

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY, MAY 2, 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., Carlton Hart, Vice-Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LESYLLEE M. WHITE, Board Member
LORNA JOHN, Board Member
CARLTON HART, Vice-Chairperson

ZONING COMMISSION MEMBER PRESENT:

PETER SHAPIRO, Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

HILLARY LOVICK, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

BRANDICE ELLIOTT
KAREN THOMAS
MAXINE BROWN-ROBERTS

The transcript constitutes the minutes from the Public Hearing held on May 2, 2018.

CONTENTS

Case No. 19708: Appeal of Berkley Smallwood	7
Case No. 19613: Appeal of B Monroe Ventures, LLC	11
Case No. 19614: Application of B Monroe Ventures, LLC	25
Case No. 19718: Application of Revie Dow, LLC	34
Case No. 19730: Application of Sons of Italy Foundation	48
Case No. 19734: Application of Angel Donchev	79
Adjourn	109

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

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

(9:36 a.m.)

1
2
3 VICE CHAIR HART: Okay. The hearing will please
4 come to order. Good morning, ladies and gentlemen. We are
5 located in the Jerrily R. Kress Memorial Hearing Room, at 441
6 Fourth Street, Northwest. This is the May 2nd, 2018 Public
7 Hearing of the Board of Zoning Adjustment of the District of
8 Columbia.

9 My name is Carlton Hart, Vice Chairperson.
10 Joining me today is Lesyllee White and Lorna John, both Board
11 Members; and representing the Zoning Commission is Peter
12 Shapiro.

13 Copies of today's Hearing agenda are available to
14 you and are located in the wall bin near the door to my left.

15 Please be advised that this proceeding is being
16 recorded by a court reporter, who is sitting to my right, and
17 is also being webcast live. Accordingly, we must ask you to
18 refrain from any disruptive noises or actions in the hearing
19 room.

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

25 All persons planning to testify either in favor

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

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

14 The Order of Procedure for Special Exceptions and
15 Variances Pursuant to Subtitle Y-409 is located on the table
16 at the door to my left. The Order of Procedure for Appeal
17 Applications Pursuant to Subtitle Y-507 is also located on
18 the table -- excuse me -- in the back of the room on my left.

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

1 The District of Columbia Administrative Procedure
2 Act requires that the public hearing on each case be held in
3 the open before the public. Pursuant to Subtitles -- excuse
4 me -- Subtitle 405(b) and 406 of that Act, the Board may,
5 consistent with its Rules of Procedure and the Act, enter
6 into a closed meeting on a case before -- for purposes of
7 seeking legal counsel on a case.

8 Pursuant to D.C. Official Code Subtitle 2-
9 575(b)(4) and/or deliberating on a case, pursuant to D.C.
10 Official Code Subtitle 2-575(b)(13), but only after providing
11 the necessary public notice and in the case of an emergency
12 closed meeting, after taking a roll call vote. The decision
13 of the Board in these contested cases must be based
14 exclusively on that public record.

15 To avoid any appearance to the contrary -- excuse
16 me. To avoid any appearance to the contrary, the Board
17 requests that persons present not engage the members of the
18 Board in conversation. Please turn off all beepers and
19 cellphones at this time so as not to disrupt these
20 proceedings.

21 Preliminary matters are those which relate to
22 whether a case will or should be heard today, such as
23 requests for postponement, continuance, or withdrawal, or
24 whether proper and adequate notice of the hearing has been
25 given. If you are not prepared to go forward with a case

1 today or if you believe that the Board should not proceed,
2 now is the time to raise such a matter.

3 Mr. Secretary, do you have any preliminary matters
4 before us?

5 MR. MOY: Good morning, Mr. Vice-Chair and members
6 of the Board. I do have a few announcements in that regard.

7 First off, as to case applications scheduled for
8 today's docket, for the record, Application number 19471,
9 this is M2 Edgewood, LLC, has been postponed and rescheduled
10 to June 6, 2018. Also Case Application Number 19700 of 1241
11 Morse Street, LLC, has been withdrawn by the applicant.

12 Other than that, Mr. Vice-Chair, with the Board
13 has before -- what's before the Board, there are preliminary
14 matters, two appeal cases and one application. And staff
15 would suggest that the Board address those preliminary
16 matters when the case is called.

17 VICE CHAIR HART: Thank you. We can do that.

18 So now all individuals wishing to testify today,
19 please rise to take the oath.

20 Mr. Secretary, would you administer the oath.

21 (Witnesses sworn)

22 VICE CHAIR HART: Thank you.

23 And I guess we can start with the first case and
24 that does have a preliminary matter, I guess. The first
25 appeal case.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. MOY: Yes, sir, that's correct. That would
2 be Appeal Number 19708 of Berkley Smallwood. The captured
3 and advertised as an appeal of the determination made on
4 November 28, 2017, by the Zoning Administrator, Department
5 of Consumer Regulatory Affairs, to refuse further processing
6 of Building Permit Number B1801942, to permit the renovation
7 of a flat in the RF-1 zone. This is at premises 3652 Park
8 Place, Northwest Square, 3034, 3-0-3-4, Lot 202.

9 VICE CHAIR HART: Good morning. If you will
10 please introduce yourselves, I'd appreciate it.

11 MS. LORD-SORENSEN: Good morning, Vice Chairman
12 Hart. My name is Adrienne Lord-Sorensen. I'm Assistant
13 General Counsel with the D.C. Department of Consumer and
14 Regulatory Affairs.

15 MR. LeGRANT: Good morning. This is Matt LeGrant,
16 Zoning Administer, DCRA.

17 VICE CHAIR HART: I assume that the appellant
18 isn't here today, so. And I know that there was a motion
19 that DCRA had submitted to postpone this hearing to July
20 11th. If you could, -- Ms. Lord-Sorensen?

21 MS. LORD-SORENSEN: That's correct.

22 VICE CHAIR HART: Okay. If you could, just give
23 us a little explanation for the record as to why are seeking
24 that postponement.

25 MS. LORD-SORENSEN: Certainly. So found in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Exhibit 33 of BZA Appeal Number 19708, I filed a motion to
2 continue the hearing to July 11th, 2018 on April 30th 2018,
3 because I've just been asked to take over the zoning matters.
4 The vice-chairman as well as the board may be familiar with
5 Mr. Tandra (phonetic) who normally represented the Zoning
6 Administrator in these particular proceedings. However, he
7 has since departed and I'm just trying to bring myself up to
8 speed on all of these cases, as well as the findings, locate
9 the documents, and so forth. So I'm asking the board for
10 additional time, so that why I can effectively represent the
11 Zoning Administrator and, therefore, the DCRA would not be
12 prejudiced as well as.

13 VICE CHAIR HART: And it looks as though the --
14 you have reached out to the Appellant in this case and they
15 have -- I guess you're submitting something, but it is
16 somewhat of a partial concurrence that the Appellant is okay
17 with -- they support the need for a postponement. They are
18 not supporting the date that you're looking for. And can you
19 talk about any other communication that you've had with the
20 Appellant?

21 MS. LORD-SORENSEN: So certainly. So one of the
22 zoning assistants in our office, Ms. Kapralova did reach out
23 to Attorney Grant who represents Mr. Smallwood. We received
24 his response, however, after we filed the motion to continue
25 on April 30th.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 He responded on the morning of May 1st consenting
2 to a continuance to May 30th, 2018. So, therefore, it's a
3 partial consent. He does understand DCRA's need for a
4 continuance of this matter, so he did consent, and so DCRA
5 is okay with continuing with this matter to May 30th, 2018.

6 VICE CHAIR HART: Do the Board members have
7 any questions for the DCRA or their counsel? I mean I kind
8 of -- I look at this as though the -- and I appreciate the
9 requests that you put out there. I understand the situation
10 that DCRA is in. It seems as though the Appellant is okay
11 with delay of some sorts, but they didn't look for an
12 extended delay. I guess they felt that two months was kind
13 of an extended delay. And I would be supportive of the
14 motion to postpone. And I think the motion to postpone the
15 May 30th is fine with me.

16 But I would like to ask the Secretary what is the
17 docket like for our May 30th meeting? And what I'm asking
18 for really is do we have any other appeals. Appeals are
19 typically a little bit more involved for us and it's hard
20 when we have multiple appeals on the same day. And we try
21 not to have those, even though today we have two on this
22 agenda. But I just was -- I was looking from the Secretary
23 if you have --

24 MR. MOY: Absolutely. Thank you, Mr. Vice-Chair.
25 Well, for May 30th it's doable. I mean on the docket we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 already have scheduled six cases, no appeals -- seven
2 actually. But looking ahead to the following, June 6th, it's
3 pretty similar with six cases. So it's the desire of the
4 Board because either of those dates have no appeal, so it's
5 doable.

6 VICE CHAIR HART: And since the Zoning Commission,
7 I'm not even sure when you're back. Are you back here, Mr.
8 Shapiro?

9 COMMISSIONER SHAPIRO: I believe I'm actually back
10 here on May 30th.

11 VICE CHAIR HART: Oh, it seems like the stars have
12 aligned. So I would then -- I don't know, I'm not sure if
13 I have to make a motion, but I'll make a motion to approve
14 the motion to postpone to May the 30th for the case. Do I
15 have a second?

16 MEMBER WHITE: Second.

17 VICE CHAIR HART: Hearing a second, all in favor
18 say aye.

19 (Chorus of aye)

20 VICE CHAIR HART: Any opposed?

21 Looks like the motion carries, so we can move the
22 meeting -- postpone the meeting to May 30th.

23 MR. MOY: Okay.

24 MS. LORD-SORENSEN: Thank you.

25 VICE CHAIR HART: Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. MOY: Mr. Vice-Chair, is --

2 VICE CHAIR HART: Yes, sir.

3 MR. MOY: -- although it's not a requirement,
4 would you care to give any guidance to the parties when --
5 whether you would want to set a deadline for filing
6 prehearing statements?

7 VICE CHAIR HART: I really hadn't thought about
8 it. Do you -- since you're the only one here, do you think
9 you could have a prehearing statement by, what, the 23rd?
10 Which is I guess the Wednesday before, a week before?

11 MS. LORD-SORENSEN: Yes, that should work.

12 VICE CHAIR HART: Okay. Then, Mr. Secretary, if
13 we could have DCRA submit their prehearing statement. And
14 I guess for the Appellant as well, both for the 23rd.

15 MR. MOY: Okay, it's recorded. Thank you, Mr.
16 Vice-Chair.

17 VICE CHAIR HART: Thank you. Thank you all very
18 much.

19 I guess you're going to sit there because you're
20 the next case.

21 So, Mr. Moy, I guess we can move to the next
22 appeals case.

23 MR. MOY: All right. That would be Appeal Number
24 19613 of B Monroe Ventures, LLC. This is captioned and
25 advertised as an appeal of the determination made on July 28,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 2017, by the Zoning Administer, Department of Consumer and
2 Regulatory Affairs, that per Subtitle E, Section 307.3, a
3 side yard would be required to construct two flats on the
4 existing vacant lots. And the RF-1 Zone, this is at premises
5 1844 Monroe Street, Northwest, Square 2614, Lot 38.

6 VICE CHAIR HART: Thank you.

7 We can have all the folks up here now. I'm also
8 looking for the intervenors in this case as well. Thank you.

9 So the first preliminary matter that we have to
10 address is the motion for intervenor party, intervenor
11 status. And I would actually like to have you all just
12 introduce yourselves so that we know who everyone is. And
13 everybody's still got a witness card, correct?

14 MS. MURPHY: Yes.

15 VICE CHAIR HART: Please.

16 MS. MURPHY: Good morning. I'm Donna Murphy and
17 together with my husband Keenan Keller we own the property
18 at 1850 Monroe Street, have for the past 22 years, and have
19 filed for intervenor status in this matter.

20 MR. KELLER: Good morning. I'm Keenan Keller.

21 COMMISSIONER SHAPIRO: Well, your wife has already
22 introduced you.

23 MS. MURPHY: Sorry.

24 MR. KELLER: Just to make sure everybody was
25 paying attention.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. CONWAY: Good morning. My name is Tom Conway.
2 I live at 1833 Park Road, several houses down and across the
3 alley from the property in question.

4 VICE CHAIR HART: And are you also...

5 MS. MURPHY: He didn't file as an intervenor,
6 right?

7 MR. CONWAY: No, I'm not here as an intervenor,
8 --

9 VICE CHAIR HART: Yeah. I'm just really am trying
10 to get the disciplinary matter -- I appreciate your coming,
11 just we're trying to get through the preliminary matter
12 first.

13 Mr. Sullivan.

14 MR. SULLIVAN: Mr. Chair and Members of the Board,
15 my name is Marty Sullivan. I'm with Sullivan and Barros on
16 behalf of the Appellant.

17 VICE CHAIR HART: So what we have is an intervenor
18 request. Ms. Murphy and Mr. Keller have provided us with
19 Exhibit Number 23 which is their request.

20 If you could, just give us some testimony as to
21 why you believe that you should be given intervenor status.

22 MS. MURPHY: So, as I mentioned, we have owned the
23 house at 1850 Monroe Street, Northwest, which immediately
24 adjoins 1844 Monroe Street, for 22 years. Our house is a
25 single-family, detached house, and it's on the National

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Register of Historic Places in the Mount Pleasant Historic
2 District.

3 The proposed development on 1844 Monroe Street,
4 while the proposal would be to build up to our lot line,
5 there is no existing row house on that lot line to attach to,
6 so that would mean that footings and other structural
7 supports would have to come onto our property. There would
8 be destruction of an existing fence, landscaping. There is
9 a special tree protected by D.C. law that is on our property
10 but on the property line. And we have -- it's been inspected
11 by the Urban Forest Administration and requires a tree
12 protection plan. All of those things would be put in danger
13 by building up to the lot line, so we have strong interests
14 both monetary and also in the quiet enjoyment of our property
15 we anticipate --

16 VICE CHAIR HART: You're not built on the property
17 line, correct?

18 MS. MURPHY: No. We're a single-family detached
19 house with a side yard built in 1900.

20 VICE CHAIR HART: And what's the separation
21 between your house on the -- just out of curiosity -- between
22 your house and the property line?

23 MS. MURPHY: You mean what's the size of our side
24 yard?

25 VICE CHAIR HART: Yes.

1 MS. MURPHY: It's probably about ten feet.

2 VICE CHAIR HART: Okay. Just curious.

3 MS. MURPHY: Yeah. No, it was a historic house,
4 so it's not a standard, you know, sort of eight foot or
5 something like that.

6 VICE CHAIR HART: Oh, that's fine. Thank you.

7 Mr. Keller, you want to --

8 MR. KELLER: I associate myself with my wife's
9 comments.

10 VICE CHAIR HART: Very smart, man.

11 MR. KELLER: In all things. In all things.

12 VICE CHAIR HART: This is being recorded. You do
13 realize that, okay, so now you can bring this back --

14 MS. MURPHY: I got it.

15 VICE CHAIR HART: -- at a later time, saying --

16 MR. KELLER: Not just recorded, I swore to that,
17 sir.

18 VICE CHAIR HART: The oath is very powerful here.

19 Mr. Sullivan, -- actually does the Board have any
20 questions for the -- I was going to call you the intervenors.
21 You're not the intervenors yet. So Ms. Murphy or Mr. Keller.

22 Mr. Sullivan, you have submitted -- I want to say
23 I remember seeing that you had submitted a document, but
24 could you talk about whether or not you are supported or not
25 supporting, but you don't have any objection to the intervene

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 status?

2 MR. SULLIVAN: We do have an objection, just
3 because everything that they have mentioned relates to
4 impact. The appeal itself is a very technical, legal issue
5 that applies to all lots that have open side yards on the
6 other side of the lot line and not just this property. And
7 so the impacts will not be considered in the appeal, as you
8 know. It's just the legal issue. So in that sense I don't
9 really think they have an interest in the outcome any more
10 than any other person that has an open side yard next to a
11 lot line anywhere in a row house district.

12 VICE CHAIR HART: But this is their property.
13 This is not just any property.

14 MR. SULLIVAN: Well, the property that's --

15 VICE CHAIR HART: I mean -- I mean the property
16 that they're talking about is their own house that they're
17 saying that's adjacent to this.

18 MR. SULLIVAN: Right. Yes. It's not the subject
19 of the appeal.

20 VICE CHAIR HART: I understand.

21 MR. SULLIVAN: The subject of the appeal is 1844.

22 VICE CHAIR HART: I understand.

23 MR. SULLIVAN: Yes, they are next door, okay. So.

24 VICE CHAIR HART: Any questions for Mr. Sullivan?

25 COMMISSIONER SHAPIRO: I do have a question, Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Chair.

2 Based on the logic, nobody would have the right
3 to be granted intervenor status.

4 MR. SULLIVAN: Well, I think the test is are they
5 more affected -- well, under the variance, are they more
6 affected by the -- well, in the variance fight to grant, the
7 variance relief. In this case I'd say they'd be no more
8 affected than any other person, any other at least ten other
9 people I know of that are waiting for a ruling on this
10 appeal. So I don't think they're affected more than anybody
11 else in the general public by -- by the decision in the
12 appeal itself. Sure, they're affected by the construction.
13 And in a variance case, which we've also filed, that would
14 come into that case as well, because in the variance case the
15 impact is part of the discussion.

16 COMMISSIONER SHAPIRO: So could the ten other
17 people come together and then be granted intervenor status
18 collectively?

19 MR. SULLIVAN: I don't know. I don't know.
20 Maybe. And I'm -- I'm --

21 COMMISSIONER SHAPIRO: I'm only asking.

22 MR. SULLIVAN: I'm not fighting this all the way
23 to the end. I just wanted to make that statement. I --

24 COMMISSIONER SHAPIRO: I'm only saying because it
25 feels like -- I don't see an argument for why we wouldn't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 grant them intervenor status based upon the requirements of
2 Y-502.13. It seems like it's pretty straightforward about
3 that.

4 VICE CHAIR HART: Ms. White.

5 MEMBER WHITE: I concur, you know, with the
6 comments. I specifically look at the criteria under Y-
7 502.13, and you've probably looked at them as well.
8 Subsections A and B, and then there are four criteria that
9 flow under that. I don't know if I need to go through them,
10 but just looking at that criteria, I'm comfortable that they
11 have met the requirement to be able to get the intervenor
12 status. I don't know if I need to go through them
13 specifically, but --

14 VICE CHAIR HART: I think you could -- the -- Ms.
15 Murphy and Mr. Keller have provided their Exhibit 23, which
16 kind of goes through their criteria.

17 MEMBER WHITE: Um-hum.

18 VICE CHAIR HART: I mean you could cite, you know,
19 your understanding and agreement with the rationale that they
20 gave in that exhibit, Exhibit 23, if that's helpful.

21 MEMBER WHITE: Yeah. I mean in their exhibit, I
22 mean obviously the first requirement is that you show up, and
23 you've shown up. And the other criteria, I think you've
24 demonstrated that your property is next door. It would be
25 right on the lot line there, and you are an affected party

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 with respect to this particular appeal. And I would go so
2 far as saying you're uniquely affected because you are next
3 door.

4 And I think by having you here, involved in the
5 case, you're able to protect your specific arguments with
6 respect to the appeal that's been filed. And I don't think
7 that the final line item is that the intervention would not
8 unduly broaden the issues or delay the proceeding. So I'm
9 comfortable with the request.

10 VICE CHAIR HART: And I should ask since DCRA is
11 actually a party in this, do you have an opinion on either
12 -- on this intervenor status -- intervenor motion?

13 MS. LORD-SORENSEN: No.

14 VICE CHAIR HART: So back to the Board. It sounds
15 like the Board is willing to support the motion for
16 intervenor status. I actually haven't opined on this yet,
17 but I also have looked through the applicant's -- excuse me
18 -- Ms. Murphy and Mr. Keller's Exhibit Number 23. And I
19 actually agree with and understand their concerns and would
20 be in support of granting them intervenor status as well.

21 I understand, Mr. Sullivan, that the points that
22 you're raising, which I can -- I can understand them, I just
23 don't necessarily agree with them. But I understand that
24 you're here to represent your client and so you have to do
25 that to the best of your ability.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So with that, yes, Mr. Shapiro.

2 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.
3 There is a question -- perhaps the Office of Attorney General
4 could help us with that, but there is a question about
5 whether if we grant intervenor status are we specifying
6 whether the intervenor -- whether the granting is for the
7 appeal for general or limited purposes. I'm not quite sure
8 I understand the distinction there, but it might be helpful
9 to get some clarity.

10 VICE CHAIR HART: Ms. Lovick.

11 MS. LOVICK: Well, that's just up to you based on
12 the arguments that are being made in this appeal. So you
13 could limit their intervenor status to specific issues. If
14 you chose to do so. But given that the subject of the appeal
15 is the interpretation of -- I think it's Subtitle E, Section
16 307.1, it would seem that this could just be a general grant.

17 COMMISSIONER SHAPIRO: I'm fine with that.

18 VICE CHAIR HART: So we'll make a motion to grant
19 intervenor status to Ms. Murphy and Mr. Keller -- excuse me.
20 I'm sorry. I don't know why I'm having a hard time with
21 that.

22 Do I have a second?

23 MEMBER JOHN: Second.

24 VICE CHAIR HART: All those in favor say aye.

25 (Chorus of aye)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR HART: Any opposed?

2 Okay. So you are now a party in this case. So
3 we have three parties -- actually we have four parties,
4 because the ANC is always a party. They may not be here.
5 It doesn't look like the -- no one's coming to the table, so.

6 Right now we are having to deal with another
7 preliminary matter and that is a request for postponement.
8 And this motion was brought on by DCRA. So, Ms. Lord-
9 Sorensen, if you could just present your -- the rationale for
10 postponement for this case.

11 MR. MOY: Excuse me, Your Honor.

12 VICE CHAIR HART: Yes, sir.

13 MR. MOY: A question here. Sorry to interrupt.
14 May I call that case, for the record?

15 VICE CHAIR HART: No, no. This is -- this is the
16 thing --

17 MR. MOY: Oh, I'm sorry. I'm sorry, I'm. I'm
18 drumming ahead. I apologize.

19 VICE CHAIR HART: It's okay. Yeah, we had two
20 preliminary matters. One was the intervenor status, which
21 we just conducted and granted. And now we're getting to the
22 preliminary matter that is the postponement for the appeal,
23 which is Appeal Number 19613.

24 MS. LORD-SORENSEN: Good morning again, Vice
25 Chairman Hart and Members of the Board.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 On April 25th, 2018, DCRA did file a motion to
2 continue until Zoning Commissioners' final action in ZC Case
3 Number 17-23, or, in the alternative, to June 13th, 2018.

4 Currently, DCRA is just going to move forward on
5 requesting a motion the continue until June 13th, 2018. As
6 stated in the motion, the original attorney of record in this
7 appeal, Mr. Tondro, has since left the Agency, and I have
8 been asked to take over his cases. And I'm requesting
9 additional time in order to review the documentation and be
10 able to effectively represent DCRA in this matter.

11 VICE CHAIR HART: And are there any -- excuse me.
12 I'm sorry, I'm battling allergies -- any questions for DCRA?

13 Okay. Do the intervenors or the appellant -- I'm
14 sorry, I'm making sure I get all this straight. The
15 Appellant or the Intervenors, do you have any questions for
16 DCRA?

17 MS. MURPHY: I don't have any questions for DCRA.
18 I filed a letter asking that if this is postponed, that the
19 related variance request also be postponed to the same date
20 because --

21 VICE CHAIR HART: And we'll deal with the variance
22 when we get to it.

23 MS. MURPHY: Okay.

24 VICE CHAIR HART: So I appreciate and we did see
25 the letter that you've submitted for this case and that you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 were supportive of the postponement until June 13th.

2 MS. MURPHY: Okay.

3 VICE CHAIR HART: Actually I think you were
4 supportive of the postponement. In this case they were
5 looking at the 13th, so. And so thank you very much.

6 MS. MURPHY: Thank you.

7 VICE CHAIR HART: So, Mr. Sullivan, how is the
8 Appellant, are they supportive of this postponement?

9 MR. SULLIVAN: We do consent to the 13th, yes.

10 VICE CHAIR HART: Any other comments you'd like
11 to make on that?

12 MR. SULLIVAN: No. I just want to make sure that
13 the longer date, the indefinite date is off the table, the
14 June 13th.

15 VICE CHAIR HART: We don't like indefinite.

16 MR. SULLIVAN: Thanks.

17 VICE CHAIR HART: That makes it a little hard to,
18 you know, figure out when things are due.

19 So I don't think there is much -- has been much
20 -- there aren't many questions up here with the Board itself.
21 I will just give you my kind of take on this. I see this as
22 -- I understand that DCRA is kind of learning this -- these
23 cases as they come up. And in this case, I think a delay or
24 a postponement until June 13th is something that I would be
25 able to support. It is helpful that the Intervenor and the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Appellant are also consenting to this postponement to June
2 13th. And I wouldn't have a problem with that.

3 And I don't know if the Board has any comments or
4 any objection to that.

5 COMMISSIONER SHAPIRO: No objection.

6 MEMBER JOHN: No objection.

7 MEMBER WHITE: No objection.

8 VICE CHAIR HART: So I will make a motion to
9 postpone this Appeal 19613 to June 13th.

10 MEMBER WHITE: Second.

11 VICE CHAIR HART: And hearing a second, all those
12 in favor say aye.

13 (Chorus of aye)

14 VICE CHAIR HART: Any opposed.

15 The motion carries, Mr. Moy.

16 Now for -- as we did with the last case, we had
17 statements. If there are -- and I'm assuming, Mr. Moy, the
18 we would need for -- to give direction to the parties
19 regarding any filings that we would --

20 MR. MOY: Well, staff was suggesting that. That's
21 advice to the Board. It's your wish, but I think it would
22 help prepare the record for your review. June 30th is of
23 course a week. The week prior to that, if that's the time
24 period, would be June 6.

25 VICE CHAIR HART: And a prehearing statement by

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 then for all the parties by June the 6th? Is that okay?

2 MS. LORD-SORENSEN: Okay.

3 VICE CHAIR HART: So that's, I think, the date,
4 Mr. Moy, we're --

5 MR. MOY: That's correct.

6 VICE CHAIR HART: Just make sure --

7 MR. MOY: It looks -- it looks good for the Board.

8 VICE CHAIR HART: Okay, excellent. And just
9 making sure we don't have any other appeals for --

10 MR. MOY: No. This is the sole appeal, --

11 VICE CHAIR HART: Okay.

12 MR. MOY: -- along with the --

13 VICE CHAIR HART: It's not the sole case but it's
14 the sole appeal. Excellent.

15 Thank you all very much, but I think you're all
16 going to sit there.

17 So you can call the next case, which is
18 Application 19614.

19 MR. MOY: Yes. Thank you, Mr. Vice-Chair. So
20 this, as you just stated, is Case Application 19614 of B
21 Monroe Ventures LLC. This is the related to application to
22 the appeal captioned and advertised for variance relief from
23 the side yard requirements of Subtitle E, Section 307.3.
24 This would construct a new three-story flat in the RF-1 zone
25 at premises 1844 Monroe Street, Northwest, Square 2614, Lot

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 38.

2 VICE CHAIR HART: Okay. Seems like we are doing
3 a lot of preliminary matters this morning. So for this case,
4 we actually have another postponement request from DCRA that
5 we had -- that's just...

6 MR. SULLIVAN: Yeah, it's from both of us.

7 VICE CHAIR HART: Oh, you --

8 MR. SULLIVAN: So, yeah. Yeah.

9 VICE CHAIR HART: There is a lot of the -- a lot
10 of overlap here this morning with these. So we're just
11 looking at a postponement and this is kind of to parallel it
12 with the appeal case to have it to be on the same date as the
13 appeal case, in that case we just heard. The appeal was
14 19613, this is the application for 19614. And you're just
15 looking to have them on the same date just for to save time
16 and actually be here on the same date as opposed to having
17 to be here on multiple days.

18 I don't know about the Board, if the Board has any
19 questions or comments on this request, I didn't have a
20 particular issue with it. I thought it was probably a better
21 thing to have it on the same date, on June 13th, so we would
22 have all this stuff kind of fresh in our minds. And one may
23 make the other moot, so depending on how we rule on it, so
24 does the Board have any questions on this request for
25 postponement?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. MURPHY: Mr. Chairman, we have -- our
2 application for party status in this matter hasn't been ruled
3 on. Thank you.

4 VICE CHAIR HART: Thank you. I knew there was
5 something I was missing.

6 MS. MURPHY: And I do have one request which is
7 that the original hearing was noticed with letters to the
8 neighbors and also posting. the postponed hearing dates,
9 there have been two, were not noticed to the neighbors. We
10 have been trying to keep our neighbors informed, but I would
11 request that, you know, with the new hearing date as set for
12 this variance that the notice be given to the neighbor
13 because there are many neighbors in the area who are
14 interested in the variance request.

15 VICE CHAIR HART: And I'll ask --

16 MS. MURPHY: Including ANC.

17 VICE CHAIR HART: I'll ask Mr. Moy.

18 How do they go about noticing the meetings when
19 there are postponements?

20 MR. MOY: Well, as the Board is aware, if --
21 certainly if there was an amendment to an application for the
22 greater relief, for example a special exception to a
23 variance, we would repost, but I don't think that's the case
24 here. Typically our obligation from the office is to post
25 to all the property owners within 200 feet on the original

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 underlying case at the beginning. Any subsequent
2 rescheduling, we're not obligated to resend to everyone.
3 There is a sign posting that stays on the site.

4 And what we've been doing, as you know in the past
5 year, we have been posting a staff memorandum into the record
6 as to the rescheduled date.

7 MS. MURPHY: So there's no sign on the property
8 right now like for today's hearing?

9 VICE CHAIR HART: Yeah. Well, what the Secretary
10 was just saying is that it's posted for the first hearing and
11 as that first hearing was posted, then all the subsequent
12 hearings are all on our website because the information --
13 the first hearing that we have on it is kind of how you open
14 everything. And so from that point out is when we -- we will
15 be -- the notification that is in the record is -- are, I
16 guess, just letters or notices that are from this office that
17 say this is when this next date is going to be. There isn't
18 a requirement, I guess, from us, from the Office of Zoning
19 to be able to have a posting on the property unless there is
20 a change in the relief that's being sought. So if they go
21 from a special exception to a variance, then that would be
22 reposted. If they're just changing the dates, that doesn't
23 get reposted. So that's it.

24 MS. MURPHY: Right.

25 MR. SULLIVAN: Mr. Chairman, if there is not.

1 We'll check the property and if there is not a sign up now,
2 we'll need to maintain that.

3 VICE CHAIR HART: Yes.

4 MR. SULLIVAN: We'll put that up with the correct
5 date --

6 MS. MURPHY: Thank you.

7 MR. SULLIVAN: -- as well.

8 VICE CHAIR HART: So, and you are correct, Ms.
9 Murphy, and I guess we should also -- okay. Did we introduce
10 ourselves again for the --

11 MS. MURPHY: No.

12 VICE CHAIR HART: I don't think we did. So why
13 don't we do that and then we'll go into the party status
14 request.

15 MS. MURPHY: So I'm Donna Murphy. Together with
16 my husband Keenan Keller, we own the property at 1850 Monroe
17 Street, Northwest, which is a single-family detached home,
18 and the property immediately abuts 1844 Monroe Street. We,
19 as the adjacent property owners, are very interested and
20 uniquely interested in the application for a variance
21 relating to the side yard requirement in 1844 Monroe Street.
22 I'd be happy to go through the factors that are listed in the
23 application. It's also an exhibit. Unfortunately, I don't
24 have the exhibit number in front of me.

25 VICE CHAIR HART: It's okay. I just wanted to get

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 everybody's name first, so the --

2 MS. MURPHY: Okay.

3 VICE CHAIR HART: -- so we get the names, then
4 we'll get to the party status request. So we got Mr. --

5 MR. KELLER: I'm Keenan Keller.

6 VICE CHAIR HART: Yes. Thank you, Mr. Keller.
7 Yes, sir.

8 MR. CONWAY: Tom Conway, 1833 Park Road.

9 VICE CHAIR HART: Mr. Sullivan.

10 MR. SULLIVAN: Thank you. Marty Sullivan,
11 Sullivan and Barros on behalf of the Applicant, and we don't
12 object to the party status request.

13 VICE CHAIR HART: Okay. So how about I ask the
14 Board if they want any questions from the -- Ms. Murphy, who
15 is requesting intervenor -- opposition status.

16 COMMISSIONER SHAPIRO: I'm happy to grant them
17 intervenor status, party status.

18 VICE CHAIR HART: You're happy to do that. That's
19 good.

20 COMMISSIONER SHAPIRO: I'm happy to do it,
21 considering the situation in the previous case, it makes all
22 the sense in the world, and there is no opposition from the
23 Applicant.

24 VICE CHAIR HART: Do the Board Members have any
25 other comments?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MEMBER JOHN: No, Mr. Vice-Chair.

2 MEMBER WHITE: No.

3 VICE CHAIR HART: So, Ms. Murphy, you don't have
4 to do any presentation right now.

5 MS. MURPHY: I'm happy --

6 VICE CHAIR HART: I actually, after reviewing the
7 record and also reviewing Mr. Sullivan's, the Applicant's,
8 they were consenting or didn't have any opposition to your
9 opposition party status, I would grant the -- I would vote
10 to grant the opposition party status.

11 Do I have a second?

12 MEMBER JOHN: Second.

13 VICE CHAIR HART: All those in favor say aye.

14 (Chorus of aye)

15 VICE CHAIR HART: So you've now been granted --

16 MS. MURPHY: Thank you.

17 VICE CHAIR HART: -- party -- opposition party
18 status in this case.

19 And now we have the -- we started talking about
20 the postponement request that both of you, both of the
21 parties wanted to -- were supportive of. And this is because
22 the appeal case, which is somewhat linked to this, has
23 already been postponed to June the 13th. I don't know if the
24 Board Members have any thoughts on moving this as well. I
25 think it kind of makes sense to move this, but wanted to open

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 up the floor to anyone else.

2 MEMBER WHITE: Yes. I would concur with you, Mr.
3 Vice-Chair. It makes sense. The fact pattern is pretty much
4 consistent. So I would also support, one, granting the
5 intervenor status and, two, having those two cases heard on
6 the same day.

7 VICE CHAIR HART: Anyone else?

8 MEMBER JOHN: I concur.

9 VICE CHAIR HART: Okay. So I think I will make
10 a motion to postpone this case. It seems like that's all
11 we're doing this morning, postponing stuff. I bet the
12 Chairman is just going to love this when he comes back. I
13 make a motion to postpone Case Number 19614 to June 13th.

14 MEMBER WHITE: Second.

15 VICE CHAIR HART: Do I have a second?

16 MEMBER WHITE: Second.

17 VICE CHAIR HART: Hearing a second, all those in
18 favor say aye.

19 (Chorus of aye)

20 VICE CHAIR HART: Any opposed?

21 Looks like the motion carries.

22 And, as with this case, Mr. Moy, probably looking
23 at some dates for getting documents. This may be a little
24 bit hard having both projects on the -- both cases on the
25 same date in terms of getting prehearing statements and all

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that. Do you suggest that we -- do you have a suggestion for
2 that?

3 MR. MOY: On conference with OAG, Mr. Vice-chair,
4 again it's up to the Board in the end. In this application,
5 I mean there already had been --

6 VICE CHAIR HART: Yeah.

7 MR. MOY: -- filings in the record and as well as
8 ANC filings in the appeal case, be if you wanted to do this
9 as well, that's.

10 VICE CHAIR HART: Yeah. If you all want to submit
11 a document -- a prehearing statement to us or any other
12 statements to us by the 6th, that would be helpful, it would
13 give us a chance to be able to review it before the actual
14 meeting. I will let it up to you whether or not you want to
15 submit something by then. That's it. Thank you very much.

16 We're going to take a two-minute break.

17 (Whereupon, the above-entitled matter went off the
18 record at 10:20 and resumed at 10:24 a.m.)

19 VICE CHAIR HART: Okay. Mr. Moy, I think we're
20 all back here. If you could call the next hearing case.

21 MR. MOY: Yes. Thank you, Mr. Vice-Chair. Moving
22 up parties to the table, this is to case Application 19718
23 of Revie Dow, LLC. R-e-v-i-e Dow, D-o-w, LLC, the caption
24 advertised for area variance from the lot area requirements,
25 Subtitle E, Section 201.4. This would add two units to an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 existing four-unit apartment house. This is in an RF-1 zone
2 at premises 1800 Fifth Street, Northwest, Square 475, Lot 46.

3 VICE CHAIR HART: Thank you, Mr. Moy.

4 Good morning. If you all could introduce
5 yourselves from my right to left.

6 COMMISSIONER BROWN: Commissioner Anthony Brown,
7 6E02.

8 MR. THOMAS: Tommie Thomas, project manager for
9 the project.

10 MS. IRVING: Pamela Irving, owner of 1800 Fifth
11 Street, Northwest.

12 MR. HOOPER: Vernoy Hooper, owner, 1800 Fifth
13 Street, Northwest.

14 VICE CHAIR HART: Good morning. So, Mr. Thomas,
15 you're going to be presenting the case to us?

16 MR. THOMAS: Yes.

17 VICE CHAIR HART: If you could, just step through
18 the case and provide us an explanation as to how you're
19 meeting the variance requirements, then just kind of what the
20 project is. A summary of it would be helpful. Thank you.

21 MR. THOMAS: Thank you, Mr. Vice-Chair. The
22 project was originally approved for four units and in the
23 initial approval phase, the original architect and contractor
24 failed to include the basement unit as part of the overall
25 renovation. Currently, the second and third floor -- I mean

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 first and second floor have been renovated for the two unit
2 -- I mean for the four units, with the basement still being
3 vacant.

4 To kind of summarize it a lot -- I mean easier,
5 I would lend to the Office of Planning's report because I
6 think it spells it out exactly as it is.

7 VICE CHAIR HART: And you just stated that the
8 project was originally --

9 MR. THOMAS: Permitted.

10 VICE CHAIR HART: -- permitted for four units, --

11 MR. THOMAS: Yes.

12 VICE CHAIR HART: -- but at that point the builder
13 didn't incorporate the basement?

14 MR. THOMAS: No. The original --

15 VICE CHAIR HART: Any idea as to why they didn't
16 do that?

17 MR. THOMAS: I don't know. They -- they -- in
18 their permit, in their original permit and in their original
19 plans, they stated the basement as storage, which was not
20 feasible for that building.

21 VICE CHAIR HART: And when was that -- when was
22 this --

23 MR. THOMAS: The original permit was issued back
24 in 2015.

25 VICE CHAIR HART: And at that point they had taken

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the HVAC out of the --

2 MR. THOMAS: Yes.

3 VICE CHAIR HART: -- out of the basement --

4 MR. THOMAS: Yes.

5 VICE CHAIR HART: -- and so there is access to the
6 basement, there is just not -- there was some description,
7 I want to say the --

8 MR. THOMAS: They took the -- originally, the
9 HVAC, all of your mechanical equipment was in the basement.
10 There is full access to that basement from the front. It's
11 like a Georgetown type basement. And they moved -- within
12 that design, they put the HVAC equipment in each individual
13 unit, the proposed new unit, so --

14 VICE CHAIR HART: And there was a description in
15 the Office of Planning Report, and I'll ask them as well, --

16 MR. THOMAS: Um-hum.

17 VICE CHAIR HART: -- since you have raised it,
18 that the Applicant is unable to combine the basement with the
19 first floor because of code compliance circulation?

20 MR. THOMAS: Yes. Because --

21 VICE CHAIR HART: Could you explain that part of
22 it?

23 MR. THOMAS: Yes. The way the building is
24 constructed, it has a center stairwell that runs from the
25 basement to the second floor. So in order to incorporate,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 say the first floor and the basement as one unit, then you
2 would take that out. And then you wouldn't have the correct
3 means of egress as well. So it would be like -- it would be
4 as if you were taking the first floor in the basement and
5 making it one apartment on each side. And then you would
6 have to build interior stairwells within those two units.
7 It's not feasible, the way the building is currently
8 constructed.

9 VICE CHAIR HART: Any questions for the Applicant?

10 MEMBER WHITE: I just want to verify. Are you
11 expanding the footprint of the building?

12 MR. THOMAS: No, no. You can't -- well, the
13 building is landlocked, so you cannot expand it.

14 MEMBER WHITE: Okay. I just wanted to get that
15 on the record.

16 MR. THOMAS: Yes, yes, yes.

17 MEMBER WHITE: I have to ask some questions.

18 MR. THOMAS: That's okay.

19 MEMBER WHITE: I'll think of some good ones.

20 VICE CHAIR HART: Going to earn her keep here, I
21 guess.

22 MEMBER WHITE: Earn my keep. And just from a
23 financing perspective, are there any exceptional situations
24 that would prevent you from getting financing if you're not
25 able to get the variance?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. THOMAS: Yes. That's a big problem because
2 right now we are paying interest only and the building is
3 sitting and we can't do anything until we can get some
4 relief.

5 MEMBER WHITE: Um-hum.

6 MR. THOMAS: The financing, since you actually
7 brought the question up, I was told that financing has
8 nothing to do with it, but it does because the bank is basing
9 its financing on it being a six-unit building, full
10 utilization of the building.

11 MEMBER WHITE: Um-hum. Okay.

12 VICE CHAIR HART: Any other questions for the
13 Applicant?

14 Okay. The Office of Planning. Good morning.

15 MS. ELLIOTT: Good morning, Mr. Vice-Chair and
16 Members of the Board. I'm Brandice Elliott with the Office
17 of Planning. I think I might like to add a couple points of
18 clarification based on some of the information that's been
19 presented.

20 The Office of Planning didn't really find that the
21 original contractors -- the original contractor did not apply
22 for a six-unit building permit. They applied for a four
23 building -- I'm sorry -- four-unit apartment building. But
24 we don't find that that is actually something that
25 contributes to -- it's not a practical situation resulting

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in a difficulty -- I'm sorry. A unique situation resulting
2 in a practical difficulty. I'm just having one of those days
3 where I'm swapping every word that comes out.

4 VICE CHAIR HART: It's spring, so.

5 MS. ELLIOTT: You know, there's all that pollen
6 in the air and terrible air quality.

7 So we don't find that that actually contributes
8 to the variance test, but what we did analyze was the
9 existing building condition and the fact that the basement
10 had previously contained all of the mechanical equipment, the
11 HVAC, and now since all of that has been relocated to the
12 individual units, that basement no longer served that
13 original purpose.

14 And, as far as the circulation is concerned, you
15 know one of the things that we do work with applicants on
16 when possible is to get larger units. And so we floated the
17 idea of combining the basement with the first floor. And,
18 in discussing that with the applicant, it was actually going
19 to create a lot of, well, practical difficulties related to
20 circulation. That circulation eats up a lot of floor area.
21 And the footprint, the layout for that first floor had
22 already been established. The work has already been
23 completed. And so we would be chopping up that footprint and
24 actually making a lot of that floor area unusable, creating
25 a choppy floor -- you know, footprint and some small,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 unusable spaces.

2 So we felt that that did contribute to the
3 variance test. And I'll go ahead and rely on our report for
4 the rest of the items, but I just wanted to add some
5 clarification. And I'm happy to answer any questions you
6 have.

7 VICE CHAIR HART: And one of the points that
8 you're making too is that because the stairwell is an
9 independent feature that is not in any unit, that if it were
10 to be incorporated into a unit, then that would reduce the
11 size of the unit as well as just -- it would eat up a lot of
12 -- as well as not -- you wouldn't -- it would be hard to
13 figure out what to do with the area where the existing
14 stairwell is.

15 MR. THOMAS: Right.

16 VICE CHAIR HART: And so that issue is -- it kind
17 of compounds itself because the stairwell is not incorporated
18 into a unit right now.

19 MS. ELLIOTT: Correct. I mean we'd be starting
20 from scratch. And circulation does eat up a lot of floor
21 area. And in the end we may not end up with much larger
22 units through combining the basement and the first floor than
23 we would have, you know, otherwise.

24 VICE CHAIR HART: Are there any other questions
25 for the Office of Planning?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

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

3 MR. THOMAS: No.

4 VICE CHAIR HART: Mr. Brown, do you have any
5 questions for the Office of Planning?

6 COMMISSIONER BROWN: No.

7 VICE CHAIR HART: I had to ask.

8 So, Mr. Brown, it is actually your turn to provide
9 us with the ANC -- I should say Commissioner Brown -- sorry
10 -- with the insight from the ANC. If you could just let us
11 know how the ANC meeting went and then what your final vote
12 was for this case.

13 COMMISSIONER BROWN: Good morning, Vice-Chair Hart
14 and Committee Members. ANC 6E, we have met with the Zoning
15 Committee as well as they presented to the full ANC. In the
16 zoning meeting, which I am the chair, we went through the
17 entire project with them. Their request to add the two
18 additional units to the building seemed very amenable to us.
19 We only had one concern and that was regarding egress, and
20 I believe they have addressed that. So at this point in time
21 we were in unanimous consent that we could support this, both
22 in the Zoning Committee and in the full ANC.

23 VICE CHAIR HART: And the issue with egress was
24 what exactly?

25 COMMISSIONER BROWN: We couldn't really readily

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 identify where the egress was, so we commented to them, and
2 they basically went back to Zoning and made sure that they
3 can get clearance and their approval for the egress that they
4 have.

5 VICE CHAIR HART: And where was the egress for the
6 -- besides the stair?

7 COMMISSIONER BROWN: They had --

8 VICE CHAIR HART: Was there some other place
9 besides the stair? Did they --

10 COMMISSIONER BROWN: There is a little courtyard
11 in the back of the building, and we thought that was an
12 egress, but they have direct stairs from the outside from the
13 front of the building.

14 VICE CHAIR HART: And that's the only access to
15 the units?

16 COMMISSIONER BROWN: Yes.

17 VICE CHAIR HART: Are there any questions for the
18 ANC?

19 Okay. Thank you very much.

20 So is there anyone here wishing to speak in
21 support of the application?

22 Anyone here wishing to speak in opposition?

23 Seeing no hands, so, Mr. Thomas, do you have any
24 other comments that you'd like to make as a final statement
25 -- oh, yeah, I'm sorry. Commissioner Brown.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER BROWN: I did have one other --

2 VICE CHAIR HART: Sure.

3 COMMISSIONER BROWN: -- question, and this was
4 raised by the constituents in that area. Of course, as
5 everybody knows, parking in D.C. is a monster. We are very
6 stressed in our very limited parking. As we exist right now,
7 we can't park on Florida Avenue, you can't park on New Jersey
8 Avenue, you have limited parking on Rhode Island Avenue.
9 That was one of the concerns that -- well, one of the
10 concerns that was raised by a number of people regarding
11 parking. And we have no answer for it.

12 VICE CHAIR HART: And did you -- were you looking
13 -- are you making a statement or are you asking a question?

14 COMMISSIONER BROWN: We are making a statement,
15 just adding it to the record: We have an issue with parking.

16 VICE CHAIR HART: Mr. Thomas, do you have any
17 response for that? How are you looking to provide parking,
18 or do you think you need to provide parking?

19 MR. THOMAS: Well, --

20 VICE CHAIR HART: Just any thoughts on that.

21 MR. THOMAS: -- one, there is no requirement for
22 parking. It's a problem. It's a problem everywhere and it's
23 -- I don't have answers.

24 VICE CHAIR HART: I don't think a lot of us do,
25 so. I don't know if any other my fellow Board Members have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 any other comments on that, but --

2 MEMBER WHITE: Is it zone-restricted at all or
3 it's, you know, --

4 MR. THOMAS: I'm not sure whether it's zone-
5 restricted, but there isn't a requirement, so.

6 MEMBER WHITE: Um-hum. Is not.

7 MR. THOMAS: Right.

8 VICE CHAIR HART: Okay. Do you have any other
9 final comments that you'd like to make?

10 MR. THOMAS: No.

11 VICE CHAIR HART: So I will close the hearing.
12 Is the Board ready to deliberate?

13 COMMISSIONER SHAPIRO: Just one question.

14 VICE CHAIR HART: Sure.

15 COMMISSIONER SHAPIRO: DDOT in their report they
16 noted that there was an exhibit ready for -- I know there is
17 a utility meter that is currently located in public space
18 requiring a permit and it needs to be relocated to an
19 existing structural wall. I just want to note that for the
20 record and hear from the Applicant if there is any concerns
21 with that. And I imagine you're going to be willing to
22 address that?

23 MR. THOMAS: Yes, we are. And I have already
24 identified the relocation of those meters, so that is not
25 where it is currently located. That was one of the errors

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of the previous contractor.

2 COMMISSIONER SHAPIRO: And I think DDOT noted that
3 as well, --

4 MR. THOMAS: Yes, yes.

5 COMMISSIONER SHAPIRO: -- so that it would be on
6 a structural wall --

7 MR. THOMAS: Yes, it will.

8 COMMISSIONER SHAPIRO: -- and not go from the
9 sidewalk.

10 MR. THOMAS: Yes, exactly.

11 COMMISSIONER SHAPIRO: Okay. That's the only
12 question I have, Mr. Chair.

13 VICE CHAIR HART: And it sounds like you got that
14 question answered.

15 COMMISSIONER SHAPIRO: Yes, sir.

16 VICE CHAIR HART: I appreciate you for definitely
17 bringing that up. I had noted that, but I'm glad that you
18 raised it and it sounds I'll the Applicant is addressing that
19 as we speak.

20 If you'd like to speak, you have -- you're more
21 than welcome to. But I have asked Mr. Thomas to -- and I
22 assuming that he's the one speaking for you. So with that,
23 I now definitely will close the record. Is the Board ready
24 to deliberate? And I can start.

25 After reviewing the record and listening to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 testimony, I appreciate all of you for coming down,
2 Commissioner Brown as well. And reading through the Office
3 of Planning report, the one concern that I had was
4 understanding the floor plan issue with regard to the
5 circulation. And after listening to the Office of Planning
6 report, as I was looking at the plan itself, the proposed
7 floor plan, I understand that there would be a difficulty,
8 a practical difficulty in reconfiguring the circulation for
9 the building so that it could provide access to the -- well,
10 to provide access to the basement so that could be used by
11 one of the existing units.

12 So as I felt that you all had met that prong, and
13 I didn't feel that there were -- and I agreed with the Office
14 of Planning for the other two prongs of the -- excuse me --
15 of the variance test, no substantial detriment to the public
16 good and no substantial harm to the zoning regulations, I
17 felt that I could be in support of the application to grant
18 your variance.

19 And I would like to hear. Do the other Board
20 Members have any comments or anything else that they'd like
21 to add to this.

22 Very quiet today.

23 MEMBER JOHN: I would just add that I agree with
24 the report from the Office of Planning, especially concerning
25 the circulation issue. In looking at the layout of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 basement, in one of the exhibits, I could see where the
2 stairs really in the middle of the building, so you'd really
3 have to do substantial reconfiguration in order to get usable
4 space for the first-floor apartment. So based on the fact
5 that the building is landlocked and you're not adding any
6 more area, any more space, just adding two units in the
7 basement, I would concur with everything everyone else has
8 said and I would be prepared to support the application.

9 VICE CHAIR HART: Okay. So with that I would make
10 a motion to approve Application Number 19718 of Revie Dow
11 LLC, as read and captioned by the Secretary. Do I have a
12 second?

13 COMMISSIONER SHAPIRO: Second.

14 VICE CHAIR HART: All those in favor say aye.

15 (Chorus of aye)

16 VICE CHAIR HART: Any opposed?

17 Motion carries, Mr. Moy.

18 MR. MOY: Staff would record the vote as four to
19 zero to one.

20 This is on the motion of Vice Chair Hart to
21 approve the application for the relief being requested.
22 Seconded the motion, Mr. Peter Shapiro also support Ms.
23 Lesyllee White, Ms. Lorna John. We have no other Board
24 Members with us today. The motion carries, sir.

25 VICE CHAIR HART: A summary order, Mr. Moy.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. MOY: Thank you.

2 VICE CHAIR HART: Thank you all very much.

3 COMMISSIONER BROWN: Thank you.

4 VICE CHAIR HART: So moving right along, Mr. Moy.

5 MR. MOY: Thank you. The next case application
6 before the Board is Number 19730. This is of Sons of Italy
7 Foundation, caption and advertised with special exception
8 under the nonprofit use provisions of Subtitle U, Section
9 203.1(n), and pursuant to 11 DCMR Subtitle X, Chapter 10, for
10 an area variance from the gross floor area requirements of
11 Subtitle U, Section 203.1(n)(2), to continue a nonprofit
12 office use, RF-3 District at 219 E Street, Northeast, Square
13 755, Lot 32.

14 VICE CHAIR HART: Good morning. If you all could
15 introduce yourselves.

16 MS. MAZO: Sure. Samantha Mazo from the law firm
17 of Cozen O'Connor. I'm here on behalf of the Applicant.

18 VICE CHAIR HART: Good morning.

19 MR. ISGRO: Morning. My name is Biagio Isgro, Jr.
20 I'm the National Co-Chair for the Budget and Finance
21 Committee for the organization.

22 VICE CHAIR HART: Could you say your last name
23 again?

24 MR. ISGRO: Last name is Isgro, I-s-g-r-o. First
25 name Biagio, B-i-a-g-i-o, and that's Jr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR HART: Thank you.

2 MS. JEROME: Carly Jerome. And I am the Director
3 of Operations and Programming for the organization.

4 VICE CHAIR HART: Good morning to you all.

5 Ms. Mazo, I'm assuming you're going to be
6 presenting the case to us.

7 MS. MAZO: Yes. Thank you very much. Hopefully
8 this will be a short presentation. This application.

9 VICE CHAIR HART: Long. I'm kidding.

10 MS. MAZO: Okay. That was a joke, for the record.

11 VICE CHAIR HART: Yes.

12 MS. MAZO: It will not be a long presentation.

13 This application has the support of the ANC, OP.
14 We also have support from both adjacent neighbors. There is
15 also support from the CHRS, Capitol Hill Restoration Society,
16 as well as Architect of the Capitol. So I just wanted to let
17 that out there.

18 As an initial matter, I'm here on behalf of the
19 Sons of Italy, which is a 501(c)(3) nonprofit organization
20 that's organized and operated for charitable purposes. The
21 property is located at 219 E Street, Northeast. Sons of
22 Italy has owned this property and operated their nonprofit
23 office out of this property since it was constructed in 1980.
24 As discussed at length in the record, Sons of Italy has --
25 excuse me -- obtained business licenses for the property in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the past, most recently, as recent as 2015.

2 Really the reason we're here, I know that that
3 question has come up, the reason we're here is because I
4 believe Ms. Carly Jerome went down to go obtain a new
5 business license maybe in the fall and was informed by DCRA
6 that it couldn't be issued because they couldn't locate a
7 CofO. So we know we spent some time working with DCRA and
8 with the Zoning Administer. It was determined that while
9 there was a CofO that was identified on the business
10 licensed, it could not be located on DCRA's records. So
11 essentially the Zoning Administer said just go to the Board
12 and ask the Board for relief in order to be able to continue
13 the nonprofit office use at this site.

14 So the property is laid out as an office. It is
15 an office. It has never been used as a residence although
16 it was constructed as a residence.

17 The background again on the Sons of Italy. They
18 have -- it's a very small nonprofit organization. And one
19 thing I do just want to mention is Mr. Isgro is a volunteer.
20 He volunteers his time for this organization. And he lives
21 in Albany, New York. And he has been coming back and forth
22 to Washington to get this issue addressed. And I think, you
23 know, it's amazing to me of people who contribute that much
24 to their community and their organizations, and I wanted just
25 to put that on the record.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The foundation has always operated in a quiet and
2 harmonious manner. No violations or complaints. Really all
3 we're here to do is to maintain the status quo. There is no
4 building expansion, there is no change in operations. We're
5 really here to be able to get the approval for the Special
6 Exception and the Associated Area Variance, and to then go
7 to DCRA. And, in fact, I was just sending an email to Mr.
8 Whitescarver at DCRA. We're hoping to be able to move
9 forward through the CofO process very quickly at DCRA once
10 today is over.

11 Just very quickly, the foundation has no
12 conference room -- or no large conference room. It has three
13 parking spaces. Only one is used. It is -- let's see, I'm
14 just trying to move forward through the presentation.

15 VICE CHAIR HART: You should just be able to use
16 the arrow keys.

17 MS. MAZO: Okay, perfect. All right.

18 VICE CHAIR HART: Does that work?

19 MS. MAZO: I'm having a little trouble with the
20 mouse.

21 Okay, let's try this. Okay. As we said, there
22 are previous building permits and business licenses for the
23 site, including two business licenses that have been issued
24 to the Sons of Italy. There is also -- they also have
25 obtained a certificate of good standing from OTR as recently

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 as 2010. They pay commercial taxes. They have been paying
2 commercial taxes since at least 2005. The property has been
3 assessed as a private club. And, just a little bit of
4 background, up until -- the property had been zoned R-4.
5 It's now the RF-3, which is the Capitol Hill RF -- R-4 zone.
6 But under the R-4 zone, a private club was permitted as a
7 matter of right. That's honestly what we believe the CofO
8 was for, was for a private club. But when the -- under the
9 new zoning regs, when they came in in 2016, private club was
10 no longer permitted as a matter of right and so we are here
11 for a special exception. But they have been assessed and
12 paying as a private club.

13 The relief requested. We are here for relief from
14 the Special Exception Requirements of Subtitle U, 203.1, to
15 continue the nonprofit organization's use for the purposes
16 of its office. As one of the criteria of that special
17 exception is that the property needs to be 10,000 square feet
18 in gross floor area. This property is approximately 3200
19 square feet in gross floor area, so we don't satisfy that
20 requirement. Accordingly, we're seeking an area variance.

21 A question that had come up both from the ANC and
22 also from OP is just confirmation that this relief, the area
23 -- the 10,000 square foot relief can be granted as an area
24 variance, and that has been squarely addressed both by the
25 DC Court of Appeals in the French case as well as by this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Board in other cases. And so, further, there is an OAG
2 discussion, that the Office of the Attorney General has
3 opined that this relief can be granted as an area variance.

4 Just very quickly I'm going to walk through how
5 the property -- the property is -- relief is harmonious, with
6 the intent. This is the Special Exception Standards. The
7 foundation satisfies the nonprofit organization definition.
8 The property was constructed as a residence.

9 It's located only two lots away from commercially-
10 zoned properties. The foundation has used it for 37 years.
11 Continuing the current use will not tend to adversely affect
12 the use of the neighbors. There is no traffic impact, only
13 four employees. No large events or associated noise. The
14 status quo will be maintained.

15 I can walk through this, but we satisfy all the
16 different requirements of the Special Conditions for the
17 nonprofit. The area variance, just as a general matter, as
18 this Board knows, area variance can be applied in a more
19 flexible manner for a nonprofit that's been -- first was
20 brought forward in the *Monaco* case and has recently been
21 reaffirmed in the *St. Mary's Episcopal Church* case that came
22 out in December of 2017. The property is exceptional and
23 unique when assessing those factors. The Board is aware that
24 the court has determined uniqueness may arise from a
25 confluence of the factors. There is a more flexible standard

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of review for an exception condition for the nonprofit
2 organization. And also *Monaco* has -- stands for the past
3 actions of a permitting authority giving rise to good faith
4 detrimental reliance can create exceptional conditions.

5 And the exception conditions here are that they
6 have been using the office for almost over 40 years -- I'm
7 sorry -- 38 years, that they had basic business licenses,
8 that we can't find the CofO, we've paid commercial taxes.
9 And of course as indicated by the prior photo of the
10 building's internal configuration is non-residential.

11 The practical difficulties here. There is no way
12 to meet the 10,000 square feet requirement. And it would be
13 unnecessarily burdensome to force the foundation to move or
14 sell the building if the nonprofit use cannot continue.
15 There is no substantial impairment of the zone plan. Again,
16 close proximity to the mixed-use zones.

17 One thing that I could go back, is that the square
18 itself is very mixed-up uses. You have -- I'll identify it
19 at the end, but you've got that the Heritage Foundation,
20 you've got the Wheat Grower's Foundation, you have a very
21 large apartment house, you've got a gas station right there
22 at the corner of Second and Mass. And so there is a lot
23 going on on that square. There have been no complaints. The
24 day-to-day operations are proportionate to the building size
25 and the number of employees, and there are no changes to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 operations.

2 You have strong community for this application,
3 16 letters of support which, as this Board knows, is not easy
4 to do. I really credit Ms. Jerome with going out and getting
5 that in particular. We've got letters of support from all
6 the adjacent property owners. There is no 2017 E Street.
7 Unanimous support from the ANC 6C, support from Capitol Hill
8 Restoration Society, and the Architect of the Capitol.

9 This is just an image that was included in our
10 prehearing statement that identifies where the letters of
11 support are located, but I would like to just use this -- use
12 this image to identify that we've got the National Republican
13 Committee at the corner of E and Second. We've got the Wheat
14 Growers, you've got the Exxon station on Mass and Second.
15 There is an apartment house and then the Heritage Foundation.
16 So the block itself is really a mix of uses.

17 ANC has proposed conditions of approval, a maximum
18 of five employees and no reception or other events shall be
19 hosted for outside persons. The applicant accepts these
20 conditions. And, with that, I will be happy to respond to
21 questions as will my colleagues here at the panel.

22 VICE CHAIR HART: I thank you very much for a
23 thorough presentation, as always. I did have a question and
24 this is a question that actually our Office of Attorney
25 General was -- wanted us to understand this a little bit

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 further and I am actually interested in this as well.

2 You cite *Monaco* in this case and that's, you're
3 saying, because this is a public service and these are
4 inadequate facilities. But in this case, in the *Monaco* case
5 our OAG is saying that this is a -- that that was really a
6 case of some different facts. And the fact in particular is
7 that they were looking for an expansion and that the Court
8 was really was kind of talking about that case and that was
9 pertaining to the expansion aspect of that. There is no
10 expansion that's happening here. This is basically an
11 existing condition that you're looking to make so that it is
12 legal, I guess. And if you could just kind of explain that.
13 And I hope I asked the question correctly, but do you
14 understand the part that I'm --

15 MS. MAZO: Sure. You know the *Monaco* and that
16 generation of cases, including National Black Children
17 Foundation and really as has been more recently reviewed
18 under the Saint Mary's Episcopal Church case, yes, Vice-Chair
19 Hart, to your point, the *Monaco* case did address a situation
20 where there was an expansion of a nonprofit.

21 But the question that we're addressing here is the
22 fact that as a general matter, the court has determined and
23 has upheld in numerous cases the fact that the area variance
24 standard can be reviewed by this Board in a more flexible
25 manner for a nonprofit. And so, yes, that particular case

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 regards an expansion, but I am very intimately involved with
2 a case that's currently before the D.C. Court of Appeals
3 which is to construct a new homeless shelter in Ward 3. And
4 in that case an order has not been issued, but at the oral
5 argument before the D.C. Court of Appeals on that case, the
6 opposition in that case had brought up this exact question:
7 Could *Monaco* apply in that situation because that was not an
8 expansion in that instance. This was a brand new building,
9 which is of course different from our case here which is that
10 we're an existing building. And the court very clearly said
11 that *Monaco* applied, would apply. I mean from the dais we'll
12 have to obviously see what shakes out in the written order,
13 but the three-judge panel who was hearing that case did very
14 clearly determine that *Monaco* applied in that case where
15 there was a construction of a new building.

16 And so I would venture to say that the court's
17 view of *Monaco* is not simply that it applies only to an
18 expansion of a nonconforming use or that it only applies in
19 a very limited instance. I would certainly say that through
20 the recent iterations and the way it's been applied in *St.*
21 *Mary's* and then also, quite frankly, in the *St. Thomas* case
22 that just came down a couple weeks ago, that there is an
23 understanding that the *Monaco* and the *Monaco* doctrine applies
24 more broadly than simply in a situation where there is an
25 expansion of a nonprofit.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR HART: And there may not be a defined
2 piece to it yet, but that may actually -- there may be a
3 limitation that is placed on the *Monaco* ruling -- or not the
4 *Monaco* ruling, but the -- as you call it -- the doctrine, but
5 that may be -- that may be coming in the future, we just
6 don't know what that is.

7 MS. MAZO: And I agree with that. And, you know,
8 of course I don't have a crystal ball and I can't
9 specifically say how the court is going to come down in
10 particular on that homeless shelter case, but in that
11 instance the feedback that -- not the feedback but the
12 language of the judges who were sitting on the bench for that
13 case, they were clearly of the opinion that *Monaco* applied
14 squarely to that case, that in that instance the District of
15 Columbia acting in order to construct these homeless shelters
16 was to be entitled to the additional deference that *Monaco*
17 stands for.

18 VICE CHAIR HART: And you're saying that the
19 *Monaco* case is relevant here because this is a --

20 MS. MAZO: A nonprofit.

21 VICE CHAIR HART: -- a nonprofit.

22 MS. MAZO: Right.

23 VICE CHAIR HART: And that's the aspect of it that
24 you're --

25 MS. MAZO: Right. Exactly. So that the -- you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 know, the -- there are two aspects of *Monaco* that I say apply
2 here, and they have been applied here by this -- by this
3 Board on numerous occasions. But the first is the general
4 understanding that the Board reviews the area variance
5 standard in a more flexible manner for nonprofits. And then
6 the second, *Monaco* really addresses the question of the
7 exceptional condition. And *Monaco* has stood for the fact
8 that there is more flexible standard of review applied for
9 that exceptional condition prong of the area variance for a
10 nonprofit organization.

11 VICE CHAIR HART: And do you believe that the --
12 that your case would work without the *Monaco* doctrine.

13 MS. MAZO: I believe it would. I mean we have a
14 situation where we've got a nonprofit that's been working
15 there for 37 years, and the building's internal configuration
16 is nonresidential. And there have been permitting back and
17 forth with DCRA.

18 And one thing I wanted to clarify on the record,
19 there was a comment that the use was not legal. But, in
20 truth, the use had been licensed --

21 VICE CHAIR HART: And actually I didn't mean to
22 say that it wasn't legal, --

23 MS. MAZO: No, I know. I just --

24 VICE CHAIR HART: -- I was more saying that it --

25 MS. MAZO: Well, that -- that --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR HART: -- hadn't gotten its license in

2 --

3 MS. MAZO: Right, right. That it hadn't --

4 VICE CHAIR HART: Yes.

5 MS. MAZO: The license had not been renewed.

6 VICE CHAIR HART: Yes.

7 MS. MAZO: And, quite frankly, I think we would
8 be in a very different situation if when the 2015 license had
9 expired. Two days before that, one of them had gone in and
10 realized, oh, this is going to expire, we need to go and
11 renew this license, I am 95 percent sure that they would have
12 been able to walk out that day with a new license. And even
13 if that had been the situation, then we would have an
14 argument, a very strong argument that even if we had to come
15 to the Board for some reason -- well, I don't think we would
16 have had to come to the Board for some reason because we'd
17 have the argument that it was a non- -- the use itself
18 conforming predating the time -- the little nonconforming use
19 that was in place at the time of the zoning regulations
20 change. And if that was an acute situation, then those types
21 of uses are permitted to continue as a matter of right. So,
22 you know,...

23 VICE CHAIR HART: I'm sorry for belaboring this
24 point, but I just wanted to get a little bit of clarity, and
25 I think you have provided it. And I don't know if the other

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Board Members have any other questions, but that was the only
2 one that I needed a lot of clarity around.

3 MEMBER JOHN: Yes, Mr. Vice-Chair. I'm still
4 struggling with the *Monaco* -- everyone's mispronouncing this
5 morning -- *Monaco*. *Monaco* case. So I'm glad that you
6 clarified that as well.

7 Now you mentioned a recent case that you said
8 would also apply. Can you go into that a little bit more?

9 MS. MAZO: Sure.

10 MEMBER JOHN: *St. Mary's Episcopal*. Thank you.

11 MS. MAZO: No, so there are two cases that have
12 come out, although numerous cases have come out of the D.C.
13 Court of Appeals recently, but the first, though, the one
14 that I'm referring to in particular is the *St. Mary's*
15 *Episcopal Church* case.

16 MEMBER JOHN: Yes.

17 MS. MAZO: In that case the court upheld the
18 Zoning Commission's decision to permit the expansion of a
19 Hillel Building at the GWU campus. And part of the court's
20 argument there is that the -- or the Hillel, it's not really
21 *St. Mary's*, but the Hillel was entitled to a reduced standard
22 of review due to the fact that it was a nonprofit. And so
23 -- and *Monaco* was referenced and the court found clearly that
24 the Board may be more flexible when it assesses a nonprofit
25 organization.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MEMBER JOHN: Thank you.

2 VICE CHAIR HART: Any other questions? Yes, Mr.
3 Shapiro.

4 COMMISSIONER SHAPIRO: Just following up on that.
5 How was the standard of review reduced in that case? I'm
6 trying to see if it's applicable to this situation.

7 MS. MAZO: Yeah. I mean I have to go pull it up,
8 I don't remember exactly. But you know I think to the
9 Board's -- I mean to Vice-Chairman Hart's point, I mean this
10 -- *Monaco* -- the courts are clear that *Monaco* applies here.
11 But even if you did not want to argue that a reduced standard
12 was applicable here, that the exceptional condition that's
13 presented in this case would still satisfy the requirements
14 of the Board.

15 COMMISSIONER SHAPIRO: Thank you. I mean, Mr.
16 Chair, that's sort of a direction that I would go with this,
17 in any case, that it feels appropriate. I just don't want
18 to even begin set any kind of precedent around reduced
19 standard in a case like this. But I don't have any
20 objections to it, frankly.

21 And I did have one other question related to the
22 issue of the ANC's conditions. Is that appropriate to talk
23 about now?

24 VICE CHAIR HART: Well, wait until we have the ANC
25 here, so we could talk to them when they -- at that point.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER SHAPIRO: Okay. I'll --

2 VICE CHAIR HART: So let's just put that on hold
3 for a minute.

4 Ms. White.

5 MEMBER WHITE: Yeah, just one question. I just
6 want to make sure I'm clear on -- this is a 501(c)(3)?

7 MS. MAZO: Yes, ma'am.

8 MEMBER WHITE: So you did file verification of
9 that. I just wanted to make sure that that's been verified
10 --

11 MS. MAZO: We have attested that it's a 501(c)(3).

12 MEMBER WHITE: Okay.

13 VICE CHAIR HART: Okay. So I think what we'll do
14 is go to the Office of Planning. Good morning.

15 MS. THOMAS: Good morning, Mr. Chairman, Members
16 of the Board, Karen Thomas with the Office of Planning. And
17 we are supporting the Applicant's request for variance
18 relief. We do indeed think there is an exceptional
19 situation here. And in an effort to regularize their
20 paperwork, we do accept the fact that they had been here
21 since in the 1980s. They have paid their taxes accordingly
22 as a commercial entity.

23 And it's unfortunate that neither they can provide
24 some of their CFOs, and the Office of Planning did in fact
25 try to do due diligence and search for this and through DCRA,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and we couldn't find any as well. So we view this as an
2 effort to regularize their existence as a nonprofit in a
3 location where they don't meet the area standard. And,
4 looking back in the records, we don't see any pause for
5 concern with respect to the substantial detriment to the
6 public good. It's a small size operation. They have four
7 employees. We don't see any negative impact with respect to
8 traffic. There is only one employee who drives. And on the
9 basis of the regulations, we do not see a substantial harm
10 to the zoning regulations.

11 And with that, as we go through the special
12 exception relief aspect of it, where they are permitted by
13 special exception and the other criteria, we do believe that
14 they have met those criteria. So on that, I will rest on the
15 record of our report. Thank you.

16 VICE CHAIR HART: Thank you, Ms. Thomas.

17 Are there any questions for the Office of
18 Planning?

19 Do you have any questions for the office of
20 Planning?

21 MS. MAZO: No questions.

22 VICE CHAIR HART: Okay. So let's go to the ANC.
23 Good morning.

24 COMMISSIONER ECKENWILER: Good morning, Mr.
25 Chairman. I was not here this morning, so I believe I need

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to be sworn in.

2 VICE CHAIR HART: That -- that would be very good.

3 Mr. Moy.

4 MR. MOY: Do you solemnly swear or affirm that the
5 testimony you are about to present in this proceeding is the
6 whole truth and nothing but the truth.

7 COMMISSIONER ECKENWILER: I do.

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

9 VICE CHAIR HART: So, Commissioner Eckenwiler.

10 COMMISSIONER ECKENWILER: Thank you, Vice-Chair
11 Hart, Members of the Board. Mark Eckenwiler for ANC 6C. As
12 the applicant indicated we voted last month at our April 11th
13 meeting, unanimously six-zero, to support this application
14 with two conditions. I won't consume the Board's time
15 discussing the legal standards. You've already been through
16 that with the Applicant and OP, so let me go to the issue of
17 the conditions that Mr. Shapiro broached.

18 Let me start by saying that Sons of Italy has been
19 a very good neighbor. The chair, longtime chair of our
20 commission, lives across the street. I myself live one block
21 away in the 300 block of E Street, so I'm passed there twice
22 a day. They're church mice. They are the best neighbors.
23 You would not know at all but for the sign on the front of
24 the building that there is a nonprofit use there.

25 However, we do have an issue. And Ms. Mazo

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 averted to the fact that there is a mix of uses. This is
2 right on the boundary. Second Street is zoned commercial and
3 Mass Ave of course is mixed use. Mass Ave is zoned mixed use
4 as well. And partly as a result of our proximity to the
5 Capitol, we have this ever-encroaching number of function
6 houses, stealth office buildings, and so there is a problem
7 including very much on this block. There is a building
8 directly across the street from this property where there are
9 frequent functions. We have large vehicles double parked for
10 hours at a time. It's very disruptive.

11 And so the conditions that we proposed are
12 entirely consistent with the Applicant's current use. They
13 have assented to that. In fact, we gave them a little
14 headroom there in the event that they need to expand to five
15 employees. But what we'd like to do is to ensure that if any
16 successor nonprofit occupies this building, that we have the
17 force of law to require them to be good neighbors at least,
18 you know, with respect to these large events that have proven
19 to be an issue at other nearby sites.

20 I'm happy to answer any questions.

21 VICE CHAIR HART: Mr. Shapiro.

22 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

23 I appreciate, Commissioner Eckenwiler, your
24 support of this and the conditions make sense to me. I don't
25 have a problem with the conditions. They just seem vague.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The first one isn't vague. You have a maximum of five
2 employees. The second one, I'm okay with supporting it the
3 way this is, but my reaction is I would want a little more
4 precision with it. So, in other words, I'm not sure how to
5 define reception or large gathering. And does it make sense
6 to put a specific number to this again, or, frankly, do you
7 not care. Do you feel like this is going to be adequate and
8 the Applicant doesn't have a problem with it. And in that
9 case I'm not going to dig into it too much. I'm just trying
10 to figure out who determines what large means or what
11 reception means.

12 COMMISSIONER ECKENWILER: If the Board prefers
13 simply to strike the word large and say, you know, no hosting
14 of functions, I mean it still has to be a function. So you
15 could have a business meeting where someone comes there, but
16 we know the difference between a business meeting and a
17 function. And the truth is --

18 COMMISSIONER SHAPIRO: But if I can say, we may
19 know intuitively the difference, but I don't know how to
20 apply that standard. So for me the issue seems to be you
21 don't want any more than x number of people showing up at the
22 building at the same time.

23 COMMISSIONER ECKENWILER: If that would -- I'm
24 sorry. Go ahead.

25 COMMISSIONER SHAPIRO: No, it's just that may or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 may not be problem and it may be too much of a burden for the
2 Applicant. It just feels more precise to me. But, again,
3 if all of you are okay with that, I don't have that strong
4 of an opinion about it.

5 COMMISSIONER ECKENWILER: I'm comfortable with the
6 language that we have proposed, and since the burden would
7 be on us and nearby residents to push DCRA to enforce that,
8 I mean that's really I think going to be on us.

9 MR. ISGRO: Yeah. I just wanted to touch on that
10 through the Chair. The facility itself, the building is not
11 large enough to hold a gathering. We have a small conference
12 room that probably could hold a maximum of ten people. You
13 know, so the building is cut up into smaller offices and
14 there really is no general gathering area where you could
15 bring in, you know, 20, 30, 40 people. So the building is
16 not conducive to holding any gatherings. And that's why when
17 we went in front of the ANC, we were totally in agreement
18 with this. I mean we don't have any worries about the
19 conditions and we're in agreement with that fully at this
20 point.

21 COMMISSIONER SHAPIRO: So if you had -- if you had
22 a meeting that maxed out in your conference room and you had
23 ten people there, is that a problem for the ANC?

24 MR. ISGRO: I don't believe it would be.

25 COMMISSIONER SHAPIRO: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. ISGRO: And the meetings would not be regular.
2 I mean we're -- this building is primarily just an
3 operational center.

4 COMMISSIONER SHAPIRO: Right.

5 MR. ISGRO: All right. We don't have like --
6 we've got 19 grand lodges throughout the whole country and
7 we have 450 local lodges that we sponsor. So these lodges
8 have their own offices, they have their own buildings. And
9 basically we are just a collections area where we monitor the
10 operations day-to-day and forward information to them. So,
11 again, it's a small operation, very little transient traffic.
12 At the most, four or five people in that office at the same
13 time, and rarely at that point, sometimes three or four. So
14 it's not like a business where the door is going to keep
15 going swinging on.

16 COMMISSIONER SHAPIRO: No, it seems perfectly
17 clear. And I think you're being quite transparent about it.
18 It's just more on the precision of what may or may not
19 approve.

20 MR. ISGRO: No, I understand.

21 COMMISSIONER SHAPIRO: So if you're okay with it
22 and you don't need any more precision than this, then, Mr.
23 Chair, I'm fine with it.

24 MR. ISGRO: Thank you.

25 VICE CHAIR HART: And right now we have -- the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Applicant has put on the board, I don't know if you could see
2 on one of the monitors that are in front of me, you know,
3 what these two are. But I know that the actual ANC report
4 says that the -- and I'll quote it -- that "The nonprofit use
5 shall be prohibited from holding events (such as receptions
6 or other large gatherings) on site for outside guests." So,
7 you know, that's the issue that we were kind of running into
8 was the "such as receptions or other large gatherings," we
9 were kind of trying to figure out what that meant. And I
10 understand that you all were trying to craft something that
11 was clearer.

12 And when we started thinking about what's a large
13 gathering, and I think hearing from Mr. Isgro, that you don't
14 really have a space to do much beyond that, I think that, Mr.
15 Shapiro, some of this is to be, just space wise, it's going
16 to limit them as to what they can do. And I mean I'd be
17 comfortable with just striking the "such as receptions or
18 other large gatherings," and just have the language that says
19 that the nonprofit use while be prohibited from holding
20 events on site for outside guests, and leave it at that.

21 I don't know what that -- you know, if a meeting
22 is considered an event and I think that was a question that
23 we were kind of -- so if we just do strike that, then does
24 that now mean that they can't have a meeting in the middle
25 of the day that has the ten people in this -- in the room.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And that was the question.

2 COMMISSIONER ECKENWILER: So if I can just speak
3 to that briefly, --

4 VICE CHAIR HART: And that's why we're glad that
5 you came here, Commissioner Eckenwiler.

6 COMMISSIONER ECKENWILER: Thank you, Vice-Chair
7 Hart.

8 I think one way to think about this the as a
9 practical matter Sons of Italy or more likely any successor
10 in this structure, they would have to have a pretty big
11 shindig for anybody even to notice. We're not going to
12 notice if one or two people show up for a meeting. And so
13 just as a practical matter there is not going to be a trigger
14 for a complaint.

15 Now I understand there is the platonic ideal of
16 the law and they would want to stay on the right side of the
17 law, but I really don't think this will create any practical
18 challenges in terms of enforcement.

19 VICE CHAIR HART: Yeah. I don't have any other
20 comments on it. I'm glad that we kind of talked it all out.
21 I just was trying to kind of figure out where we were with
22 it and it sounds like we are at a fairly good place.

23 Ms. White.

24 MEMBER WHITE: No, I'm just concurring with your
25 assessment. Sons of Italy, I'm familiar with it. And I know

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you're operating this as a business office, but you guys are
2 involved in a lot of charitable events, you know, Wounded
3 Warriors. And this is all going to be offsite. It might be
4 in concert with another organization at another satellite
5 operation that's hosting something special like a golf
6 tournament, or whatever. So I'm perfectly comfortable with
7 the fact that this is operating as a business office and it's
8 not going to be an environment where you're going to have
9 large gatherings of people on a regular basis.

10 VICE CHAIR HART: Ms. John.

11 MEMBER JOHN: I'm also comfortable with it if the
12 Applicant is, but I would prefer myself to have a numerical
13 limit because it only takes one neighbor to complain that
14 there are too many people in the building if there are six
15 cars parked out in front of. But I'm fine if the Applicant
16 is fine with it.

17 VICE CHAIR HART: Before we go -- no, please go
18 ahead if you have any --

19 MR. ISGRO: No. I just wanted to address that
20 issue also, is that again the building would not substantiate
21 having a large group. So if we had more than 10, 15 people
22 there, it would over burden the structure itself. And that
23 being said in regards to Board Member White, here we do have
24 events that we have off site. And if you know anything about
25 the organization or you have looked into the organization,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we have a large event coming up at the end of this month.
2 It's going to be held at the Gaylord Hotel. And what we have
3 is we have a NELA, which is the National Education and
4 Leadership Awards, ceremony where we honor scholarship
5 recipients. We're going to be handing out over \$75,000 in
6 scholarships this year. And we also do Wounded Warriors and
7 veterans that were going host at these events for free. So
8 we do a lot of the charitable work.

9 Again, the office itself is primarily just a
10 clearinghouse. And if there is a concern about numerics on
11 there, I mean again I don't know whether we would be able to
12 put 10, 12, 15, 20 in there. You wouldn't -- the office
13 itself would only hold a meeting maybe once a quarter and
14 maybe six to eight people. I can't guarantee that. There's
15 17 or 18 people on the board. We have a national board of
16 directors. So they might all show up. You might have five
17 people show up, but it's only for that day. Maybe a half a
18 day. So it's not something that's continuous.

19 MS. MAZO: So can I just also clarify that the
20 ANC's condition is regarding being hosted for outside
21 persons. And so an internal meeting for the board members
22 or others would not be triggered by this condition.

23 VICE CHAIR HART: And that's a great
24 clarification. I mean, I don't have any concerns with this.
25 I think we've talked through it enough, so.

1 So after we've heard from the ANC, thank you very
2 much for coming down, Commissioner.

3 COMMISSIONER ECKENWILER: Thank you.

4 VICE CHAIR HART: Is there anyone here in support
5 of the application?

6 Anyone here in opposition?

7 Seeing no one come up, Ms. Mazo, do you have any
8 final comments?

9 MS. MAZO: Yeah, just very briefly. The Applicant
10 satisfies the requirements for Special Exception. It also
11 satisfies the requirements for a variance. And you don't
12 need to take the *Monaco* reduced standard to find that an
13 exceptional condition is here. The conditions that apply to
14 the property apply specifically to this property. It
15 satisfies the court's definition of what an exceptional
16 condition is. And so, yeah, the Board does not need to
17 address that issue here.

18 Also, the exceptional conditions here, in
19 particular the property, that the Sons of Italy have been
20 there for more than 40 years, that they own the property,
21 that the internal office layout, they would all create severe
22 practical difficulties that would cause really -- would be
23 unduly burdensome on the Applicant if this relief is not
24 granted.

25 And just in closing out the variance test, there

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 is no negative impact or substantially adverse impact on
2 either the zoned plan or the public good here as attested to
3 by Commissioner Eckenwiler. And just with that, obviously
4 we would ask for the Board's support. And in light of the
5 fact that there is no opposition here, we would ask for a
6 summary order. Thank you.

7 VICE CHAIR HART: Thank you.

8 With that, I will close the hearing. Is the Board
9 ready to deliberate?

10 Yes, and I can start. I appreciate the -- all the
11 testimony today. I think while it didn't seem as though it
12 was -- and it still really isn't a difficult case, it is more
13 just understanding some of the details of it. And I think
14 we've had a great discussion on this. I applaud the Sons of
15 Italy for their work and continued to work.

16 In looking at the case, I read through the Office
17 of Planning report. And I would be in support of the
18 application because of the analysis that was provided in the
19 report, pursuant to the -- that was regarding the variance
20 relief and how they met the three prongs of the variance
21 test. And this is for Subtitle U, Section 203.1(n)(2). And
22 really this is an existing use that is not going to expand
23 the building and that they -- that the applicant would really
24 have difficulty in turning this into a residential building
25 since it's never even been used as a residential building.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And I just felt that the Applicant had met the zoning prongs
2 -- excuse me -- the variance prongs. I didn't think this
3 would be a substantial detriment to the public good or harm
4 to the zoning regulations and felt that they have also met
5 the special exception relief for Subtitle U, 203.1(n), and
6 I didn't really have much more beyond that. I appreciate the
7 Applicant's presentation.

8 And, stepping through this, while there was a lot
9 of little pieces to it, I felt that you provided sufficient
10 information on the record and in the record regarding the
11 case and would be in support of the application.

12 Any other comments?

13 Hearing none, I will make a motion to approve
14 Application Number 19730, of the Sons of Italy Foundation,
15 as read by the -- read and captioned by the Secretary.

16 Do I have a second?

17 MEMBER WHITE: Second.

18 VICE CHAIR HART: All those in favor -- hearing
19 a second, all those in favor say aye.

20 (Chorus of aye)

21 VICE CHAIR HART: Any opposed?

22 The motion carries. Mr. Moy.

23 MS. LOVICK: Excuse me.

24 VICE CHAIR HART: Yes.

25 MS. LOVICK: Can you just read into the record the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 conditions?

2 VICE CHAIR HART: Oh, I'm sorry. Thank you. I'm
3 so glad you said that.

4 And so I'll make another motion, to approve
5 Application Number 19730 of Sons of Italy Foundation, as read
6 by the Secretary, and with the conditions that the approved
7 nonprofit use allow a maximum of five employees on the site.
8 That's condition number one. And, two, that the nonprofit
9 use be prohibited from holding events on site for outside
10 guests. That's going to be condition number two.

11 Do I have a second?

12 MEMBER WHITE: Second.

13 VICE CHAIR HART: All those favor say aye.

14 (Chorus of aye)

15 VICE CHAIR HART: Any opposed?

16 The motion carries, Mr. Moy.

17 Thank you very much, Ms. Lovick

18 MR. MOY: The staff would record the vote as four
19 to zero to one. This was on the motion of Vice-Chair Hart
20 to approve the application for the relief requested, along
21 with the two conditions as cited in his motion. Seconded the
22 motion, Ms. White. Also in support, Mr. Peter Shapiro, Ms.
23 Lorna John. No other Board Members present. The motion
24 carries.

25 VICE CHAIR HART: A summary order, Mr. Moy.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. MOY: Thank you, sir.

2 VICE CHAIR HART: Thank you.

3 Thank you all very much.

4 MS. MAZO: Thank you very much.

5 VICE CHAIR HART: Have a good day. Thank you.

6 COMMISSIONER SHAPIRO: And thank you,
7 Commissioner, as always.

8 VICE CHAIR HART: Mr. Moy, the last case when
9 you're ready.

10 MR. MOY: Thank you, sir. That would be Case
11 Application Number 19734 of Angel Donchev, as amended for
12 Special Exceptions under Subtitle E, Section 5201, from the
13 nonconforming structure requirements of Subtitle C, Section
14 -- Subtitle E -- thank you -- E. I'm going to say Section
15 202.2 -- or is it 205.5 --

16 MS. LOVICK: You -- I'm sorry. I interrupted too
17 quickly. I's C, 202.

18 MR. MOY: Oh, okay. Sorry. So, again, that would
19 be Subtitle C, Section 202.2; rear addition requirements,
20 Subtitle E, Section 205.4; lot occupancy requirements,
21 Subtitle E, Section 304.1; and the rear yard requirements of
22 Subtitle E, Section 306.1 and Subtitle E, Section 520.3 from
23 the height requirements; Subtitle E, Section 303.1. This
24 would construct a partial third-story addition and roof deck
25 to an existing flat in the RF-1 District. This is at premise

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 1432 Newton Street, Northwest, Square 2677, Lot 371. And I
2 would ask the Applicant if he could confirm what I've just
3 read. Thank you.

4 MR. SOLOMON: Hi. My name is James Solomon,
5 architect and representative for Angel Donchev. I also have
6 not been sworn in yet.

7 VICE CHAIR HART: Okay.

8 MR. SOLOMON: And all of those things sounded
9 correct. There is a lot of them, I know.

10 MR. MOY: Do you solemnly swear or affirm that the
11 testimony you're about to present in this proceeding is the
12 truth, whole truth, and nothing but the truth?

13 MS. JEROME: I do.

14 MR. MOY: Thank you.

15 VICE CHAIR HART: So, Mr. Solomon, you said that
16 you are representing Mr. Donchev. And if you could, there
17 was a lot of -- a lot of change, I guess with the relief that
18 was requested for this case. And you heard the Secretary Mr.
19 Moy provide the -- what was captioned for the case. If you
20 could just make sure that that's all of the relief that's
21 requested?

22 I want to say that in the -- it wasn't the --
23 maybe the revised self-certification, was there something
24 that was not included in that. I'm asking --

25 MR. MOY: Yeah, I can add, Mr. Vice-Chair. Yeah,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 because in the -- I believe in the Z8 memorandum there was
2 a question about relief under Subtitle E, Section 205.5.
3 This is the relief for occupancy, and that's in the ZA memo
4 under Exhibit 46.

5 MR. MOY: I didn't catch that one, but I think the
6 thing we added was the relief for the exceeding a ten-foot
7 addition, needed to be added to the --

8 MS. LOVICK: Right. It was their rear wall
9 extension relief. And that in your revised application,
10 instead of referring to Subtitle E, Section 205.5, it
11 referred to Subtitle C, so we just want to make sure that
12 it's captioned correctly. That's all.

13 VICE CHAIR HART: I'm sorry. Could you say that
14 again?

15 MS. LOVICK: So the relief should be relief
16 pursuant to Subtitle E, Section 205.5, for rear wall
17 extension.

18 VICE CHAIR HART: Okay. And the Applicant put
19 down C, 205.5?

20 MS. LOVICK: Yes, I believe so, in their revised
21 application that was submitted to the record.

22 MR. SOLOMON: Thank you. I'm still confused by
23 the numbers. There are too many of them in this case.

24 VICE CHAIR HART: And they're very close to each
25 other, which makes it that much more fun.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And I'm looking at the revised certification,
2 self-certification form, which is Exhibit 59, and in it it
3 has -- it includes C202 -- Subtitle C202.2, Subtitle E,
4 301.1, Subtitle E, 304.1, Subtitle E, 306.1, and then
5 Subtitle C, as in cat, 205.5. And I think that last one is
6 the one that the Office of Attorney General is saying should
7 actually be --

8 MS. LOVICK: Correct.

9 VICE CHAIR HART: -- E, 205.5. So not C, but E,
10 205.5.

11 MR. SOLOMON: Okay, got it.

12 MS. LOVICK: Yes. I was incredibly nitpicky. I
13 just wanted for it to be clarified.

14 VICE CHAIR HART: No. It's -- actually I mean
15 it's not nitpicky, it has to do with what is the criteria
16 that we use to be able to say that they have met or not met
17 the criteria in the zoning regs. So it's helpful for us to
18 know what is before us so that we could then make that
19 determination.

20 MR. SOLOMON: Absolutely.

21 VICE CHAIR HART: So and as Ms. Lovick has said,
22 that E, 205.5 is relief for the rear yard extension for the
23 project. So just to make things much more confusing, of
24 course.

25 But if you could, Mr. Solomon, provide just kind

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of where we are with the project?

2 MR. SOLOMON: Sure.

3 VICE CHAIR HART: Because it seems like there has
4 been some change in what was proposed and that was because
5 -- as a result of some conversations that you and your client
6 -- you and/or your client have had with neighbors and the
7 ANC. So if you could kind of step us through that, that
8 would be helpful.

9 MR. SOLOMON: Sure. There's been no change to the
10 relief requested other than adding the rear wall setback to
11 our application. What's changed is the footprint of the
12 building that was proposed.

13 So when Mr. Donchev originally obtained the
14 property, he always wanted to expand upon it, but first he
15 had to take care of his illegal flat that he inherited, and
16 we dealt with safety and licensing issues for that. So when
17 he turned his attention to actually doing the addition, which
18 is essentially making a three-story in front of building with
19 two stories in the rear of a dog leg into a full three
20 stories, that's when he encountered the need for relief for
21 height, extension of a nonconforming structure, the rear yard
22 setback, low occupancy, and then the rear yard access of ten
23 feet addition.

24 So as soon we started the application process, I
25 advised him to please talk to neighbors, and which he did

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 proactively. Then as the ANC got involved, this became
2 formalized into meetings with neighbors and other people from
3 the neighborhood and the ANC itself.

4 There was a concern with there is no alley on the
5 back of this property, so the neighbors in the rear were
6 concerned about height and privacy issues with a rooftop, I
7 mean on the very, very rooftop deck was proposed. And then
8 to both sides there are concerns about light, air, and
9 privacy.

10 And so in talking with them and having meetings
11 with them and revising the plans, then he had me reduce the
12 size of the addition itself so that it instead of it being
13 the full height -- or the full length of the dog leg, which
14 was about 37 feet, we reduced it to 22 and a half feet, with
15 the remainder being a rooftop deck, albeit lower than it was
16 originally proposed.

17 That seemed to satisfy everyone such that the ANC
18 did give its approval at their last meeting. And that's
19 basically the gist of it. So by reducing the footprint there
20 are still some effects on light and air with the neighbors,
21 not unduly so for a normal, sort of small court situation.
22 But by reducing or eliminating windows on the court, that
23 takes care of privacy issues for the neighbor on 1430. And
24 then 1432 still loses some light and air and views to the
25 east, but has ample to the south and west, so they were also

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 satisfied by the reduction in the extent of the addition.

2 And then everyone seemed satisfied that the
3 removal of the rooftop deck to a lower portion of the roof
4 mitigated the concerns over privacy and noise issues.

5 VICE CHAIR HART: And so you said that the ANC is
6 in support. Can you talk about the ANC letter -- I'm sorry
7 -- the ANC meeting?

8 MR. SOLOMON: Sure. I actually was not able the
9 attend the committee meetings because I was out of town, but
10 the ANC Commissioner immediately responded to Mr. Donchev's
11 reach-out to the neighbors and to her as well. She has had
12 a meeting with the neighbors and concerned people on her own,
13 to gather their concerns; and then after that had a meeting
14 with Mr. Donchev, where he listened to all their concerns and
15 then immediately had me revise the plans to address their
16 concerns, after which he then pursued them with follow up to
17 get letters of approval which he has in the record as well.
18 And, finally, support of the full ANC.

19 VICE CHAIR HART: And this meeting was on April
20 11th; is that what I'm seeing?

21 MR. SOLOMON: The ANC meeting or --

22 VICE CHAIR HART: Yeah. The ANC meeting.

23 MR. SOLOMON: Yes.

24 VICE CHAIR HART: Okay.

25 MR. SOLOMON: I believe so.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR HART: Because they have -- they put
2 the date of the ANC meeting as 11/04/18, so to me that seems
3 like it would mean November, but it's not November yet --

4 MR. SOLOMON: I'll check the calendar, that sounds
5 correct -- because when that came through, then with working
6 with Office of Planning, we were all behind in getting things
7 together. We had to ask for the postponement at the last
8 hearing.

9 VICE CHAIR HART: And the question I was having,
10 if this was November, then how is this --

11 MR. SOLOMON: It was definitely April, I know it,
12 yeah.

13 VICE CHAIR HART: But I think that it must have
14 been the April 11th that they were looking at.

15 MEMBER SHAPIRO: I think it just means they were
16 European.

17 VICE CHAIR HART: I was going to say the same
18 thing. Must be that -- which is fine.

19 So it seems as though you've worked through the
20 problems with the ANC and with the next door neighbors. Did
21 you say the next door neighbors had -- they were in support
22 of the application.

23 MR. SOLOMON: Once we made the revisions, they
24 were in support. Prior to, they were not in support.

25 VICE CHAIR HART: Okay, well, that's good.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. SOLOMON: Certainly.

2 VICE CHAIR HART: Does the Board have any
3 questions for the Applicant?

4 MEMBER WHITE: Yes, Mr. Vice-Chair.

5 So this property is located at 1432 Newton, right?

6 MR. SOLOMON: That's correct.

7 MEMBER WHITE: Northwest. And I see that -- so
8 you have adjacent neighbors, 1430 and also on the other side
9 would be '28.

10 MR. SOLOMON: 1434?

11 MEMBER WHITE: Yeah. Would be 1430 and 1434,
12 right.

13 MR. SOLOMON: Right, correct.

14 MEMBER WHITE: So I see a number of letters from
15 residents at 1430 which would be an adjacent neighbor. They
16 signed letters basically saying they're good, but I don't see
17 anything from the neighbor on the other side. And because
18 there were some light and air issues that were raised and
19 there were no shadow studies, I had some concerns about the
20 rear addition relief, because you're going back 22 feet --

21 MR. SOLOMON: Yes.

22 MEMBER WHITE: -- past the rear wall. And I just
23 wanted to get your feeling on that because I don't have any
24 kind of paper trail that provides an acknowledgement from
25 that adjacent neighbor. And I guess the neighbors on the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 other side, it's probably a condo, so they either bought
2 each, you know, unit or they're renting each unit, not that
3 that should make a difference, but I was curious what your
4 feedback would be on that.

5 MR. SOLOMON: Sure. I was under the impression
6 we had letters from both sides and there were a lot of
7 players here and I wasn't going to be able to attend one of
8 the meetings with the ANC. So I may be confused. But I was
9 pretty sure we had it from both sides. I could be mistaken
10 and mistaking one neighbor for the wrong side of the
11 building.

12 But, in any case, I know that there was strong
13 opposition when this first came out with respect to the ANC,
14 and so if there was concern there was no concern once things
15 were resolved. And there was opposition at the ANC meeting
16 that followed, but no concerns or opposition we've gotten
17 since then. So even if -- is there a mistake in the address
18 or it's not submitted, but there is ample opportunity for
19 anyone to have a concern to voice it and had been addressed.

20 To the ten-foot setback, yes, it exceeds it by a
21 great degree; 22 feet is a lot. However, it's only on the
22 third floor. The rest of the building goes all the way back
23 two stories, not three. On 1430 goes all the way back and
24 then some because their porches have been enclosed as well.
25 So, if anything, it exceeds ten feet, yes, but they seem

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 satisfied that it's been reduced and now they have an
2 opportunity to go back themselves as well and then plus
3 another ten feet if they wanted to. So I think that they are
4 happy with the outcome with the reduced footprint.

5 MEMBER WHITE: So can you just spell out from the
6 first, second, and third floor how far back are you going,
7 how far each level?

8 MR. SOLOMON: So on the first floor it goes back
9 the full distance, the full 37 feet. On the second floor,
10 it goes back the full 37 feet, the original footprint of the
11 original house. On the third floor now, we are seeking to
12 go out 22 feet as opposed to 37 feet -- or 22 and a half
13 feet.

14 Currently the neighbor that you mentioned, the
15 1434, then only -- on the third floor, it only goes back as
16 far as we go back on where the dog leg separates from the
17 main part of the building.

18 MEMBER WHITE: I guess --

19 MR. SOLOMON: And on 1430, they go back the whole
20 way on all three floors and then some because our full
21 distance at 37 feet includes open porches below of about
22 seven feet or so, while there's have been enclosed over the
23 years, so that's one solid building all three floors.

24 MEMBER WHITE: And on the one that I was
25 questioning, is it a single-family resident, only one family,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 or is it three different units

2 MR. SOLOMON: I do not know.

3 MEMBER WHITE: Okay.

4 MR. SOLOMON: I'm not sure.

5 VICE CHAIR HART: Any other questions?

6 Okay. The Office of Planning. Good morning.

7 MS. BROWN-ROBERTS: Good morning, Mr. Chairman and
8 Members of the BZA. Maxine Brown-Roberts, for the record.

9 Maybe I should just put some clarification on the
10 property at 1434. It's currently -- it has two levels that
11 goes all the way back, similar to the existing building. And
12 then it has a third floor portion that I think it's similar
13 to the existent property right now. So the -- with the
14 addition, the only thing that will be there is one window on
15 the back of their third floor portion.

16 This addition will go all the way back, so it will
17 be looking on their second floor roof. So, again, it only
18 looks at one window. Because of the orientation of the --
19 not south orientation of the building, I think the addition,
20 with the proposed addition, the majority of times they will
21 have sun coming into that window, maybe in the morning when
22 the sun is in the east, it may -- they may have some shadows
23 from there. But I think for the rest of the day, that window
24 will be fine.

25 The property at 1430, it's a little different.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 That one has a full buildout of the three stories. However,
2 there is a side yard on both properties, so I think it's like
3 a minimum of eight feet on both sides. So that building,
4 there is some space between the proposal and the other
5 building. There are some windows there on that building, but
6 again there is that separation. In addition to that, the
7 addition won't have any windows, so there will be no problem
8 with their privacy and that sort of thing.

9 So based on that, you know, I will stand on our
10 report and if you have any questions I'm available.

11 VICE CHAIR HART: Yeah. Actually one question,
12 and this is just around there's a whole lot of numbers for
13 the zoning regulations that they are seeking relief from.
14 In your report, Ms. Brown-Roberts, you have E-205.4, and I'm
15 again trying to make sure that we're all on the same page.
16 And you're saying E-205.4 is a rear wall extension?

17 MS. BROWN-ROBERTS: Yes. That's -- yes.

18 MS. LOVICK: I will interject just to explain.
19 So that's the provision that states the 10-foot requirement,
20 but then the special exception relief is pursuant to Subtitle
21 E, 205.5.

22 VICE CHAIR HART: So then it should be both then,
23 correct?

24 MS. LOVICK: Well, --

25 VICE CHAIR HART: I know I'm getting into the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 weeds --

2 MS. LOVICK: Yeah, well, --

3 VICE CHAIR HART: -- with this, but it just seems
4 like it's like --

5 MS. LOVICK: Yeah. This is something that -- I
6 mean there have been conversations back and forth with regard
7 to that, but because the relief is -- the special exception
8 relief is pursuant to 205.5, it's -- it's acceptable for that
9 to be what is certified, self-certified in the application.

10 VICE CHAIR HART: Okay. And so it's okay that the
11 Office of Planning started 205.4 because that's where you
12 would start to get to --

13 MS. LOVICK: Correct. That is the provision that
14 states the requirement with regard to the rear wall
15 extension, but the relief is pursuant to E-205.5.

16 VICE CHAIR HART: Thank you. Just to make things
17 really nice and straightforward. I'm trying to be funny
18 today. I'm sorry.

19 I appreciate it. Thank you very much, Ms. Brown-
20 Roberts.

21 MS. BROWN-ROBERTS: Okay.

22 VICE CHAIR HART: I just wanted to make sure that
23 I had that straight in my head because it can get a little
24 bit confusing.

25 Are there any questions for the Office of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Planning?

2 MEMBER WHITE: One question because I'm still
3 stuck on this rear addition. And I'm looking at your report
4 where you're saying that the Applicant hasn't demonstrated
5 that the light and air would not be adversely affected by the
6 addition or that other Special Exception criteria would be
7 satisfied. What did you mean by that?

8 MS. BROWN-ROBERTS: We submitted a supplemental
9 report.

10 MEMBER WHITE: Am I looking at the --

11 MS. BROWN-ROBERTS: You're maybe looking at the
12 wrong one. It's dated April 26th.

13 MS. LOVICK: Exhibit 61.

14 MEMBER WHITE: Okay, so I have it now. So now you
15 are satisfied that the light and air --

16 MS. BROWN-ROBERTS: Yes. Right.

17 MEMBER WHITE: -- will not be adversely affected
18 --

19 MS. BROWN-ROBERTS: Right, because --

20 MEMBER WHITE: -- with 1434?

21 MS. BROWN-ROBERTS: Right. Because in the first
22 report was that because we didn't have enough information and
23 that was at that time the Applicant asked for the
24 postponement, so we would work with them to address the
25 issues with that headline.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MEMBER WHITE: Okay.

2 VICE CHAIR HART: Are there any questions for the
3 Office of Planning?

4 Mr. Solomon, do you have any questions?

5 MR. SOLOMON: No. Thank you.

6 VICE CHAIR HART: It's very quiet in here. Is the
7 ANC here?

8 Seeing no one come to the desk, to the table, is
9 there anyone here wishing to speak in opposition to the case,
10 anyone wish to speaking?

11 No one has approached the desk with you.

12 So do you have any other closing remarks that
13 you'd like to do, Mr. Solomon?

14 MR. SOLOMON: No, thank you.

15 VICE CHAIR HART: And do we have any questions for
16 Mr. Solomon, any final questions?

17 MEMBER JOHN: Just a point of clarification. So
18 1430 extends the full length, you said 37 feet, the neighbor
19 at 1430. I'm trying to --

20 MR. SOLOMON: 1430 extends the full length all
21 three stories.

22 MEMBER JOHN: All three stories. And your
23 proposals goes back 22 feet, roughly --

24 MR. SOLOMON: On the third story.

25 MEMBER JOHN: -- so on the third floor only, but

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the first and second floor go back 37 feet?

2 MR. SOLOMON: Yes, except for the last six or so
3 feet of that is an open porch.

4 MEMBER JOHN: Okay. But --

5 MR. SOLOMON: That's the difference between us and
6 1430.

7 MEMBER JOHN: Okay, okay. And the neighbor at
8 1434 goes back...

9 MR. SOLOMON: The full distance for the two-
10 stories.

11 MEMBER JOHN: To 37 -- 1434 --

12 MR. SOLOMON: Right. Correct.

13 MEMBER JOHN: Okay. So that neighbor goes back
14 roughly 37 feet?

15 VICE CHAIR HART: And really what we're talking
16 about is the extension is really the -- from the dog leg?

17 MR. SOLOMON: Correct.

18 VICE CHAIR HART: And so that's the issue that
19 we're kind of dealing with. It's not extending beyond the
20 back wall of the buildings on either side.

21 MR. SOLOMON: No.

22 VICE CHAIR HART: It's really the dog leg creates
23 this seemingly longer building, but you're really not going
24 back --

25 MR. SOLOMON: Correct.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR HART: Okay, I understand that.

2 MEMBER JOHN: So you're just closing off the dog
3 leg?

4 VICE CHAIR HART: No, no, no. No, no, no.

5 MEMBER JOHN: Oh, I see.

6 VICE CHAIR HART: What I think is happening -- not
7 what I think is happening. What's happening is that they are
8 -- because the dog leg is included in this, it is included
9 in the project, and the dog leg connects to the building to
10 the -- I didn't know what the right --

11 MEMBER JOHN: 1434.

12 VICE CHAIR HART: -- to the east? Is that right?
13 I did that correctly? I was looking at the plans earlier --

14 MR. SOLOMON: To the east is -- creates between
15 the two buildings.

16 VICE CHAIR HART: Yes.

17 MR. SOLOMON: Between 14- -- our building 1432 and
18 1430.

19 MEMBER JOHN: Yes, 14 --

20 MR. SOLOMON: Right.

21 MEMBER JOHN: -- 1432 and 1430, 1430 has the
22 eight-foot side yard?

23 MR. SOLOMON: No. They both do have an open
24 court, which amounts to about eight feet all together.

25 MEMBER JOHN: The court, uh-huh, okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. SOLOMON: They're around almost four feet
2 each, more or less.

3 MEMBER JOHN: On both sides of --

4 MR. SOLOMON: Right. So the space between them
5 ends up being about eight feet.

6 MEMBER JOHN: Okay.

7 MR. SOLOMON: Whereas on -- between our building
8 1430 and 1434, we share the wall the whole way back.

9 MEMBER JOHN: Oh, okay. And that's about 37 feet?

10 MR. SOLOMON: From where the dog leg starts.

11 MEMBER JOHN: Where the --

12 MR. SOLOMON: Where the two story, the three story
13 separation occurs, from there back is where we're measuring
14 this 37 feet --

15 MEMBER JOHN: Okay.

16 MR. SOLOMON: -- as a reference point.

17 MEMBER JOHN: Okay.

18 VICE CHAIR HART: And I think the one thing that
19 would have been helpful with this would have been -- and
20 maybe I missed it somewhere, but having all of the building
21 -- having the two neighbors to show where this is, to show
22 where all of these measurements are taken from, so that then
23 you can kind of say, oh, okay, this is what we're dealing
24 with here.

25 We deal with a lot of extensions onto the back of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 buildings, and in most of those cases it is -- there are no
2 dog legs, the building is built to the property lines. And
3 -- on either side. And people are expanding their houses
4 past their neighbors, and that is past a ten-foot distance.
5 And so it is a much larger building than you end up with.
6 And in this case you're not really doing that, because you're
7 kind of starting with a building that is already a certain
8 distance beyond -- because of the dog leg, it is a certain
9 distance from the next door neighbor, but it makes it seem
10 as though you're adding a lot to the project, but it's not
11 actually what's happening. And I think that that's getting
12 a little bit confusing.

13 And the reason I said it would have been helpful
14 to have the next door neighbors because we could have seen,
15 okay, well, this is where the other buildings are. That's
16 why we're asking a lot of questions about, well, how far does
17 the next door neighbor go back. And it is trying to
18 understand what your building is with respect to the
19 buildings that are adjacent to it. And so that's the
20 confusion I think that we're having.

21 And unless there is a drawing in here that I
22 missed, is there a drawing like that --

23 MR. SOLOMON: No, I understand your confusion.

24 VICE CHAIR HART: Okay.

25 MR. SOLOMON: And I did envision a drawing to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 answer these questions a lot easier and I was barely able to
2 finish the redocumentation based on the revisions that
3 hopefully, you know, satisfy the neighbors in time to
4 actually get it together, --

5 VICE CHAIR HART: Yeah.

6 MR. SOLOMON: -- to make it more clear.

7 VICE CHAIR HART: But I think that the -- excuse
8 me -- I think that's what's been the most difficult to kind
9 of grasp with it, because it's the how does this building
10 look with relationship to the next door neighbors. And
11 because we haven't been able to kind of grapple with that or
12 haven't seen that, then we're kind of relying on what the
13 words -- you know, what has been written.

14 MR. SOLOMON: I understand.

15 VICE CHAIR HART: It makes it a little bit like
16 --

17 MR. SOLOMON: Yes.

18 VICE CHAIR HART: -- so where are we starting
19 from, so how is that? And I think that a lot of this has to
20 do with the dog leg.

21 MR. SOLOMON: Yes. And that's difficult to and
22 the side an alley to get a good view of things to help
23 document things. But I understand your frustration with
24 that.

25 VICE CHAIR HART: I mean it is what it is. I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 think that there are constraints on -- you've got so much
2 time to do some of these drawings and revisions, and address
3 the concerns that some of the folks have. Anyhow, if we have
4 any questions or comments, please.

5 MEMBER WHITE: Well, I guess my only question, and
6 I'm not an architect but I'm just trying to see this
7 visually, and I'm still not clear on exactly how this would
8 look from a different perspective. I don't know if the other
9 Members of the Board would like to see an additional drawing
10 that shows how this would look in relation to the adjacent
11 neighbors' properties, that I would be interested in that in
12 order to feel a little more comfortable with it.

13 MEMBER JOHN: I think the Office of Planning has
14 a drawing that was -- has a diagram or a photograph that
15 might help us. And I think I may have seen one in the
16 exhibits, because as I looked at it, it seemed familiar to
17 me. So maybe there is something in the exhibits. It's a
18 photograph of a rooftop -- of the rooftops for the three
19 buildings.

20 MR. SOLOMON: Is this in the OP supplemental
21 report or the OP report?

22 MEMBER JOHN: I think it's in the --

23 VICE CHAIR HART: No.

24 MEMBER JOHN: -- submission. No?

25 VICE CHAIR HART: I'm looking at Exhibit Number

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 -- it's -- they are views, I think. Exhibit Number 9 or 10,
2 because -- Number 10, I think, which is existing conditions.
3 And it shows -- is this...

4 MEMBER JOHN: There's another one that shows the
5 -- the rooftop.

6 VICE CHAIR HART: I'm sorry. We're trying to go
7 through our exhibits to try to figure out where this is. And
8 it's helpful to see all of this because then it kind of
9 brings it home as to where the other building --

10 MEMBER JOHN: So let's try Exhibit 15, Existing
11 Conditions, Roof Addition. Okay, so that's the one that the
12 Office of Planning showed. So you will see the location of
13 the proposed addition on the roof.

14 VICE CHAIR HART: Yeah. And I think this is very
15 helpful to kind of show. It looks like the dog leg in the
16 photograph on Exhibit 15 in the top photograph shows the
17 building that's to the right of it, I guess it says,
18 "Location of Proposed Addition" in kind of white-yellow
19 outline.

20 MEMBER JOHN: Um-hum.

21 VICE CHAIR HART: That helps to show where the
22 actual addition is. And then you see the building that's
23 next to it to the right, that's actually the same length as
24 this building. So they're abutting each other. The building
25 to the left is actually --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MEMBER JOHN: 1440. I'm sorry.

2 VICE CHAIR HART: I don't know.

3 MEMBER JOHN: 1430, I mean.

4 VICE CHAIR HART: Yes. And I --

5 MEMBER JOHN: 1430.

6 VICE CHAIR HART: And I think that that's the one
7 that has the dog leg or that's where the court is. And so
8 there is the -- when you're measuring, they're measuring from
9 where that court is to the building to the -- I guess it's
10 to the east, but it's to the left.

11 Does that make sense?

12 MEMBER JOHN: Yeah, and so 1434 --

13 VICE CHAIR HART: Is the to the -- is the --

14 MEMBER JOHN: -- to the right.

15 VICE CHAIR HART: -- sandy colored roof to the
16 right.

17 MEMBER JOHN: Right. Right.

18 COMMISSIONER SHAPIRO: Mr. Chair, I think you get
19 a little flavor of this on Exhibit 48 as well. It's kind of
20 an odd, odder view of it, but you can see the relation of the
21 buildings to each other.

22 VICE CHAIR HART: Yeah, yeah. I think both of
23 these are helpful to see that. Oh, yeah, I see. The dog leg
24 is actually drawn on there.

25 COMMISSIONER SHAPIRO: Exhibit 48.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR HART: Yeah, 48.

2 MEMBER WHITE: So 1434 on that one on the right
3 as well?

4 VICE CHAIR HART: Yes.

5 MEMBER WHITE: Okay.

6 VICE CHAIR HART: Yeah. So I mean I think I
7 understand where this is now. As I was going through it, I
8 was just having a little harder time trying to get there.

9 So, Mr. Solomon, did I ask you I've you had any
10 further concluding statements that you'd like to make?

11 MR. SOLOMON: No. Thank you.

12 VICE CHAIR HART: Okay. So I'm going to close the
13 record, close the hearing. Is the Board ready to deliberate?
14 Do you have any further documents that you think you'd need.

15 I mean for me I think that it's -- while I noted
16 that it was a little difficult getting to what was being
17 requested, I think I am there now. And in looking through
18 these further documents or at least seeing the documents
19 after hearing the testimony and listening to the Office of
20 Planning, I feel that I can support the application. I
21 understand what the Applicant is seeking to do. And I
22 understand that the Applicant has also worked with the ANC
23 and neighbors to address some of the concerns the neighbors
24 had with regard to the expansion of the -- I guess it's a --
25 third floor of the project. And the Applicant has proposed

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 through those conversations a reduction in that third floor,
2 that it would not actually extend the whole entire distance
3 of the building, but only extend 22 feet as an addition, I
4 guess.

5 And I would be able to -- and after reviewing the
6 Office of Planning Report, which steps through all of the
7 criteria for relief that's being sought, and there is quite
8 a number of pieces of relief, I would support the Office of
9 Planning report, and I agree with their conclusion that we
10 should be approving this application.

11 And I don't know if the Board Members have any
12 other comments that they'd like to make. And hearing none,
13 --

14 COMMISSIONER SHAPIRO: I'm fine. I agree with
15 Board Member White's concerns that it wasn't as clear to
16 begin with, but I also concur with you, Mr. Chair, that it's
17 been adequately explained.

18 MEMBER JOHN: And I would just add that I, based
19 on the additional explanation, I too would concur. I also
20 rely on the explanation and the analysis of the Office of
21 Planning, which was very detailed. And we just needed to
22 have an idea of exactly where the addition would be. Thank
23 you.

24 MEMBER WHITE: And I'm very sensitive to these
25 rear additions because we've gotten a lot of pretty heated

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 discussions from some of the neighbors and ANCs and others
2 because sometimes there's some pushback on it. So I just
3 wanted to make sure that I was clear on exactly what was
4 happening. And the fact that the Office of Planning has
5 provided further explanation with respect to the logistics
6 of how this is going to look, as well as the fact that the
7 ANC has also supported what you're trying to do. And I did
8 look in the record just to make sure that the adjacent
9 neighbor was given a certified mailing of what you're trying
10 to do, because what I didn't want to have happen is for them
11 to not have any idea that this was happening. But seeing
12 that in the record, I'm -- I can get behind this and support
13 the application.

14 VICE CHAIR HART: Okay. So hearing that, I will
15 then make a motion to approve Application Number 19734 of
16 Angel Donchev. And I guess I should read this since there
17 is some -- we wanted to make sure that we were -- we had all
18 the pieces -- actually this is correct in here now.

19 So this is the Application 19734 of Angel Donchev,
20 as read -- as amended and read by the Secretary. Do I have
21 a second?

22 COMMISSIONER SHAPIRO: Second.

23 VICE CHAIR HART: All those in favor of the
24 application -- of the motion, say aye.

25 (Chorus of aye)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR HART: Any opposed?

2 Mr. Moy, the motion carries.

3 MR. MOY: Yes. Staff would record the vote as
4 four to zero to one. This is on the motion of Vice Chair
5 Hart to approve the Application as amended, seconded the
6 motion of Mr. Peter Shapiro, also in support; Ms. Lesyllee
7 White; Ms. Lorna John. No other Board members participating
8 or present. The motion carries.

9 VICE CHAIR HART: Thank you, Mr. Moy.

10 Just one question. Should we have an amended
11 self-cert, certification? Or can they add that? I don't
12 know, I'm just asking. I mean the Applicant has stated that
13 they would -- that they understand the relief that is being
14 sought and that the relief, as the Secretary has read, is the
15 relief that they're looking. The Office of Planning has
16 provided the justification for that relief, as read by the
17 Secretary. So those parts are okay and the Applicant has
18 said that they're okay with that. I just didn't know if we
19 needed a revised self-certification.

20 MR. MOY: Well, as certainly the motion would
21 carry as the relief being granted, but typically the Board
22 likes to put a little bow tie on it by including the revised
23 self-cert into the record. Of course.

24 VICE CHAIR HART: So, Ms. Lovick, is there an
25 issue with...

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. LOVICK: Well, I mean you've closed the
2 record.

3 VICE CHAIR HART: Yes, I know. That's why I'm
4 asking.

5 MS. LOVICK: And so it poses an issue for there
6 to then -- I guess you could allow for that submission to be
7 made to the record.

8 VICE CHAIR HART: Okay.

9 MS. LOVICK: And you could set a timeframe for
10 that to happen, --

11 VICE CHAIR HART: Mr. --

12 MS. LOVICK: -- post hearing submission.

13 VICE CHAIR HART: Mr. Solomon, could we get that
14 today?

15 MR. SOLOMON: I don't see why not.

16 VICE CHAIR HART: Okay. That makes it easier.
17 So I will make a motion -- I mean with do I do with that, or
18 --

19 MS. LOVICK: Well, you can just state that --
20 well, see, technically the record is closed.

21 VICE CHAIR HART: I can always reopen it.

22 MS. LOVICK: Yeah. Why don't you reopen the
23 record --

24 VICE CHAIR HART: Okay.

25 MS. LOVICK: -- and allow for that submission to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 --

2 VICE CHAIR HART: Okay.

3 MS. LOVICK: -- come into the record as a post-
4 hearing submission. And then I guess you would need to --

5 VICE CHAIR HART: Just to make things messy,
6 right?

7 MS. LOVICK: Yes. Yeah, it does -- then it
8 becomes a situation where the record is technically open and
9 therefore --

10 VICE CHAIR HART: We can get any --

11 MS. LOVICK: -- you haven't closed the case and
12 so you would need to then set --

13 VICE CHAIR HART: Yes.

14 MS. LOVICK: -- set the case for a decision later.

15 VICE CHAIR HART: I mean -- well, let me say this
16 way. I think that I'm kind of satisfied with -- I don't
17 think I want to go down that route.

18 MS. LOVICK: Okay.

19 VICE CHAIR HART: I think I'm satisfied with the
20 Applicant has already stated that he has accepted the relief
21 that has been read by the Secretary and stated that on the
22 record, so I think I'm going to leave with that. But I
23 understand what you're saying and I just wanted to --

24 MS. LOVICK: No, and it's certainly -- as Mr. Moy
25 said, it certainly would make things completely clean, but

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 --

2 VICE CHAIR HART: Yes.

3 MS. LOVICK: -- because of the fact that we have

4 --

5 VICE CHAIR HART: I know.

6 MS. LOVICK: -- exhausted the issue on the record,
7 I think it's clear that --

8 VICE CHAIR HART: Yes.

9 MS. LOVICK: -- what relief is being sought.

10 VICE CHAIR HART: Yes, I do too as well. So thank
11 you very much, Mr. Solomon.

12 So we are -- this whole case is done, so you don't
13 have to provide anything else.

14 MR. SOLOMON: Thank you. Thank you.

15 VICE CHAIR HART: And thank you very much for
16 coming.

17 Mr. Moy, do we have any other matters before us?

18 MR. MOY: Nothing from the staff, Mr. Vice-Chair.

19 VICE CHAIR HART: Then I will adjourn the meeting.

20 (Whereupon, the above-entitled matter went off the
21 record at 12:07 p.m.)

22

23

24

25

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCBZA

Date: 05-02-18

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



Court Reporter

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701