER: So we provided these in our
20 original application. So one of the things we did in
21 response to what OP requires is to look at the elevational
22 study for the Hamilton.

23 You know, one of the reasons why we didn't
24 really reference this is because we don't believe there's
25 a substantive impact. You know, one thing Lumen is across

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1 the right-of-way so it's across W Street. I believe
2 that's a 70 foot right-of-way.

3 So the first study here, on the top row, this
4 is a study of basically the design if we just trimmed off
5 the back to comply with the setback requirement. On the
6 bottom we have the proposed design.

7 You can see the impact on W Street between the
8 two is really not substantial and the impact across the
9 street is non-existent. And so this is an axiom showing
10 the exact same studies.

11 MS. MOLDENHAUER: Can you just circle where the
12 Lumen is just to kind of give everybody a perspective?

13 MR. BERTSCHINGER: I apologize. So the Lumen
14 is right here across the street on 14th and W on the north
15 side.

16 So looking at the second set of studies, here
17 we're looking at sort of prevailing conditions, spring and
18 fall. And you can see here at mid-day, where the shadows
19 kind of reach their greatest extent, they do get across W
20 Street.

21 They're essentially into the sidewalk by sort
22 of the morning. And then in the afternoon, we've got some
23 shading in the intersection. You know, obviously, that's
24 a public space that everybody uses in the neighborhood so
25 there's an impact, but it's not specifically to the Lumen.

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1 According to the final study, you know, this is
2 difficult because this is the winter. You know,
3 obviously, with a low sun angle, we have an impact across
4 the street here. And we can extend this if it's
5 requested. But, you know, all these buildings have an
6 impact across the street to their neighbors regardless of
7 their height.

8 MS. MOLDENHAUER: Thank you very much. And
9 then obviously we'll take any questions and supplement
10 anything we need to.

11 VICE CHAIR HART: Thank you. Any other
12 questions for right now? I think that -- are you pretty
13 clear on the things that we are looking for?

14 MS. MOLDENHAUER: Yes, I do believe we are.
15 And we'll obviously continue to talk with OP and the ANC.

16 VICE CHAIR HART: Yes, please, Mr. Shapiro.

17 COMMISSIONER SHAPIRO: I'm building off of what
18 Board Member White asked about related to the arts uses.
19 And I just don't know how much you were able to quantify
20 that? But in the same way you are quantifying other
21 things, please, you know, specifically quantify it.

22 Even if there is some flexibility around how it
23 ends up getting provided, it's just helpful to hear what
24 kind of commitment you're making. Thank you, Mr. Chair.

25 VICE CHAIR HART: Thank you. Okay. So I think

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1 we're looking at time now, timeline. I'm looking at Mr.
2 Moy, but I'd also like to know when Mr. Shapiro is back
3 with us.

4 SECRETARY MOY: Not for a couple months.

5 VICE CHAIR HART: So it's going to be little --
6 we're not going to wait a couple months. Sorry.

7 COMMISSIONER SHAPIRO: I might be able to trade
8 with another commissioner.

9 VICE CHAIR HART: Okay. So I know we're not
10 going to lose them when we -- and two weeks is probably
11 not going to work either just because I know the Chairman
12 is not going to be here. Three weeks, we're talking about
13 when?

14 MS. MOLDENHAUER: We would need to wait until
15 the ANC meets again. So, I mean, and I'm saying if we're
16 hopeful, obviously, at least to present to them and
17 discuss this with them. So that would be, I believe, on
18 the 5th of April. And so we would then be looking maybe
19 at the 11th, if possible? Sorry, just to clarify.

20 VICE CHAIR HART: I appreciate it. I'm trying
21 to remember when -- I think the Chairman is here on that
22 day.

23 SECRETARY MOY: I believe so.

24 VICE CHAIR HART: There are a couple of days in
25 April that I think are going to be a question. I would

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1 like for him to be here, you know. So you said the 11th?

2 SECRETARY MOY: The 11th.

3 VICE CHAIR HART: How does the 11th look, Mr.
4 Moy?

5 SECRETARY MOY: The 11th looks, that looks
6 doable. I mean, the Board has six cases that day, but it
7 should be okay. So that's doable.

8 VICE CHAIR HART: Well, why don't we look at
9 April 11 for a continued hearing, limited scope, got my
10 words right. And we'll come back and continue the
11 discussion, have your full rebuttal and I think that's it.
12 Yes, sir.

13 COMMISSIONER SHAPIRO: Mr. Chair, so just so
14 it's clear. It's limited scope, but does that mean we can
15 hear -- I'm just curious. Will we hear additional
16 testimony related to that from all the parties, from the
17 public? How does that work?

18 VICE CHAIR HART: I mean, the ANC can speak
19 whenever they like. I mean, I'll let the Chairman figure
20 out if he wants to have additional testimony from the
21 public. But, I mean, that's a good question. I think
22 that right now we'll keep it to the applicant and the ANC.
23 And we'll see how the Chairman feels about that at that
24 point.

25 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

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1 SECRETARY MOY: Would you need to submit a
2 deadline for filing for supplemental information or not?

3 VICE CHAIR HART: So --

4 SECRETARY MOY: The ANC meeting is April 5.

5 VICE CHAIR HART: Yes, and the one question,
6 Ms. Moldenhauer, if you are proposing to make changes to
7 the 45 degree, you know, issue, I think the Office of
8 Planning because they've already given their -- I guess
9 they've recommended denial of that aspect of it.

10 If you come back and have something that is
11 closer but, I don't know. I think that we should have the
12 Office of Planning weigh on that. What I'm trying to ask
13 you to do is to figure out when you could have something
14 for us so that I could figure out when they need to get
15 their comments to us. And I don't know if it's like the
16 23rd of this month or --

17 MS. MOLDENHAUER: I think the 23rd would be
18 good and then OP could file a supplemental by the 30th.
19 I'm looking, I mean, I don't want to put words in his
20 mouth that works. I mean, I think that would -- obviously
21 we don't know --

22 VICE CHAIR HART: He nodded.

23 MS. MOLDENHAUER: You put words in his mouth,
24 not me.

25 VICE CHAIR HART: No, I think the 23rd is --

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1 we'll give you all a couple of weeks to come up with some
2 other designs for us or at least some other looks for us.
3 And then it'll give a week for the Office of Planning to
4 provide their comments. And the ANC will then have until
5 the -- well, they can submit whenever they like up to, I
6 guess, the 10th. So, Mr. Commissioner, do you understand
7 that as well?

8 MR. ACKERMAN: Yes.

9 VICE CHAIR HART: So I think you all have
10 until, like, the 10th of April to submit something to us
11 after the ANC meeting on the 4th. Thank you very much for
12 coming.

13 MS. MOLDENHAUER: Thank you very much.

14 VICE CHAIR HART: Thank you all. No, we're not
15 done. Next case, Mr. Moy.

16 SECRETARY MOY: Thank you. If we could have
17 parties come to the table to Case Application Number 19-
18 701 of Amy and Fernando Wright. Application for a special
19 exception on Subtitle E, Section 205.5. This is from the
20 rear addition requirements of Subtitle E, Section 205.4 to
21 construct a two-story rear addition to an existing one
22 family dwelling, RF-1 zone, 1511 C Street Southeast,
23 Square 1074, Lot 486.

24 VICE CHAIR HART: Thank you. Welcome. Thanks
25 for staying all day.

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1 COMMISSIONER SHAPIRO: They certainly drew the
2 short straw in terms of the day they picked.

3 VICE CHAIR HART: If you could introduce
4 yourself? And you have been sworn in?

5 MR. FOWLER: Yes.

6 VICE CHAIR HART: Okay. I have to ask because
7 it's been a long day. Thank you.

8 MR. FOWLER: Hi, I'm Mike Fowler from Fowler
9 Architects representing my clients.

10 VICE CHAIR HART: Thank you, Mr. Fowler. If
11 you could -- I mean that I think that the record is
12 pretty full on this case. If you could just give us a
13 little summary of your project and the relief that you're
14 looking for? Thank you.

15 MR. FOWLER: This is a single family residence
16 in the R3 District. We are proposing a rear addition that
17 would exceed the 10 foot limit. We are conforming in all
18 other aspects, lot coverage, rear yard and height.

19 We did draw a sun study showing the difference
20 between a matter of right proposal and what we were asking
21 for. Presented it to ANC neighbors. And we have support
22 from everybody that we've talked to about this.

23 VICE CHAIR HART: Okay. Do the Board members
24 have any questions?

25 MEMBER WHITE: Let's see, is there ANC feedback

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1 on this case at all? I don't know if there is a report
2 unless it came in late. But I don't see one. So my
3 question is, was this presented to the ANC?

4 MR. FOWLER: Yes, it was. I wasn't personally
5 there. I'm filling in for my wife on these two hearings
6 today. So I apologize if it takes me a little bit longer
7 to find some information.

8 But we did present to the ANC, and it did vote
9 to support in both the planning and zoning and the full
10 ANC.

11 COMMISSIONER SHAPIRO: Mr. Chair, if I may?

12 VICE CHAIR HART: Yes. Sir, sorry.

13 COMMISSIONER SHAPIRO: Technically, if you're
14 filling in for your wife, are we required to have her
15 authorization for Mr. Fowler? So do we have one for Ms.
16 Fowler?

17 VICE CHAIR HART: Actually it says both --

18 MR. FOWLER: We put both our names on those
19 letters of authorization in case this arises. It's a
20 small firm. It's two of us and a couple of employees so.

21 VICE CHAIR HART: It's Exhibit 10 actually has
22 the letter of authorization. I appreciate it. I'm glad
23 that you looked at it. I hadn't thought about it but --

24 COMMISSIONER SHAPIRO: Actually, I hadn't
25 looked at it. So thank you, guys.

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1 MR. FOWLER: No, we typically do that. I'm
2 glad we did it in this case, too.

3 VICE CHAIR HART: So thank you. Any other
4 questions?

5 MEMBER WHITE: I guess my only question is
6 whether or not the ANC was going to submit anything in
7 writing? Your names are very familiar to me so I'm not
8 questioning your veracity, but I wondered whether or not
9 they were going to submit anything.

10 MR. FOWLER: I don't know. I'm actually
11 surprised that it wasn't submitted, to be honest. Because
12 we were under the impression -- well, it was voted for and
13 supported in the meeting so.

14 MEMBER WHITE: You were there?

15 MR. FOWLER: I was not there, but my wife was
16 there, yes.

17 MEMBER WHITE: Your wife was there.

18 VICE CHAIR HART: Any other questions? Let's
19 turn to the Office of Planning. Ms. Thomas?

20 MS. THOMAS: Yes. Good evening, Mr. Chair.
21 The Office of Planning stands by the record of staff
22 approval. And you will see after much discussion about
23 these additions, that this addition, while it measures 15
24 feet, what is considered the main portion of the rear yard
25 line, it is only considered to be something feet because

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1 it fills in that core area, that small core there so.

2 So the main impact is not on the full 30 feet,
3 what we consider 30 feet, but just the 15 feet beyond the
4 core area. And so we did not have an issue with that.
5 And in that sense, he has provided a wealth of information
6 that we could base our decision on.

7 Apart from that, I'm sorry, one more thing, the
8 residents on both sides sent in their letters of
9 agreement. Thank you.

10 VICE CHAIR HART: Thank you very much. Any
11 questions for the Office of Planning? Mr. Fowler, any
12 questions for the Office of Planning?

13 MR. FOWLER: No.

14 VICE CHAIR HART: Excuse me. And I'll now move
15 to the -- is the ANC here? No? Is there anyone here in
16 support of the application? Thank you so much.
17 Wonderful. Welcome, and before you --

18 MR. PETERSON: I've been sworn.

19 VICE CHAIR HART: I'm glad that you're
20 anticipating. Excellent.

21 MR. PETERSON: I've been sworn many times.

22 VICE CHAIR HART: Well, yes, but today?

23 MR. PETERSON: Even today.

24 VICE CHAIR HART: Okay.

25 MR. PETERSON: My name is Gary Peterson. I'm

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1 chair of the Capitol Hill Restoration Society Zoning
2 Committee. This property came before the Zoning Committee
3 at our February 8 meeting and we voted unanimously to
4 support the application.

5 I just want to call your attention -- I have
6 heard previously today the question about how deep and how
7 big should these extensions go? I just wanted to let you
8 know our committee sort of has a protocol for looking at
9 these.

10 First of all, we just look at how big the
11 request is. Are they doubling the size of the house? In
12 other words, just what's the scale compared to the
13 existing house?

14 We look at the percent of the lot occupancy,
15 which here, they're staying under 60 percent. We look at
16 the rear yard, and here they're maintaining a substantial
17 rear yard. We look at the shadow study and including the
18 matter of right portion of it. So in other words, what's
19 the shadow is going to be shown by the matter of right as
20 opposed to then the addition?

21 We look at whether or not the neighbors have
22 approved this and in their approval they have had the
23 benefit of the shadow study. So they make a knowledgeable
24 approval.

25 And so what we come down to is the greater

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1 relief that is required the less likely we're going to
2 support the application.

3 In this case, we felt that the applicant had
4 met all of our standards, and we support the application.

5 VICE CHAIR HART: Okay. That's just way too
6 quick and way too -- I'm kidding. Mr. Peterson, I
7 appreciate you coming down. I know I've seen you before.
8 You've come on a number of cases before us. So I do
9 appreciate your effort and sticking with us for so long.

10 MR. PETERSON: I'm going to be for the next two
11 cases.

12 VICE CHAIR HART: You're just in here for --
13 you're going to be here for a while. So do we have any
14 other questions for Mr. Peterson?

15 COMMISSIONER SHAPIRO: No, sir.

16 VICE CHAIR HART: Okay. Thank you very much.
17 Is there anyone here -- thank you very much. Is there
18 anyone in opposition to the case? Seeing no one stand up,
19 back to you, Mr. Fowler. Do you have any other things you
20 want to say in closing?

21 MR. FOWLER: Yes, just that this addition, if
22 approved, would allow the family to remain in the house
23 that they've been in for quite a while. It's a very
24 modest addition, and they're going from two bedrooms to
25 three bedrooms. And it's really to just get an extra

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1 bedroom for a child so they can stay in the house.

2 VICE CHAIR HART: Thank you. I think I can
3 safely say I can close the hearing and bring it back for
4 discussion. I can begin.

5 After reviewing this case, reviewing the
6 record, the Office of Planning report, which the
7 recommendation is to vote for approval of the case, I
8 think that the record is very full. And it has all the
9 information that I need to be able to support this
10 application.

11 And I believe that the applicant has met the
12 requirements for the relief under the Zoning Code, and I
13 would like to hear any other comments from anyone.

14 MEMBER WHITE: I'll just make it short. I
15 concur with your comments. This is the type of rear
16 addition relief that I can get on board with without a lot
17 of push back because of all of the approvals that we've
18 gotten from the neighbors, from the Capitol Hill
19 Restoration Society and others, including the information
20 that the ANC was on board with it as well. So I would
21 support it, Mr. Vice Chair.

22 VICE CHAIR HART: Okay. And with that I'll
23 make the motion to approve Zoning Case -- excuse me, wow,
24 I can't even say, BZA Application 19701 as read by the
25 Secretary. Do I have a second?

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1 COMMISSIONER SHAPIRO: Second

2 VICE CHAIR HART: All those in favor say aye.

3 (Chorus of ayes.)

4 VICE CHAIR HART: Any opposed?

5 (No audible response.)

6 VICE CHAIR HART: Looks like the ayes have it.

7 Mr. Moy.

8 SECRETARY MOY: Staff would record vote as 3 to
9 0 to 2. This motion was brought by Vice Chair Hart to
10 approve the application for the relief being requested.
11 Seconding the motion Mr. Peter Shapiro. Also supported by
12 Ms. White. No other Board members participating. Motion
13 carries.

14 VICE CHAIR HART: Summary order, Mr. Moy?

15 SECRETARY MOY: Thank you.

16 VICE CHAIR HART: Thank you very much.

17 MR. FOWLER: Thank you.

18 VICE CHAIR HART: And you're still here for the
19 next case.

20 MR. FOWLER: I have the next case, yes. So I'm
21 just going to sit here if that's okay.

22 VICE CHAIR HART: That's fine.

23 SECRETARY MOY: All right. That case would be
24 Number 19702 of Kate and Matthew Gallery. This is as
25 amended for a special exception under Subtitle E, Section

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1 5201, from rear addition requirements of Subtitle E,
2 Section 205.4, lot occupancy requirements, Subtitle E,
3 Section 304.1, and the non-conforming structure
4 requirements of Subtitle C, Section 202.2 to construct a
5 two-story rear addition to an existing one family
6 dwelling, RF-1 Zone, 656 Independence Avenue Southeast,
7 Square 870, Lot 62.

8 VICE CHAIR HART: Thank you, Mr. Moy. And it
9 looks like we have Mr. Fowler here again. If you could,
10 as you did in the last case, if you could give us a
11 summary of the case?

12 I, you know, read through the record. I
13 thought that, again, it was, you know, full, but would
14 like to hear from you on how believe you meet the
15 criteria.

16 MR. FOWLER: Okay. Mike Fowler again, from
17 Fowler Architects. Yes, this is another single family
18 residential project in the RF-1 District. It is currently
19 over lot coverage, and it would be increasing that by a
20 few percentage points.

21 It's basically an open core infill project
22 staying below 70 percent. It requires, like I said, the
23 lot coverage relief in addition to a relief we added for
24 the 10 foot addition.

25 I guess the -- it wasn't originally included

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1 because we didn't anticipate the need for relief from that
2 since the core is on the opposite side of the house that
3 it would affect. But we did add that relief, and we don't
4 think that it affects, you know, the project and whether
5 or not that unduly affects the neighboring properties.

6 So, again, it's a modest residential addition
7 to a single family residence, and we feel that it meets
8 the special exception.

9 VICE CHAIR HART: And could give us -- thank
10 you. Could you us give us a few -- this is, I think, a
11 similar issue as to the last case. Any ANC report?

12 MR. FOWLER: This was at the same ANC meeting
13 and both projects were approved at the planning and zoning
14 committees and the full ANC. And I do not know why there
15 isn't a report.

16 VICE CHAIR HART: That's fine. Thank you. Any
17 other questions for the applicant? Let's move to the
18 Office of Planning.

19 MS. MYERS: Hello. Crystal Myers for the
20 Office of Planning. The Office of Planning recommends and
21 stands by the record of staff report.

22 VICE CHAIR HART: That was short and sweet.

23 COMMISSIONER SHAPIRO: A six hour wait for
24 eight words.

25 VICE CHAIR HART: Are there any questions for

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1 the Office of Planning?

2 COMMISSIONER SHAPIRO: No, sir.

3 VICE CHAIR HART: And I don't have any either.
4 Does Applicant have any questions for the Office of
5 Planning?

6 MR. FOWLER: No, I don't.

7 VICE CHAIR HART: I thank you. Let's move to
8 the ANC -- I don't think the ANC is here. But I will ask
9 if the ANC is here. If there is anyone in support, Mr.
10 Peterson, it looks like you're up again.

11 MR. PETERSON: Thank you. My name is Gary
12 Peterson. I'm chair of the Capitol Hill Restoration
13 Society Zoning Committee. We considered this case at our
14 February 8 meeting and unanimously voted to support it.

15 I would just like to point out we ordinarily
16 are not happy with filling in the dog legs. But in this
17 case, if you look at the plat that's on their C3, you can
18 see there is no pattern along the back of the properties
19 in that square. And so we don't feel this is damaging the
20 rhythm or anything along the back of the property line.
21 And we urge you to approve this application.

22 VICE CHAIR HART: Thank you. Any questions for
23 Mr. Peterson? Thank you very much. I'm sorry, one other
24 question. Do you have any question for Mr. Peterson?

25 MR. FOWLER: No, I don't.

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1 VICE CHAIR HART: Okay. Anyone here in support
2 of the application? Anyone here wish to oppose the
3 application? Seeing none, back to you, Mr. Fowler. Any
4 last words that you'd like to provide us?

5 MR. FOWLER: No, just that this is another very
6 modest proposal, and, you know, we feel it meets the
7 requirements.

8 COMMISSIONER SHAPIRO: Okay. No children, Mr.
9 Fowler?

10 MR. FOWLER: I'm less involved with this
11 project, so I can't speak to that.

12 VICE CHAIR HART: Thank you, Mr. Shapiro. If
13 there are no other questions, I'll close the hearing and
14 bring it back for deliberation.

15 Again, I believe that the applicant has
16 provided sufficient information to show how they're
17 meeting the applicable zoning regulations or the criteria
18 for the zoning regulations, or relief from them, I should
19 say. And I'm looking at the Office of Planning report,
20 which has recommended approval of this application. And
21 I'm in agreement with it.

22 I noted that the Office of Planning Report
23 notes that both of the neighbors actually are in support
24 of the application as well. They are adjacent to this
25 property.

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1 We did hear from Mr. Gary Peterson, who is the
2 chair of the Capitol Hill Restoration Society Zoning
3 Committee, who has said that they voted to support it as
4 well. And I would be support of this application as well.
5 Any other thoughts from my Board members?

6 MEMBER WHITE: I concur with you, Mr. Vice
7 Chair.

8 VICE CHAIR HART: Thank you so much. Hearing
9 that, I would make a motion to approve Application Number
10 19702 of Kate and Matthew Gallery as read by the Secretary
11 and would like a second?

12 MEMBER WHITE: Second.

13 VICE CHAIR HART: Hearing a second, all those
14 in favor say aye.

15 (Chorus of ayes.)

16 VICE CHAIR HART: Any opposed?

17 (No audible response.)

18 VICE CHAIR HART: Looks like the ayes have it,
19 Mr. Moy.

20 SECRETARY MOY: The staff would record the vote
21 as 3 to 0 to 2. This is on the motion of Vice Chair Hart
22 to approve the application for the relief being requested.
23 Seconding the motion Ms. White. Also in support Mr. Peter
24 Shapiro with two Board members not participating on this
25 application. The motion carries.

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1 VICE CHAIR HART: Summary order, Mr. Moy.

2 SECRETARY MOY: Thank you.

3 VICE CHAIR HART: Thank you. Thank you very
4 much.

5 MR. FOWLER: Thank you.

6 VICE CHAIR HART: We're going to take, like, a
7 two minute break, I think, just to --

8 MEMBER WHITE: Three.

9 VICE CHAIR HART: Three minute break. We'll be
10 back here very shortly.

11 (Whereupon, the matter went off the record at
12 5:53 p.m. and went back on the record at 6:01 p.m.)

13 VICE CHAIR HART: Thank you for your
14 indulgence. Mr. Moy, if you could call the last case.

15 SECRETARY MOY: Yes, sir, with pleasure. It's
16 6:04 p.m. All right. This is Case Application Number
17 19593 of Edward and Naomi Griffin, as amended, for a
18 special exception under Subtitle E, Section 5201, from the
19 lot occupancy requirements of Subtitle E, Section 304.1
20 and from the non-conforming structural requirements of
21 Subtitle C, Section 202.2.

22 This would include a rear third floor deck in
23 an existing one family dwelling, RF-1 Zone at premises
24 1226 North Carolina Avenue Northeast, Square 1012, Lot
25 122.

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1 As the Board will recall, this was last heard
2 for a preliminary matter, as a matter of fact, on December
3 13, 2017. And there are a number of motions filed in
4 every direction as preliminary matters.

5 I can go through each one of these if you like,
6 Mr. Vice Chair, or I can leave that with you. But we can
7 start, I suppose with an opposition party's filing
8 regarding an Office of Planning staff. And there were two
9 responses to that motion, both from the applicant and from
10 the Office of Planning.

11 The opposition party has also filed a motion
12 regarding a model or documentation regarding a shade study
13 under Exhibit 68, 68A. The applicant filed a response to
14 that under Exhibit 70.

15 The applicant has also filed a motion to strike
16 the appearance of the opposition party's counsel, and
17 that's under Exhibit 72, 72A. So that's it for starters.

18 VICE CHAIR HART: Okay. I only see one person
19 here.

20 MR. GRIFFIN: Good afternoon. Edward Griffin.
21 I'm the applicant.

22 VICE CHAIR HART: Yes. Welcome, Mr. Griffin.

23 MR. GRIFFIN: Thank you.

24 VICE CHAIR HART: And I'm wondering why I'm
25 just seeing one person here.

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1 MR. GRIFFIN: I believe the party in opposition

2 --

3 VICE CHAIR HART: Were they here?

4 MR. GRIFFIN: No. Has decided not to attend
5 today or at least they're not here.

6 VICE CHAIR HART: Well, I mean, I'm sorry. I'm
7 not asking you. I wasn't trying to find out much about
8 that because that's not your, you know, decision on why
9 they weren't here. I was just more of kind of using why
10 there was just one person sitting in front of us.

11 MR. GRIFFIN: I understand.

12 VICE CHAIR HART: So now I'm a little confused.

13 MEMBER WHITE: On the motion?

14 VICE CHAIR HART: Yes, I mean, if the party in
15 opposition is actually not here, I'm looking at --

16 MR. GRIFFIN: I would suggest that the issues
17 of the motions may be --

18 VICE CHAIR HART: Well, actually, hold on. I'm
19 talking to our Office of Attorney General. What happens
20 when the party in opposition is not here? Because they
21 can't provide any testimony so, I mean, do we outright
22 deny things or?

23 MS. GLAZER: Well, it depends on whether you're
24 talking about the hearing itself or the motions. If we
25 start with the motions, I think, and do it one by one we

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1 can -- the Board can determine what to do.

2 With respect to the first motion that was --
3 well, I don't know which one was first. Yes, I think the
4 first motion was brought by the opposition party and that
5 might be moot because she's no longer here to press that.
6 On the other hand, the Board could discuss that and
7 deliberate on it anyway.

8 VICE CHAIR HART: Yes. I think I'm inclined to
9 do that. That's the motion -- this is the motion to
10 remove the staff person. They actually noted that the --
11 the party in opposition said that it was a -- they made
12 motion to remove a -- and they said it was a BZA staffer,
13 but it was someone with the Office of Planning.

14 And I guess we could have a brief conversation
15 about it. But from my perspective, I've read through the
16 -- excuse me -- the Office of Planning has provided some
17 information, and I'm trying to see what exhibit it is.

18 SECRETARY MOY: 67.

19 VICE CHAIR HART: Sixty --

20 SECRETARY MOY: 67, sir.

21 VICE CHAIR HART: Oh, okay, thank you. I was
22 thinking that that was the actual motion, but it's the
23 OP's response to it. In reading through the Office of
24 Planning response, I fully concur with the Office of
25 Planning response to this motion. And I would vote to

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1 deny the motion. But I'd like to hear from the other
2 Board members.

3 COMMISSIONER SHAPIRO: I concur. If that's our
4 motion, I will second it.

5 VICE CHAIR HART: So, Ms. White?

6 MEMBER WHITE: Yes, I also would support
7 denying the motion a well. I think there was some major
8 flaws with the argument in the motion itself in terms of
9 how the arguments were structured and just the merits of
10 what was in the motion I think was flawed.

11 VICE CHAIR HART: Okay. Thanks a lot. So with
12 that, I think that we've -- I don't know if we actually
13 need to actually do a roll call, but I think we've already
14 made our --

15 MS. GLAZER: I would suggest taking a vote.

16 VICE CHAIR HART: That's fine. I make a motion
17 to deny the opposition party's motion to remove an Office
18 of Planning staff member. Do I have a second?

19 COMMISSIONER SHAPIRO: Second.

20 VICE CHAIR HART: All those in favor say aye.

21 (Chorus of ayes.)

22 VICE CHAIR HART: Any opposed?

23 (No audible response.)

24 VICE CHAIR HART: Looks like the ayes have it.

25 SECRETARY MOY: Staff would report the vote was

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1 3 to 0 to 2. This is on the motion of Vice Chair Hart to
2 deny the opposition party's motion. Seconding the motion
3 Mr. Shapiro. Also supporting was Ms. White with two Board
4 members not participating. Motion carries.

5 VICE CHAIR HART: Thank you. Thank you. Okay.
6 So the next motion -- sorry. There are a number of them
7 here. This is the motion to strike the appearance of the
8 opposition's attorney or representative. But since
9 they're not here, I think that's moot now, I mean, it's --

10 MS. GLAZER: I don't think that it's moot just
11 to strike the appearance. But the central claim is that
12 Ms. Pitts has been engaging in the unauthorized practice
13 of law. She did not file a response so the Board could
14 just consider the motion without her response.

15 VICE CHAIR HART: Okay. I mean, I think that
16 they are -- for someone to represent an opposition party,
17 they do not have to be an attorney. They just have to
18 represent that person.

19 I don't know what the other Board members think
20 on this. But I think that we can allow her, allow Ms.
21 Pitts to represent the opposition party as long as she is
22 not representing herself as an attorney and -- I'm sorry.
23 I'll leave it at that.

24 MS. GLAZER: I'm sorry, Mr. Chair, for
25 interrupting, but the Board --

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1 VICE CHAIR HART: Yes. Your mic is not on.

2 MS. GLAZER: I'm sorry again. The Board
3 doesn't really know whether she's authorized to practice
4 law in the District of Columbia.

5 VICE CHAIR HART: Yes.

6 MS. GLAZER: The allegation by the Applicant --

7 VICE CHAIR HART: Yes.

8 MS. GLAZER: -- is that she's not, but I don't
9 know that the Board has adequate proof to make that
10 determination.

11 VICE CHAIR HART: Okay, well.

12 MS. GLAZER: But the Board could just note that
13 whether she's an attorney or not, under the zoning
14 regulations she could be here. And it's an entirely
15 separate matter as to whether she has violated some
16 ethical cannons or, you know, could be subject to any
17 penalties for the unauthorized practice of law. But
18 that's not the Board's purview to make that determination.

19 VICE CHAIR HART: So then I would make a motion
20 to deny the motion to, I don't know, strike the
21 appearance? I don't know if that's the actual motion, but
22 --

23 MS. GLAZER: Well, her appearance would --
24 correct. Except I would note that as she is not here and
25 has not participated in the motion that the Board will

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1 proceed to the hearing.

2 VICE CHAIR HART: Yes.

3 MEMBER WHITE: In other words, you don't have
4 to be a licensed attorney in the District of Columbia in
5 order to be an authorized representative for an Applicant.

6 MS. GLAZER: I'm saying under the zoning
7 regulations, under our procedures here, you do not have to
8 be an attorney.

9 VICE CHAIR HART: Yes.

10 MS. GLAZER: But you do have to file a form
11 that says you're a representative. Now, Ms. Pitts, as a I
12 recall, filed a form at one point that said she was legal
13 counsel. But, you know, she has not responded to the
14 claim.

15 So I don't think, and since she's not going to
16 respond, I think there's really nothing for the Board to
17 decide. If she did appear, the Board could instruct her
18 to file the appropriate form, but still deny the motion to
19 strike her appearance. So the Board doesn't have a basis
20 to strike it.

21 VICE CHAIR HART: Yes. Okay. Do we have to
22 vote on this?

23 MS. GLAZER: And just one other thing, this can
24 all be part of -- I don't think we need to issue an order
25 at this point.

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1 VICE CHAIR HART: Yes.

2 MS. GLAZER: It can be done as part of the
3 case.

4 VICE CHAIR HART: That's fine. Yes, Mr.
5 Shapiro.

6 COMMISSIONER SHAPIRO: I just want some clarity
7 on that just what exactly we would be voting on if Ms.
8 Pitts isn't here. I mean --

9 MS. GLAZER: The motion was to strike an
10 appearance of an attorney. There's really nothing to
11 strike, I think, is what the Board has decided. So the
12 motion would be denied. But we would note that doesn't
13 necessarily impact the opposition party's rights if she
14 were to surface in any way.

15 COMMISSIONER SHAPIRO: But if she were to
16 surface in some way, then our first question would be does
17 she actually have the right to represent herself as an
18 attorney?

19 MS. GLAZER: Well, the first question to the
20 opposition party was why weren't you here for the hearing?
21 And --

22 VICE CHAIR HART: I think we're going to down
23 to a hole. And I don't think I want to be there. I'll
24 make a motion to deny this motion to strike and do I have
25 --

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1 MS. GLAZER: There's no other action that needs
2 to be taken, I don't think.

3 VICE CHAIR HART: Yes. That's fine. And we'd
4 ask for a second.

5 MEMBER WHITE: Second.

6 VICE CHAIR HART: And hearing a second, all
7 those in favor say aye.

8 (Chorus of ayes.)

9 VICE CHAIR HART: Any opposed?

10 (No audible response.)

11 VICE CHAIR HART: So it looks like the motion
12 in this case to deny the motion to strike is affirmed.

13 SECRETARY MOY: Yes.

14 VICE CHAIR HART: Hold on. Hold on a second.
15 Okay.

16 SECRETARY MOY: This is a vote count of 3 to 0
17 to 2. This is on the motion of Vice Chair Hart to deny
18 the motion. Seconding the motion Ms. White. Also in
19 support, Mr. Peter May -- no other -- now I'm doing it.
20 My apologies, Mr. Shapiro. And two other Board members
21 not present, not participating. So your motion carries,
22 Vice Chair Hart.

23 VICE CHAIR HART: Okay. Do we have any other
24 motions that are before us? I only have the two. Is
25 there a third?

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1 MS. GLAZER: There are no other motions, I
2 don't think.

3 VICE CHAIR HART: Okay.

4 MS. GLAZER: Now the only question is the fact
5 that the opposition party --

6 VICE CHAIR HART: Yes.

7 MS. GLAZER: -- is not present.

8 VICE CHAIR HART: Yes, but this --

9 COMMISSIONER SHAPIRO: Just a minute. I'm
10 reading a third motion, this one, the motion to compel the
11 applicant to share a model or documentation used to
12 prepare the shade study.

13 SECRETARY MOY: Yes. That's under Exhibit 68.

14 MS. GLAZER: I apologize, I thought that was
15 part of the motion to remove the OP's representative.
16 But, yes, it is a separate request. But I mean, does the
17 Board want to discuss that? I don't think the OAG has
18 weighed in at all on that one. But, I don't -- the models
19 have been here.

20 VICE CHAIR HART: Yes. I mean, the model is
21 part of the record. So, I'm sorry, the reason I'm having
22 difficulties with these is that they're process heavy
23 about things that we either already have or things that
24 are -- it seems like they're moot. So it's hard for me to
25 kind of grasp them sometimes because I'm like, I don't

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1 think we need to do this.

2 So I think we can actually have a -- I mean,
3 I'm ready to have a conversation about this particular
4 piece. The motion to request a copy of the applicant's
5 model, I mean, the applicant has submitted their sun study
6 or shade study in the record in Exhibits 63 through 66,
7 and so I'm not really sure that that's necessary.

8 I would vote to deny this motion because I
9 think it's already there. So if I could get a second, I
10 would appreciate it.

11 COMMISSIONER SHAPIRO: Second.

12 VICE CHAIR HART: All those in favor say aye.
13 (Chorus of ayes.)

14 VICE CHAIR HART: Any opposed?
15 (No audible response.)

16 VICE CHAIR HART: Okay. So the motion to deny
17 is affirmed. I have a hard time of saying that by the
18 way. Mr. Moy, you've got all that?

19 SECRETARY MOY: Okay. So the vote now is 3 to
20 0 to 2. This is on the motion of Vice Chair Hart to deny
21 the opposition party's motion under Exhibit 68. I will
22 refer to it that way. Seconding the motion Mr. Peter
23 Shapiro. Also in support of the motion Ms. White. Two
24 other Board members not present. Motion carries.

25 VICE CHAIR HART: Thank you. So now, Ms.

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1 Glazer, we are, whether or not you said we should be
2 moving forward with the case because the opposition party
3 is not here.

4 MS. GLAZER: Okay. That is up to the Board.
5 The Board can -- if the non-appearing party were the
6 applicant, there are procedures that must be followed
7 before a case can be dismissed. But I don't think there
8 are any such procedures for an opposition party. Did that
9 make sense?

10 VICE CHAIR HART: Say that again?

11 MS. GLAZER: Okay. If the applicant had not
12 appeared today, there are very clear --

13 VICE CHAIR HART: No, I understand what you're
14 saying. Yes. I got that.

15 MS. GLAZER: But since it's the opposition
16 party that has not appeared, I think first we might
17 inquire as to whether the applicant has any information as
18 to the reason. And the Board should be making a decision
19 about whether to possibly continue the case or at least
20 investigate and find out why she did not appear or not.

21 VICE CHAIR HART: And before I ask the
22 applicant, Mr. Moy, we haven't gotten any notification
23 from the opposition party on this case that you're aware
24 of?

25 SECRETARY MOY: Not to my knowledge, sir. And

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1 during the break, I also checked my email as well.

2 VICE CHAIR HART: I appreciate it. Mr. Griffin
3 -- no.

4 MEMBER WHITE: Mm-hmm.

5 MR. GRIFFIN: That is correct.

6 VICE CHAIR HART: I did get that correct. I'm
7 like, it's been a while. I'm sorry you had to sit through
8 all of this, at least our discussions. Are you aware of
9 any reason for the opposition party, did they describe why
10 they weren't able to make it today?

11 MR. GRIFFIN: No, I'm not aware of anything.

12 VICE CHAIR HART: Okay.

13 MR. GRIFFIN: The only thing I could think of
14 was at the last ANC meeting, Ms. Pitts had mentioned that
15 I guess she was concerned about the veracity of the shade
16 study. And if they thought that the shade study was done
17 correctly then maybe there wouldn't be an undue impact.
18 And they may withdraw their opposition because they
19 wanted, you know, it seemed like much of a particular
20 burden on their property.

21 And that might be the reason they decided not
22 to show up. They showed up to every other -- they showed
23 up to the ANC meeting every single time. They showed up
24 to the Capitol Hill.

25 VICE CHAIR HART: And they were here at the

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1 last hearing so.

2 MR. GRIFFIN: Yes.

3 VICE CHAIR HART: Yes, Mr. Shapiro.

4 COMMISSIONER SHAPIRO: Thank you, Mr. Chairman.

5 I'm not sure I would want to take into account -- no
6 disrespect to Mr. Griffin, but I'm not sure I'd want to
7 take into account his interpretation of why she might or
8 might not be here, the opposition.

9 But the opposition was notified to be here, and
10 actually even if we had questions about or there is some
11 question about whether the representative is considered
12 counsel or just a representative, I mean, there were a
13 couple of ways that they could have been here. And I
14 don't have any concerns with moving forward with this even
15 with the opposition not here. I just have no concerns at
16 all.

17 VICE CHAIR HART: I appreciate your candor on
18 that. And I actually would agree with you. I think that
19 we have -- the information on when this hearing would
20 actually take place has been on the record and has been
21 out in the open for actually anyone from the public. And
22 we do have somebody from the public here. So I wouldn't
23 have a problem with proceeding. Ms. White, do you have
24 any comments on that?

25 MEMBER WHITE: I think we should go forward

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1 with it. They could have filed something into the record
2 and then checked as early as a few minutes ago. And I
3 don't see anything recent. So I think we can move forward
4 and make a decision on the merits based on Mr. Griffin's
5 application.

6 VICE CHAIR HART: I also would concur with
7 that. So I guess we can move on to you, Mr. Griffin. If
8 you could provide us with a summary of the project -- I
9 shouldn't say summary. Provide us what it is that you're
10 requesting. And let's go from there.

11 MR. GRIFFIN: Sure. So we've been in the house
12 for 14 years. And we're seeking to partially enclose the
13 deck off the third floor of the house. We'd still have a
14 small 3 foot deck.

15 So we're asking for a special exception to be
16 granted for additions to a non-conforming structure and
17 the lot occupancy going up to -- exceeding the 60 percent
18 maximum and going up to 70 percent. It's actually a
19 little less than 70 percent. But 3 feet seemed like a
20 simpler number than trying to do anything more complicated
21 than that.

22 I've gone over the plans and the shade studies
23 with our adjacent neighbors. And neither of them have any
24 objection. I met with the 1228 North Carolina. I think
25 we had them over for dinner maybe a week and a half ago.

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1 And we went over what we had been going through. And let
2 them have a review of all of the documentation and that
3 kind of thing. And they were very supportive.

4 Also our adjacent neighbors on the other side
5 on 1224 North Carolina have also been very supportive.
6 And there's a letter in the record from them.

7 I think the shade study shows that any impact
8 would be pretty minimal. And I believe the photos that we
9 submitted into the record also help highlight some of the
10 features that already provide shade in the back area and
11 really the minimal impact that this partial enclosure
12 would cause on the neighborhood.

13 I think it's consistent with other properties
14 facing the alleyway. Certainly, there's no view from the
15 street. There's no view from North Carolina Avenue. It's
16 just that alleyway, which isn't -- you can't drive down
17 it. You can only walk down it.

18 So it's primarily used for people storing their
19 garbage cans in the back of their houses, and they walk
20 around using the alleyway on garbage pickup days.

21 And then enclosing the deck, we have small
22 kids. But I know the people who owned the house before us
23 used to have a lot of parties out on it. They were single
24 people. I think it would provide greater privacy for the
25 adjacent and abutting neighbors, you know, since the deck

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1 would be too small to have any kind of big get together
2 out there or anything like that anymore.

3 It would also be great for our family. We're a
4 family of five. We currently have two bedrooms. And I
5 know my older daughter would really like the extra space
6 and have her own bedroom at some point.

7 So unless there's any questions, I think that's
8 everything I got.

9 VICE CHAIR HART: Yes. I do have a couple of
10 questions. One is, do you have -- is there a letter from
11 the ANC?

12 MR. GRIFFIN: There should be. They voted
13 unanimously to approve it at the ANC Zoning, the 6A Zoning
14 Committee.

15 VICE CHAIR HART: Was it the full ANC
16 Commission?

17 MR. GRIFFIN: It was the -- it was Mr. Brad
18 Greenfield. So it was the 6 ANC 0A Zoning Committee that
19 we went in front of?

20 MEMBER WHITE: What was his last name? I'm
21 sorry.

22 COMMISSIONER SHAPIRO: Greenfield.

23 MR. GRIFFIN: I think, it's Greenfield.

24 MEMBER WHITE: Okay.

25 MR. GRIFFIN: And I know they were going to

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1 send a letter of support. Oh, here it is. Here's my
2 notes. It was on February 21. And they supported, and
3 they asked me to give, like, data supporting the shade
4 study to Ms. Patton's counsel, which I did. It was the
5 sort of screenshot. But I believe I submitted it in the
6 record that showed the widths of the buildings and the
7 longitude and latitude and all that kind of stuff.

8 VICE CHAIR HART: Okay. I had one other
9 question, but I can't think of it right now. Do you have
10 questions for Mr. Griffin?

11 MEMBER WHITE: Just so I'm clear, this Ms.
12 Patton, does she live next door to you?

13 MR. GRIFFIN: No, she is at 1230 North
14 Carolina. So we're 1226, 1228 and 1230. So she's the
15 second one down.

16 MEMBER WHITE: Yes. I was reading some of the
17 stuff in the record and one of the things that was
18 mentioned was that there was some impacts to light and
19 air. And she also potentially had some plans of
20 installing some solar panels. So I wanted to get your
21 response on that for the record.

22 MR. GRIFFIN: Sure. And, you know, I think in
23 the Statement in Support of the Request for Special
24 Exception submitted back on February 14, it does include a
25 picture -- I realize I didn't put page numbers on that. I

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1 apologize.

2 But there's a picture I took from our roof and
3 you can see the roof of 1228 North Carolina, which is our
4 adjacent --

5 VICE CHAIR HART: Exhibit Number 62. I think,
6 is that your second request? Your amended request?

7 MR. GRIFFIN: Yes, sir.

8 VICE CHAIR HART: It's on Page 2 on Exhibit 62.

9 MR. GRIFFIN: It is Page 6.

10 VICE CHAIR HART: There are a couple
11 photographs there.

12 MEMBER WHITE: Oh, okay, I see.

13 MR. GRIFFIN: My apologies. And it shows that
14 1228 North Carolina, which is our adjacent neighbor does
15 have solar panels. And you can see them there right on
16 the front of the house.

17 And then you can see the roof of 1230 North
18 Carolina, which looks pretty unobstructed, but certainly
19 putting the solar panels up there -- I assume that's where
20 they would put them.

21 MEMBER WHITE: Mm-hmm.

22 MR. GRIFFIN: And that's on a totally different
23 part of the house. We're not changing that area of the
24 home that's already --

25 MEMBER WHITE: Mm-hmm.

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1 MR. GRIFFIN: I'm sort of standing on my roof
2 taking that picture. That's the existing roof and
3 nothing's going to change that would be able to impact the
4 solar panels if she were to choose to install them.

5 MEMBER WHITE: Okay.

6 MR. GRIFFIN: I think with regards to the --
7 the shade study does a good job of showing, you know, the
8 potential impacts. And also the pictures, looking at, you
9 know, two pages up, there's sort of two pictures of the
10 window that she was primarily concerned about.

11 MEMBER WHITE: Mm-hmm.

12 MR. GRIFFIN: You can see the first one is --

13 VICE CHAIR HART: Which one are you looking --
14 what is?

15 MR. GRIFFIN: Oh, sorry, Page 4. I guess, Page
16 3, taking a look at that first photograph, you can see
17 that the window is already partially shaded. It was taken
18 at 2:32, which is the time at the height of winter that
19 the window could be impacted by the addition.

20 What we are talking is impacting that tiny
21 corner of the window during the height of winter for some
22 time here between 2:30 and sunset here at 4:30. And you
23 can see on Page 4 that the window is already shaded during
24 a portion of that time period in full shade.

25 And then that lower photo, you can see what's

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1 being impacted again is just that corner, which is already
2 partially shaded anyway by the railing of the existing
3 deck.

4 VICE CHAIR HART: Thank you. Any other
5 questions? I think we'll move to the Office of Planning.

6 MR. LAWSON: Hi, good evening, Joel Lawson,
7 representing Brandice Elliott at the Office of Planning.
8 I can stand on the record in support.

9 VICE CHAIR HART: Are you sure you don't want
10 to say anything else?

11 MR. LAWSON: I do not.

12 VICE CHAIR HART: Okay. Any questions for the
13 Office of Planning? Hearing none, Mr. Griffin, do you
14 have any questions for the Office of Planning?

15 MR. GRIFFIN: No, thank you, sir.

16 VICE CHAIR HART: Okay. ANC, I'll now move to
17 whether or not the ANC is here. No? Anyone in support of
18 the application?

19 MR. PETERSON: Hello. I'm Gary Peterson, chair
20 of the Capitol Hill Restoration Society Zoning Committee.
21 The Committee has heard this case three times and the
22 Board has heard it once. The Committee at its last --
23 actually we did this electronically voted 5 to 1 to
24 support the application. I came today loaded for bear,
25 but it looks I could have left my gun at home. But I'm

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1 happy to answer any questions you have on this matter.

2 VICE CHAIR HART: That would be a rhetorical
3 one.

4 MR. PETERSON: Yes, yes, of course.

5 VICE CHAIR HART: So, thank you. Do the Board
6 members have any questions for Mr. Peterson? And thank
7 you very much for staying for this. Mr. Griffin, do you
8 have any questions for Mr. Peterson?

9 MR. GRIFFIN: No. Thank you, Mr. Peterson.

10 MR. PETERSON: Okay.

11 VICE CHAIR HART: Thank you very much, Mr.
12 Peterson. Is anyone here in opposition to the case?
13 Hearing none, back to you, Mr. Griffin. Do you have any
14 other final thoughts?

15 MR. GRIFFIN: No, thank you.

16 VICE CHAIR HART: So I will then, I guess,
17 close the hearing. Is the Board ready to --

18 MS. GLAZER: Mr. Chair.

19 VICE CHAIR HART: Yes, ma'am.

20 MS. GLAZER: Could I just add one thing.

21 VICE CHAIR HART: Sure, sure.

22 MS. GLAZER: In regard to the non-appearance, I
23 just wanted to call to the Board's attention, Subtitle Y,
24 Subsection 404.16, which states that if a party and
25 opponent no longer wishes to participate in a case that

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1 she may file written notice, or she shall, actually, file
2 written notice of her intent not to participate.

3 So the way I interpreted that is otherwise,
4 she's still considered a party, just a party who did not
5 appear. So my suggestion would be that before the Board
6 deliberates, to perhaps request staff to reach out to the
7 party in opposition and ask her to withdraw her opposition
8 status -- ask her to withdraw her opposition actually.

9 And if she doesn't, set it for a quick
10 decision. And that way no one has to come and the record
11 is left open only for the limited purpose of allowing
12 either a report from staff or the withdrawal by the party
13 in opposition.

14 VICE CHAIR HART: And would that require the
15 seven day issue? Because we'd be getting something that
16 would go into the record.

17 MS. GLAZER: I don't think so if the applicant
18 waives that, I mean.

19 VICE CHAIR HART: That's fine. And given what
20 we're discussing right now.

21 MR. GRIFFIN: Yes, I'd be happy to waive.

22 VICE CHAIR HART: Okay. That's fine. And I
23 understand what you're saying. And I think out of an
24 abundance of caution I understand what you'd like to do
25 and reaching out to them is fine and seeing if they

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1 respond in some way or the other.

2 MS. GLAZER: And then if she doesn't respond at
3 all, then I think the Board can go on to the decision and
4 assume that she is no longer interested in participating.

5 VICE CHAIR HART: But she would still be a
6 party --

7 MS. GLAZER: Technically, but --

8 VICE CHAIR HART: But, I mean, the technically
9 part of it is whether or not this would be a --

10 MS. GLAZER: A full order, I understand. Well,
11 that's one reason it might be helpful to do that. Let's
12 see if the party responds.

13 VICE CHAIR HART: And I'm not sure if you're
14 aware of it, Mr. Griffin, but what we're talking about is
15 a summary order or a full order because I think that the
16 Board -- well, I'm not going to speak for the rest of the
17 Board members.

18 If we were to approve the case, this
19 application, and there is still is an opposition party,
20 then we are required to do a full BZA order, which means
21 that it is a -- there's a period of time in which the
22 Office of Attorney General would have to draft the Order
23 and that could be lengthy. It could be, I don't know,
24 several months.

25 MS. GLAZER: Yes. Well, let's not get ahead of

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1 ourselves.

2 VICE CHAIR HART: I know, I'm just saying that
3 that's the -- I was explaining to him what --

4 MS. GLAZER: Perhaps there could be a way to
5 not treat it as deemed withdrawn. I'd have to do some
6 research for that.

7 VICE CHAIR HART: That's fine. I was just
8 raising that there can be -- there's just an issue on
9 whether or not this would be a summary order or not if we
10 were to approve the application.

11 MR. GRIFFIN: I understand.

12 VICE CHAIR HART: And that's what we're just
13 trying to kind of work through.

14 MS. GLAZER: Unfortunately, the rules don't say
15 what happens --

16 VICE CHAIR HART: I know.

17 MS. GLAZER: -- if there's no response at all.

18 VICE CHAIR HART: Mr. Shapiro.

19 COMMISSIONER SHAPIRO: Thank you, Mr. Chairman.
20 My inclination is to consider this case heard. There is a
21 party in opposition. The party in opposition's voice, the
22 silence was heard.

23 Now the OAG's determination of whether that can
24 count as the party withdrew or not, I would absolutely
25 follow their lead and request whether it's summary order

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1 or not, I think that legal interpretation, I think OAG
2 needs to guide us on that although I disagree with the
3 interpretation that we should continue the hearing and
4 reach out to the --

5 VICE CHAIR HART: No, no, no. I think she was
6 just saying having a meeting.

7 MS. GLAZER: A meeting, not continuing the
8 hearing. The record would be closed except to allow a
9 withdrawal by the party opponent or a report from OZ as to
10 what occurred when they reached out.

11 COMMISSIONER SHAPIRO: Okay.

12 VICE CHAIR HART: And we're really looking at
13 just -- and the reason I was asking about the seven day is
14 what I'm also understanding is that we would set this for
15 a public meeting or decision next week so that they
16 wouldn't have that -- oh, actually, we don't have it next
17 week do we?

18 MS. GLAZER: Two weeks.

19 VICE CHAIR HART: Okay, okay. So I think that
20 that's fine. Yes, I just realized that we don't have a
21 meeting next week. We have it on the 21st, I guess. So
22 we would set this for a decision -- you don't have to show
23 up.

24 MR. GRIFFIN: Okay.

25 VICE CHAIR HART: -- for the 21st.

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1 COMMISSIONER SHAPIRO: I'm comfortable with
2 that, Mr. Chair.

3 VICE CHAIR HART: Yes, and I am, too, I'm just
4 explaining to you what we're kind of talking about.

5 MR. GRIFFIN: I appreciate that.

6 VICE CHAIR HART: It's somewhat, like, what are
7 you doing? But I think that this is in -- but it's a
8 caution that we kind of reach out to them, understand if
9 there is some kind of finale to this piece of it, add that
10 information into the record. And that's the only thing
11 that's going to be added into the record. And then we'll
12 set this for a decision on March 21 and then you'll have
13 some finale that way.

14 MS. GLAZER: Another housekeeping issue. If OZ
15 gets something out to them right away, perhaps they could
16 give a deadline to the party opponent to respond so that
17 the Board would have this information before you came out
18 here in two weeks. And Mr. Shapiro, if he was not
19 appearing that day, wouldn't necessarily have to appear.
20 He could vote by absentee ballot.

21 COMMISSIONER SHAPIRO: So Mr. Chair, what
22 happens if the staff reaches out and the party in
23 opposition doesn't respond? What timeline is associated
24 with the waiting for the non-response?

25 VICE CHAIR HART: I think what Ms. Glazer is

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1 saying is it's kind of up to us, that we can set whatever
2 that time frame is. We set that time frame for all the
3 other cases. So if we say that, you know, by, you know,
4 next Friday, if we haven't, which is the -- we're in the
5 what, it's the 7th now? So the 14th, 16th -- next Friday
6 which is I think the 16th, be able to get something from
7 the opposition party. If we don't hear from the
8 opposition party that's also -- we'll deal with it on the
9 meeting on the 21st.

10 MS. GLAZER: And any communication should go to
11 both the party in opposition herself and Ms. Pitts.

12 VICE CHAIR HART: Yes.

13 MS. GLAZER: And I believe they're two
14 different addresses.

15 VICE CHAIR HART: Oh, I see what you're saying
16 so that the representative and the person that lives two
17 houses down both get the information so that if one of
18 them wants to, you know, I don't know. However they want
19 to deal with it. But that's fine. We won't have an issue
20 with that.

21 So the party in opposition or Ms. Patton,
22 whichever you want to call them, if they give us something
23 by -- we will give them until the 16th to provide us with
24 information and then we will decide the case on the 21st.

25 Are you okay, Mr. Moy?

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1 SECRETARY MOY: I was just thinking. We
2 probably should submit a staff memo into the record as
3 well so I have something in writing.

4 VICE CHAIR HART: Yes. Staff memo that says
5 what?

6 SECRETARY MOY: Regarding a response from party
7 in opposition.

8 VICE CHAIR HART: Okay. So maybe I will amend
9 it. The BZA will close the record except for any
10 correspondence from the BZA and any correspondence from
11 the applicant pertaining to, I guess, just why they
12 weren't here?

13 MS. GLAZER: Party in opposition.

14 VICE CHAIR HART: I'm sorry, the party in
15 opposition, yes. But just those two things. Ms. Glazer.
16 I got a lot of comments. I want to end this.

17 MS. GLAZER: Not just why they weren't here,
18 but also hopefully a response to the letter from OZ that
19 will ask them to submit their withdrawal if they no longer
20 intend to participate.

21 VICE CHAIR HART: Okay.

22 COMMISSIONER SHAPIRO: So the only thing I
23 would add is just a question for attorneys or legal
24 counsel is this isn't the first time this has happened by
25 any stretch. So I imagine there's something in our rules

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1 that say what happens when a party in opposition doesn't
2 appear. And it's hard to imagine that that doesn't
3 indicate that there's something that they have withdrawn
4 their opposition.

5 MS. GLAZER: Well, I'll look again. But I
6 didn't see any such provision. I know in the 58 regs,
7 there was a provision similar to that that related to
8 applicants where it was called a failure to prosecute.
9 And I don't know if that exists for a party in opposition
10 or a party in support.

11 But that's in a sense what it is, it's a
12 failure to prosecute their case, whether it's in support
13 or opposition. But there is the provision that I read to
14 you that says they file something in writing saying
15 they've withdrawn. And this person has not chosen to do
16 that.

17 And perhaps it's a minor procedural issue, but
18 perhaps there should be a text amendment, you know,
19 stating what should be done, you know, that maybe, you
20 know, there are any number of ways of handling this.

21 VICE CHAIR HART: We're holding Mr. Griffin
22 here for a very long time to talk about stuff that he
23 really doesn't care about. But I do appreciate your
24 sticking with us for this long.

25 I think we're clear on what it is that we need

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1 to get. And that we will have this decision meeting on
2 the 21st of March. I appreciate your time and would say
3 thank you. And I think you're done. At least you're free
4 to go.

5 MR. GRIFFIN: Do I need to keep those orange
6 placards in front of the house during those things?
7 Should I keep them until the 21st?

8 VICE CHAIR HART: Yes, I think so. Yes, keep
9 them until the 21st and then. Yes.

10 MR. GRIFFIN: Don't tell that to my wife.

11 VICE CHAIR HART: Mr. Moy, is there anything
12 left on the agenda?

13 SECRETARY MOY: Nothing from the staff, sir.

14 VICE CHAIR HART: So with that, I will consider
15 ourselves adjourned. Thank you. And I will say that, I
16 don't know if we've said that, Mr. Moy, but we will not
17 have a meeting next week. The next meeting for the BZA
18 will be on March 21.

19 SECRETARY MOY: That's correct.

20 VICE CHAIR HART: Thank you. And with that, I
21 will now close the hearing. Thank you. We're adjourned.

22 (Whereupon, the above-entitled matter went off
23 the record at 6:44 p.m.)
24
25

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In the matter of: Public Hearing

Before: DC BZA

Date: 03-07-18

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