

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

MAY 9, 2018

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

- PETER MAY, Commissioner
- MICHAEL TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

- SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ANNE FOTHERGILL
MAXINE BROWN-ROBERTS
ELISA VITALE

The transcript constitutes the minutes from the
Public Hearing held on May 9, 2018.

AGENDA

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

9:45 a.m.

1
2
3 CHAIRMAN HILL: All right, everybody. The hearing
4 will please come to order. We're located in the Jerrily R.
5 Kress Memorial Hearing Room at 441 Fourth Street, N.W. This
6 is the May 9th public hearing of the Board of Zoning
7 Adjustment.

8 My name is Fred Hill, Chairperson. Joining me
9 today is Carlton Hart, Vice Chair, Lesyllee White, and Lorna
10 John, Board members. And representing the Zoning Commission
11 on a case is Michael Turnbull. And then later we'll be
12 joined by Peter May.

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

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

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

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1 in by the Secretary. Also, each witness must fill out two
2 witness cards. These cards are located on the table near the
3 door and on the witness table. Upon coming forward to speak
4 to the Board, please give both cards to the reporter sitting
5 to the table on my right.

6 If you wish to file written testimony or
7 additional supporting documents today, please submit 1
8 original and 12 copies to the Secretary for distribution.
9 If you do not have the requisite number of copies, you can
10 reproduce copies on an office printer in the Office of Zoning
11 located across the hall. Please remember to collate your set
12 of copies.

13 The order of procedures or special exceptions and
14 variances, as well as appeals, is also listed in the bin as
15 you walk in.

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

23 The District of Columbia Administrative Procedures
24 Act requires that the public hearing on each case be held in
25 the open before the public pursuant to Section 405(b) and 406

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1 of that Act.

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

10 The decision of the Board in cases must be based
11 exclusively on the record. To avoid any appearance to the
12 contrary, the Board requests that persons present not engage
13 the members of the Board in conversation.

14 Please turn off all beepers and cell phones at
15 this time so as not to disrupt the proceedings.

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

21 If you're not prepared to go forward with the case
22 today or if you believe that the Board should not proceed,
23 now is the time to raise such a matter. Mr. Secretary, do
24 we have any preliminary matters?

25 SECRETARY MOY: Good morning, Mr. Chairperson and

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1 members of the Board. Very quickly for the record as to
2 today's hearing docket, we do have one case application
3 originally scheduled for today, which is Application Number
4 19746 of D.C. Super Pack, LLC. This has been postponed and
5 rescheduled to May 30, 2018.

6 There's other preliminary matters. But the staff
7 would suggest the Board address those when a case is called.

8 CHAIRMAN HILL: Okay. Great. Thank you, Mr.
9 Secretary. If anyone is here going to present or testify,
10 if you could please stand and take the oath administered by
11 the Secretary to my left.

12 SECRETARY MOY: Good morning. Do you solemnly
13 swear or affirm that the testimony you're about to present
14 in this proceeding is the truth, the whole truth, and nothing
15 but the truth?

16 (Group response.)

17 SECRETARY MOY: Ladies and gentlemen, you may
18 consider yourselves under oath.

19 CHAIRMAN HILL: Okay. Good morning, everybody.
20 Let's see. We are going to jump around a little bit in the
21 order. And so I just want to let everybody know what we're
22 going to do because we have to accommodate a few
23 commissioners here today.

24 We're going to start off with the item that
25 Commissioner Turnbull is on. And that would be Application

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1 19726 of Amaro, LLC. So that's going to be our first issue
2 of business.

3 Then after that, in order to accommodate what has
4 happened earlier with this, we're going to go ahead and hear
5 Appeal Number 19550 of ANC 6C. So that will be our second
6 item.

7 Then we're going to jump back to our decision
8 cases and hear both of our decision cases, which is 19683 and
9 then 19629. And then after that, we're going to hear 19745,
10 Fort Totten. And then we're going to follow the agenda as
11 we have it listed out. And if we need further clarification,
12 I can kind of point that out as we move along.

13 SECRETARY MOY: Before I call the next case, Mr.
14 Chair, I just want to also mention that on the Board's
15 expedited review calendar, Application Number 19742 of
16 Anthony Balestrieri, B-A-L-E-S-T-R-I-E-R-I, that has been
17 postponed and rescheduled to May 30, 2018.

18 So, with that, I can seat parties to the table.
19 This is to case Application Number 19726 of Amaro, LLC. This
20 application has been amended.

21 And I believe currently it's for special
22 exceptions under the use provisions of Subtitle U, Section
23 802.1(c), Subtitle C, Section 1504 from the penthouse setback
24 requirements of Subtitle C, Section 1502.1(b) and (d), and
25 pursuant to 11 DCMR, Subtitle X, Chapter 10 for variances

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1 from the driveway width requirements of Subtitle C, Section
2 711.6 and the loading berth requirements of Subtitle C,
3 Section 902.3. This would construct an emergency shelter in
4 the PDR-2 Zone at premises of 101 Q Street, N.E., Square
5 3518, Lot 25.

6 And as the Board will recall, this was last heard
7 in public hearing on April 11th. And, well, let me leave it
8 at that. Thank you.

9 CHAIRMAN HILL: Okay, great. Thank you, Mr. Moy.
10 Let's see. Hi. Could you please introduce yourselves from
11 my right to left?

12 MR. AHERN: Thank you. My name is Abraham Ahern.
13 I'm representing Amaro, LLC.

14 MS. HAUN: Ashley Haun with Ballard Spahr, counsel
15 for the applicant.

16 MS. VAIAS: Emily Vaias with Ballard Spahr for the
17 applicant.

18 MS. RIDENOUR: Elizabeth Ridenour with Atelier
19 Architects.

20 MR. HUME: William D. Hume with Gelberg AEC.

21 CHAIRMAN HILL: Okay, great. Well, welcome back.
22 And thank you all, while I was gone, for hanging out here.
23 And, Mr. Vice Chair Hart, thank you for covering for me. So
24 nice to see everybody here today and so many familiar faces.
25 And I hope today continues to be as happy as it is right now.

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1 So, Ms. Vaias, so you were here last. And we
2 asked you to go back and take care of a few things or asked
3 you to, if you could clarify what happened since the last
4 time you were here.

5 I do know that I guess, well, I know some of the
6 things you've done. But if you just want to go ahead and go
7 over it, I am kind of curious again about the ANC, what
8 happened at the ANC since you have left us.

9 And then also, there are, I think there is going
10 to be quite a bit of discussion concerning the penthouse
11 relief. And so, but why don't you go ahead and start with
12 what has happened since you last were here?

13 MS. VAIAS: Okay. Good morning. So first just
14 to clarify, we are now asking no longer for a variance from
15 the driveway access width because that was determined by the
16 Zoning Administrator to be permitted as we had designed it.

17 So we are here for the special exception for the
18 shelter and the variance for the loading berth and then the
19 special exception for the penthouse stairs.

20 We also have redesigned the penthouse main portion
21 itself so that it no longer requires a special exception.
22 We were not able to submit that into the record before
23 Friday. But we do have plans that we'll be sharing with you
24 that show that that penthouse is now 12 feet set back from
25 the front and the rear, which we recognize was some of the

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1 concern of some of the Board members. So we have done that.

2 CHAIRMAN HILL: Oh, congratulations.

3 MS. VAIAS: Thank you. We appreciate the feedback
4 from staff. And we've worked with them and pushed and
5 pulled. And so we think we have a better design for the
6 rooftop now. But the stairwells are still the subject of the
7 special exception.

8 But answering your question as to the ANC and the
9 Eckington citizens, we have met with both, and they have
10 submitted. But I think there was some technical glitch in
11 getting their form into the record. I do have paper copies.
12 But I'll let Abe talk a little bit about that because he went
13 to both meetings and he can tell you what went down.

14 MR. AHERN: So we went before the Eckington Civic
15 Association first at the request of the ANC. We first went
16 before the Eckington Civic Association March 3rd and
17 presented them with our project.

18 And at that point, we asked for their support for
19 the special exception as it related to the penthouse stairway
20 setback and to the use as an emergency shelter. The ANC --
21 or the Eckington Civic Association, all members present voted
22 in favor with one abstention by an ANC member who was
23 present.

24 That had followed an additional meeting that we
25 had done public outreach for neighbors on the Q Street, the

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1 only residential neighbors of the property in the unit block
2 of Q Street, who expressed some concerns about the parking
3 in the neighborhood generally but no concerns about the
4 project specifically.

5 We were originally scheduled, as you might recall,
6 to go to the ANC on March 20th. But due to the snowstorm,
7 we were not able to go prior to coming before you last time,
8 April 11th.

9 We went before the ANC, I think it was several
10 weeks ago now, I'm forgetting the date off the top of my
11 head, the last ANC meeting we attended or were able to
12 present the project, including all the aspects that we're
13 asking for today.

14 The ANC did not raise any specific objections.
15 One member of the, one commissioner did raise general
16 concerns about the pace of development in Bloomingdale and
17 Eckington, but no specific objections to the project itself.
18 And there were no public questions or concerns at that
19 meeting that were raised either. The Commissioners voted I
20 believe it was eight to zero to one, one abstention from
21 Commissioner Holliday, to support the project.

22 We then returned on Monday of this week to the
23 Eckington Civic Association to advise them of our request for
24 a special, for a variance related to the loading dock. And
25 they once again voted to support the project unanimously with

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1 no concerns about the loading dock.

2 CHAIRMAN HILL: Okay. Ms. Vaias, I'm sorry, you
3 have a report for us or something from the ANC?

4 MS. VAIAS: We have the ANC submission form and
5 the Eckington letters. As I said, they tried to submit them
6 and had some technical glitches.

7 VICE CHAIR HART: They're actually in the --

8 MS. VAIAS: Have they made it into the file?
9 Okay.

10 VICE CHAIR HART: Yeah.

11 MS. VAIAS: We --

12 VICE CHAIR HART: It's Exhibit 76 for the ANC 5E
13 report.

14 MS. VAIAS: Okay.

15 VICE CHAIR HART: And 75 for the Eckington.

16 MS. VAIAS: Okay. All right. Thank you.

17 VICE CHAIR HART: No problem.

18 MS. VAIAS: They may have gotten entered quickly
19 this morning.

20 Any --

21 VICE CHAIR HART: Could you --

22 MS. VAIAS: Yes.

23 VICE CHAIR HART: -- just for my purposes, can you
24 step, not step through, can you just list the relief that you
25 are requesting again, because we've had the amended and not

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1 amended and, you know, this is now not on, this is no longer
2 on? I just want to make sure that I have all that clear.

3 MS. VAIAS: Sure. So we need the special
4 exception for the shelter itself. And then we are requesting
5 relief for the two stairwells, one on the rear, one on the
6 side, from the penthouse setback standards of Subtitle C,
7 Section 1502.1(b) and (d).

8 We no longer need (a). We had added (a) to our
9 prior self-certification. But that is no longer necessary.

10 And then the variance for the loading berth, which
11 is Subtitle U 802.1(c), and I'm sorry, Subtitle C, 902.3 is
12 at the variance.

13 VICE CHAIR HART: And then driveway width?

14 MS. VAIAS: The driveway width is no longer
15 necessary.

16 VICE CHAIR HART: I thought you said --

17 MS. VAIAS: Correct, that's --

18 VICE CHAIR HART: But I just wanted to make sure
19 that --

20 MS. VAIAS: -- been determined that it meets
21 zoning requirements.

22 VICE CHAIR HART: Okay. I think I have all of
23 that now. Thank you very much.

24 MS. VAIAS: Sure. So as I said, we were -- I'm
25 sorry.

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1 CHAIRMAN HILL: All right, I'm sorry. Go ahead.

2 MS. VAIAS: So we're also going to file -- again,
3 I apologize, we didn't get this in by Friday -- a new
4 penthouse plan that shows how we meet the requirements for
5 the front and the back minus the stairwells.

6 So what I think we were asked to do when last time
7 we were here was to go to the ANC and Eckington, and we have
8 done that, and then was to come back and we would deal with
9 the variance for the loading berth and the special exception
10 for the penthouse stairwell.

11 The loading berth, we did submit into the record
12 the report from our civil engineer, as well as a plan showing
13 that due to the attributes of the property, it will result
14 in practical difficulties and undue hardship if we need to
15 provide the loading dock and that granting of the variance
16 would not result in substantial detriment to the public good.

17 The loading dock in this case is not required for
18 either use independently, the emergency shelter or the
19 additional office use. It's only triggered by Section C,
20 902.3, which says that when the sum of the total gross square
21 footage exceeds either of the minimums, you must provide at
22 least one.

23 And in this case, because the property is
24 irregularly shaped and narrow and it is difficult to maneuver
25 a truck into the area, it would essentially obliterate the

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1 entire parking area, which again we believe is more
2 important. And the types of uses that will be in the
3 building, the shelter in particular, will not require loading
4 space.

5 So Mr. Hume is here. If you want to hear any
6 additional testimony on that issue, we're happy to have him
7 speak. But again, we did submit his letter into the record.
8 So I will ask if you'll like him to explain any more or if
9 that's sufficient.

10 CHAIRMAN HILL: That's okay.

11 MS. VAIAS: Okay.

12 CHAIRMAN HILL: At least I don't have any
13 questions for Mr. Hume. Does the Board have any other
14 questions for Mr. Hume? Okay.

15 MS. VAIAS: Great.

16 CHAIRMAN HILL: Mr. Hume, you weren't the one that
17 was supposed to remember a number, were you?

18 MS. VAIAS: He was.

19 MR. HUME: I am prepared for that.

20 (Laughter.)

21 CHAIRMAN HILL: What's your number, Mr. Hume?

22 MR. HUME: 907362.

23 CHAIRMAN HILL: Wow.

24 MR. HUME: Civil.

25 CHAIRMAN HILL: Civil? That's what happens at the

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1 end?

2 MS. VAIAS: Okay.

3 CHAIRMAN HILL: I love it. Okay. Does the Board
4 have any -- I mean, I'd like you to walk through I guess how
5 you pushed back the parapet in the penthouse.

6 MS. VAIAS: Penthouse, right, yes.

7 CHAIRMAN HILL: And I know that some members of
8 the Board had some questions about that.

9 MS. VAIAS: Sure.

10 CHAIRMAN HILL: That was going to become kind of
11 a sticking point. So you can kind of get us through that if
12 you'd like to.

13 MS. VAIAS: Yes, so now we'll have our architect
14 walk through where we are with the plans, where we've pushed
15 and pulled a little bit and we believe come up with a
16 solution that does not require at least a full penthouse
17 special exception, just the stairwells.

18 MS. RIDENOUR: Okay. So we started with double-
19 checking the setback on First Street, which turned out we
20 were, we had initially believed that to be the one to one
21 setback. And it turned out when we double-checked it and
22 triple-checked it, it's actually a one to five or, sorry, a
23 one to a half setback.

24 And so we ended up adjusting the penthouse. So
25 we pulled it in from the front facade to 12 feet back to

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1 accommodate the 12-foot penthouse walls both, basically in
2 the entire structure. We pulled it back all the way across
3 the front.

4 We did not pull either of the outdoor spaces back
5 because they're -- I'll call them protective enclosures.
6 They're just, it's essentially fencing to make sure that
7 balls don't go over the edge or anything like that. Those
8 enclosures are only 10 foot 6. So those are set off 10'6.
9 I think, I'm trying to remember, yes, 10 foot 6 off the face
10 of the building.

11 And then we expanded the penthouse towards First
12 Street, because we had had a ten-foot setback there. And now
13 we have a six-foot setback there to, again, meet the code and
14 try to get as much space as we can out of this space.

15 Along the back of the building we did the same
16 thing. We pulled the building, the penthouse back two feet
17 to meet the 12-foot requirement wherever it didn't meet. And
18 that pretty much sums it up.

19 CHAIRMAN HILL: Okay. Does the Board have any
20 questions for the architect?

21 COMMISSIONER TURNBULL: Well, I just have a
22 comment. I mean, we hate getting drawings at the last minute
23 on the dais at the day we're deciding something. There's no
24 sections. There's nothing. There's just the floor plan of
25 the penthouse, the roof, and that's it. There's no real

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1 sections on it.

2 How did you get the six feet on the, at the east
3 end?

4 MS. RIDENOUR: At the east end --

5 COMMISSIONER TURNBULL: I mean, the west end.

6 MS. RIDENOUR: Sorry. The west end? The setback
7 there is one to, it's one to a half. So --

8 COMMISSIONER TURNBULL: Where do you find that?
9 I mean, if you're under 1502 for penthouse setbacks, 1502.1,
10 you will find that it's supposed to be one to one and
11 especially if it's on a corner lot.

12 MS. VAIAS: I believe it's 1502.1(c) for the side
13 building wall.

14 COMMISSIONER TURNBULL: You just said this was the
15 front of the building.

16 MS. VAIAS: Oh, no, I'm sorry. That's the side.
17 Sorry, Q Street is the front of the building. First Street
18 is the side.

19 COMMISSIONER TURNBULL: I'm not -- I mean, I could
20 see where it's on a party line where it's on a private. But
21 where it's fronting on a street, I believe it's one to one.

22 MS. VAIAS: We had reviewed, so 1502.1(c), as well
23 as 1502.1(d), a distance equal to one-half of its height from
24 any side building wall of the roof upon which it is located
25 that is not adjoining another building wall and not meeting

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1 the conditions above, which are all related to residential
2 zones, so --

3 COMMISSIONER TURNBULL: Well, I will ask Ms.
4 Brown-Roberts to weigh in on that. I would have thought that
5 from a front street it's supposed to be one to one.

6 MS. BROWN-ROBERTS: I thought it was one to one.
7 I don't have the regulations in front of me. But --

8 COMMISSIONER TURNBULL: I have a copy.

9 Oh, yeah, I guess when you design these, when you
10 go through these plans, it's always good to go back and check
11 with the Office of Planning to make sure that your
12 interpretation is correct.

13 I mean, we ran into this the first day when we ran
14 into that the height of the penthouse is measured from the
15 roof of the building it's on to the toppest-most part of the
16 penthouse. I mean, we struggled through that. I mean, from
17 day one, that was a problem I think either you didn't
18 understand, and that set up this whole chain of events. So
19 --

20 MS. VAIAS: Yes, and I --

21 COMMISSIONER TURNBULL: So, again, I hate getting
22 drawings at the last minute. Mr. Chair, it's just, it's
23 awkward to review all this stuff and check it out. It's like
24 we're supposed to do it as we're going along.

25 MS. VAIAS: I think -- I apologize for that. Our

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1 attempt was to try to minimize, as I said, the need for
2 additional special exception relief. And so we were trying
3 to accommodate that.

4 And as I said, we still need to talk potentially
5 about the stairwells. And I do believe we had talked with
6 staff, as well as the Zoning Administrator, regarding the
7 setbacks.

8 And in reading again those two sections together,
9 it would seem it's the side building wall that we have to
10 measure from for the penthouse and that it is half of its
11 height pursuant to paragraph (d) of that section.

12 VICE CHAIR HART: And if you could also -- I mean,
13 I was, you know, looking at the drawings that you submitted.
14 I'm looking at -- give me a second. I'm having a hard time
15 pulling it up.

16 I think it's Exhibit 68. And it's basically a
17 section through the building. And this is old section,
18 because this has now changed. But that west wall of the
19 penthouse is actually set back at ten feet at that point.
20 But I'm assuming that you've now moved some things because
21 you are, you know, you're squishing it --

22 MS. VAIAS: Correct.

23 VICE CHAIR HART: -- on either side, and you're
24 kind of now pushing it out on one side.

25 MS. VAIAS: Exactly.

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1 VICE CHAIR HART: But I don't exactly know what
2 that looks like. So it's hard to, you know, to -- I'm making
3 these assumptions. I'm not actually able to see something
4 that says, oh okay, I see how this has changed --

5 MS. VAIAS: Oh, sure. Well, Elizabeth, do you
6 have the prior penthouse plan?

7 MS. RIDENOUR: I have the prior penthouse plan.
8 It's actually the next slide. This one is also showing the
9 stairs if we were to reorient the building. But this was the
10 prior penthouse plan. You can see it's closer here.

11 MS. VAIAS: I don't know if they can see your --

12 MS. RIDENOUR: You can't see? Okay. So on the
13 front of -- for some reason I was thinking that -- no. Okay.

14 So along Q Street, which is the top of the
15 drawing, we are closer to the exterior wall. And along First
16 Street we are further, the previous drawing is further from
17 the exterior wall. And then along the back we're also,
18 again, closer to the exterior wall.

19 VICE CHAIR HART: And so is there a minimum size
20 for the residential communal room, I mean, because you've
21 made it, you've pushed it out I guess four feet to
22 accommodate the four feet that you've reduced on the north
23 and south side. So is there a particular size that you're
24 looking for for that?

25 MS. RIDENOUR: We're really looking for a space

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1 in which parents with kids when weather is inclement can go
2 upstairs and actually let their kids run around because the
3 units are not particularly large. And it really helps that
4 it's a larger space that allows for some toys and indoor play
5 equipment and those kinds of things. I mean, we're looking
6 for kind of a bit of a playroom to be honest.

7 VICE CHAIR HART: No, I understand that. What I'm
8 asking is is there a particular set number that you are
9 pulling from, a standard that you're pulling from that says,
10 oh, we need to have a, you know, 300-square-foot room to do
11 that, or we need to have -- I just don't know where you're,
12 what you're using to determine that.

13 MS. RIDENOUR: There is not a specific set
14 standard that we're going off of. We were more trying to
15 look at the number of people in past experience with
16 designing similar spaces as to what you end up needing space-
17 wise to actually give kids the freedom to get a little bit
18 of energy out.

19 VICE CHAIR HART: And that space is 15 by 25? I
20 mean, that looks -- I mean, I have to guess as to what that
21 is because I don't know if they have the square footage or
22 the actual -- I guess I could use the scale on the bottom of
23 the drawing. But --

24 MS. RIDENOUR: It's --

25 VICE CHAIR HART: -- it's still a little bit hard

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1 to determine that.

2 MS. RIDENOUR: Yes, it's about 16 by 25, 26.

3 VICE CHAIR HART: Okay.

4 MEMBER JOHN: I have a question.

5 CHAIRMAN HILL: Sure. Go ahead.

6 MEMBER JOHN: Do you know how many children you
7 will accommodate on average or what you expect, how many you
8 expect you might?

9 MR. AHERN: So I can answer that, representing the
10 owner and operator of the shelter. So, in general, with a
11 30-unit facility, we have roughly half of the residents at
12 any given time have children. And the average number of
13 children is four. So that would be up to sometimes 120 minor
14 children in the building. Now, many of those children are
15 very young. But that would be a maximum on average. But
16 that would be a rough estimate.

17 I misspoke. That's 60. I did math in my head.

18 MS. VAIAS: Four times thirty.

19 MR. AHERN: Yes, four times --

20 MS. VAIAS: Well, no, four times thirty is not --
21 that's correct.

22 All right. Okay. Are there more questions on the
23 side? Have we --

24 CHAIRMAN HILL: Yes, I'm sorry. Hold on. I'm
25 just trying to look up a regulation.

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1 MS. VAIAS: Okay.

2 COMMISSIONER TURNBULL: We're actually waiting for
3 Ms. Brown-Roberts to return.

4 CHAIRMAN HILL: And that.

5 VICE CHAIR HART: So could you actually just step
6 through the -- you had the image that showed the stair, where
7 the stair location, why that can't work. Can you just step
8 through that, why that is a problem?

9 MS. RIDENOUR: Yes, it goes through several
10 different floor plans. We start at the roof. We could, I
11 mean, at the roof we could reorganize things. Again, it
12 significantly reduces the space allotted for where the kids
13 can play outside specifically because I'd have to remove the
14 bathrooms probably to be in line with the stairs over there.

15 The main argument is not actually on the roof.
16 The main argument is I'm going to move down into the
17 apartment units.

18 So this is an old slide that we showed you last
19 time that was showing that basically each of the highlighted
20 areas with a different color is interlinkable so that any of
21 those apartments can be expanded into adjacent apartments to
22 create larger apartments as necessary to accommodate either
23 a single woman or a single woman with one child or a single
24 woman with four children and meet all the government, federal
25 requirements for how many bedrooms, et cetera that they're

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1 supposed to have and the private spaces that they're supposed
2 to have to accommodate families of that size.

3 So when we move into -- I'm showing side by side
4 on the left is how the stairs affect things. And on the
5 right is our original plan.

6 The first thing to note is that we, in order to
7 adjust the stairs, we lose access to the apartment buildings,
8 apartments. So basically several of our studio units become
9 one bedrooms because we'll end up losing three apartments
10 total, which reduces the total number of people they can
11 serve at any given time.

12 And then over on the far right-hand side, there's
13 unit 410, also 510. And then we're going to look at 310
14 specifically because it's the ADA unit and it is a special
15 case.

16 The ability to interact that with other units is
17 done through the bedroom. And while that's acceptable on one
18 side, that's very uncomfortable just in terms of a living
19 arrangement to have the only way to expand that unit be into,
20 be walking through the bedroom. Whereas, if you look up
21 along the units that are on the northern side of the
22 building, those at least have the option of expanding into
23 another unit so that they're not, the access to those other
24 spaces are not directly through a bedroom.

25 Now if we have to expand all the way across the

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1 entire front, that's a different story. But I'm going to
2 move down now to --

3 VICE CHAIR HART: Actually, if you just stay there
4 for a second, and this is also assuming the half, one to .5
5 setback on the east side as well for the stairs.

6 MS. RIDENOUR: Yes, that is assuming that -- but
7 that's on a property line.

8 VICE CHAIR HART: So I just wanted to make sure
9 that that was what we were --

10 MS. RIDENOUR: Yes. So then the other thing that
11 happens there is that we end up, if you look on the far east
12 side, we end up with this really long, awkward corridor that
13 accesses the one-bedroom unit. And that corridor space
14 really isn't, it's not like big enough to put a bathroom in.
15 Well, it kind of is, but not really. I mean, it just, it
16 ends up being a very awkward space because of the nature of
17 these units.

18 I'm going to move to the next slide. This is the
19 third floor. And it really hasn't changed a whole lot on,
20 in terms of losing the one accessible unit or, sorry, not the
21 one accessible unit. We can't use, we cannot lose the one
22 accessible unit because we're, those are required. But we're
23 losing one studio unit on this floor, a total of three over
24 the course of the three floors.

25 But then the other thing that happens is if you

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1 go look at the one-bedroom ADA unit, it is impossible for
2 that one-bedroom ADA unit to be expanded into a two-bedroom
3 unit because I can't get an accessible door into the one-
4 bedroom unit next to it.

5 And to have an ADA unit, I'm only required to have
6 one accessible bathroom. So I could. Like I could easily
7 have an ADA unit that could expand to become a two-bedroom
8 unit, from one bedroom to two bedroom, which would then give
9 them two two-bedroom ADA units as needed. But I can't
10 because I can't get the door, I can't get all the clearances
11 required for the accessibility.

12 I'm going to skip the second floor because it
13 doesn't have a huge impact on the second floor. It's
14 workable. But if we go down to --

15 CHAIRMAN HILL: Excuse me. Can I interrupt for
16 a second? I think we're okay with -- I don't think the Board
17 has any more questions about the stairwell right now.

18 I'm just trying to figure out, again, the
19 penthouse issue. And so I guess I'd like to turn to Ms.
20 Brown-Roberts for a moment, if you could introduce yourself
21 again for the record, and then if you wouldn't mind kind of,
22 A, going over the supplemental report that you put in the
23 record, as well as kind of a little bit more clarification
24 about the question that Mr. Turnbull had with regards to if
25 we needed to have a discussion with the Zoning Administrator.

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1 MS. BROWN-ROBERTS: Yeah, Maxine Brown-Roberts
2 from the Office of Planning. Regarding the supplemental
3 report, the first section was, addressed the question of the
4 height of the penthouse measurement. And on that, I spoke
5 to the Zoning Administrator. And he determined that the
6 height of the penthouse structure should be measured from the
7 roof on which it sits to the top of the parapet. So, in this
8 case, it will be 12 feet. Okay.

9 The second portion was to just address the
10 variance requirement for the loading. And in prior
11 testimony, I had gone over how they met the requirements.
12 And this was just to set out in writing how they did.

13 And again, we think that based on the use that's
14 being proposed, the loading requirement, there is an
15 exceptional situation that causes a practical difficulty for
16 providing the loading berth and that not providing the
17 loading berth will not be a detriment to the public good or
18 to the zoning regulations.

19 And the applicant did demonstrate how the turning
20 radius would affect, having to put that in would affect how
21 many units and how the function of the building. And so we
22 recommended approval on the variance for the special
23 exception.

24 Regarding the setback requirements for the side
25 street, I spoke to the Zoning Administrator. And he believes

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1 that it is the .5, half the height of the building. Again,
2 we could take some additional time to really sit down and go
3 over that to make sure that what we're saying is correct.
4 So we'd ask for some additional time on that.

5 For the building, for the stairs, I think we
6 continue to, if the applicant is able to demonstrate that
7 there is a problem and that it affects the uses within the
8 building, that the special exception for the penthouse
9 heights, we could be, we could support that.

10 Again, we have asked the applicant to look at any
11 ways that they could maybe reduce the height or have some
12 sort of setbacks on the upper portion. But we'll see what
13 they present.

14 CHAIRMAN HILL: Okay. Does the Board have any
15 questions for the Office of Planning?

16 COMMISSIONER TURNBULL: No, I just would like to
17 see the ZA's written comments on both side yards. I think
18 it would be good to have that for the record.

19 CHAIRMAN HILL: Okay. Does the Board have any
20 other comments about that? No? Okay.

21 MEMBER WHITE: I just have one question.

22 CHAIRMAN HILL: Sure, of course.

23 MEMBER WHITE: There was a third point that you
24 made that I had some questions about, I wasn't clear on. You
25 were talking about the setback for the side street --

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1 MS. BROWN-ROBERTS: Yes.

2 MEMBER WHITE: -- that it needed to be .5.

3 MS. BROWN-ROBERTS: The ratio is half of the
4 height of the structure.

5 MEMBER WHITE: Right. So in its current form
6 based upon what's been presented, has it met your criteria
7 or no?

8 MS. BROWN-ROBERTS: Yeah, so that's what we were
9 saying is that there is some discrepancy, or we want to take
10 a look at that to make sure that it is not one to one but is
11 the .5, yes.

12 CHAIRMAN HILL: Okay. Does the applicant have any
13 questions for the Office of Planning?

14 MS. VAIAS: So if the building, if the penthouse
15 with the parapet is 12 feet, then the setback on the sides
16 would be 6 feet. Is that -- that's --

17 MS. BROWN-ROBERTS: For the stair, the --

18 MS. VAIAS: For either, whichever we're talking
19 about, the main penthouse or the stairwell, it would be --

20 MS. BROWN-ROBERTS: Yes, for the, yes, so for the,
21 I think for the rear penthouse, it's the .5. I think we are
22 clear on that.

23 MS. VAIAS: No, not, no, the rear has got to be
24 12 feet. That's one to one.

25 But the sides, so either side, either the

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1 stairwell --

2 MS. BROWN-ROBERTS: Right, so that's --

3 MS. VAIAS: -- or penthouse --

4 MS. BROWN-ROBERTS: Yes, so that's --

5 MS. VAIAS: -- is half of --

6 MS. BROWN-ROBERTS: -- the ones we need to check.

7 MS. VAIAS: -- the 12 feet.

8 MS. BROWN-ROBERTS: Yes.

9 MS. VAIAS: So that would be six.

10 MS. BROWN-ROBERTS: Yes.

11 COMMISSIONER TURNBULL: Because the other side
12 yard is on a property line --

13 MS. BROWN-ROBERTS: It is.

14 COMMISSIONER TURNBULL: -- which there could be
15 another building there, which means it would have to be one
16 to one. I think we need to have that clarified.

17 MS. BROWN-ROBERTS: Yes.

18 CHAIRMAN HILL: Okay. So this is what I think
19 real quick. And I don't know what the Board has. I mean,
20 I hear the arguments. And I understand a lot of what has
21 been said. And I don't, you know, I don't really have -- I
22 think we can have some discussion about the stairwells,
23 though. But I think we're okay with the stairwells.

24 I mean, I guess what I keep hearing about is the
25 setback in terms of the penthouse. And I guess particularly,

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1 you know, we have a Board member that wants to hear a little
2 bit more from the Zoning Administrator for the .5.

3 And so what I would suggest is go ahead and ask
4 the Office of Planning to speak with the Zoning Administrator
5 and provide something from the Zoning Administrator's
6 perspective that the .5 is applicable. And then also I guess
7 these are the plans now that you're submitting to us for the
8 penthouse?

9 MS. VAIAS: Correct.

10 CHAIRMAN HILL: And so we can go ahead and take
11 a look at those. Okay?

12 COMMISSIONER TURNBULL: Well, I would suggest we
13 get a complete set of revised plans that include --

14 MS. VAIAS: Everything, correct, right.

15 COMMISSIONER TURNBULL: Yes, because, I mean --

16 CHAIRMAN HILL: Okay. That's fine.

17 COMMISSIONER TURNBULL: If an order gets issued,
18 it's going to need a correct set of plans.

19 CHAIRMAN HILL: Okay. So could we get a complete
20 set of revised plans?

21 MS. VAIAS: Yes.

22 CHAIRMAN HILL: All right? And then if you could
23 just either -- you don't have to revise your application, but
24 at least, you know, give me the caption as to what you're
25 applying for again. And I know you're getting rid of the

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1 driveway with requirements, but if you could just provide
2 that to us so I read it properly.

3 And then I think we can probably just deliberate
4 upon this, right? So if you can provide that to us, do you
5 know when you might be able to provide that to us?

6 MS. VAIAS: Two weeks.

7 CHAIRMAN HILL: Okay. Do you know when, Ms.
8 Brown-Roberts, you might be able to get something from the
9 Zoning Administrator?

10 MS. BROWN-ROBERTS: At the end of the week.

11 CHAIRMAN HILL: Okay. All right. Okay. We're
12 more efficient than you guys. So --

13 MS. VAIAS: Thank you.

14 CHAIRMAN HILL: Okay. All right. Is there
15 anything else, Mr. Turnbull? Is there anything else from the
16 Board? Then, Mr. Moy, how would that work in terms of the
17 dates when we get things? And do people have to have time
18 to respond? I forget.

19 MS. GLAZER: I don't believe there's any
20 opposition or any other parties. I mean, the ANC should have
21 a chance to respond. The ANC is a party.

22 MR. THOMAS: I'm here from the ANC.

23 CHAIRMAN HILL: Oh, okay. All right. Well, okay.
24 So we'll get to you. That's great. Thank you, sir.

25 But in terms of time, I'm just trying to get

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1 through the time limit here, the line I guess if the ANC
2 waives their right to any kind of -- then I'm just trying to
3 figure out when we get back here for a decision. And I'm
4 looking at Mr. Moy real quick. And then I'm going to go
5 through who is here.

6 SECRETARY MOY: Yes, I have the dates, Mr. Chair.
7 So today's May 9th. If the applicant can refile within two
8 weeks, that would be May 23rd. The Board could set for a
9 decision on the 30th or the following week, which would be
10 June 6th.

11 MS. VAIAS: We would request, obviously, the
12 soonest --

13 CHAIRMAN HILL: Yes, I think the 30th is --

14 MS. VAIAS: -- we can do.

15 CHAIRMAN HILL: The 30th is fine, Mr. Moy, for --
16 now, okay.

17 So now since I know there is somebody here from
18 the ANC and I was going to go through -- we had, it was a
19 continued hearing. And we did go through I believe support
20 and opposition. But nonetheless, is there anyone here
21 wishing to speak in support? Is there anyone here wishing
22 to speak in opposition? Is there anyone here with the ANC?
23 Sir, would you please come forward? Good morning.

24 MR. THOMAS: Good morning.

25 CHAIRMAN HILL: If you could please introduce

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1 yourself and speak -- you need to turn the microphone on.

2 MR. THOMAS: Sure. Good morning, Mr. Chairman.
3 I'm Bradley Thomas, Chair of ANC 5E.

4 CHAIRMAN HILL: And, Mr. Thomas, as an ANC member,
5 thank you for coming down first of all. Thanks for taking
6 the time.

7 MR. THOMAS: Certainly.

8 CHAIRMAN HILL: And you'll have five minutes to
9 speak, you know, tell us whatever you'd like to tell us. So,
10 please, go ahead whenever you like.

11 MR. THOMAS: All right. Well, I don't have much
12 to tell you other than that the ANC did meet three weeks ago
13 and voted on this matter and voted to support the applicant's
14 requests. I have a copy of the Form 129, which I've signed,
15 which indicates that we did vote eight to one to support the
16 request. And that's basically it.

17 CHAIRMAN HILL: All right. Chairman Thomas, thank
18 you for coming down here. Does anybody have any questions
19 for the Chairman? Okay. I guess, Mr. Chairman, as you can
20 see, we're kind of struggling just through kind of the
21 specifics of the regulation.

22 MR. THOMAS: Right.

23 CHAIRMAN HILL: But thank you so much for coming
24 down. And, you know, we also don't want to oppose the, what
25 is actually transpiring here. It's just kind of making sure

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1 that the regulations are adhered to properly. So, but thank
2 you for coming down.

3 MR. THOMAS: All right. Should I submit this to
4 --

5 CHAIRMAN HILL: Yes, I think we have that in the
6 record.

7 MR. THOMAS: No, we didn't.

8 SECRETARY MOY: Yeah, it is in the record, Mr. --

9 CHAIRMAN HILL: You're welcome to give that to Mr.
10 Moy again just to --

11 (Simultaneous speaking.)

12 MS. GLAZER: The applicant submitted that with the
13 Civic Association.

14 CHAIRMAN HILL: Okay. I think we have it. Since
15 you brought it --

16 MR. THOMAS: -- voted at that time. So I don't --

17 CHAIRMAN HILL: You can go ahead and submit that
18 to Mr. Moy.

19 MS. GLAZER: This morning before you came.

20 MR. THOMAS: Oh, this morning?

21 MS. GLAZER: Yes.

22 MR. THOMAS: Okay. Thank you.

23 CHAIRMAN HILL: That's all right. Everybody's
24 being efficient today. Okay. All right.

25 So then, Ms. Vaias, do you understand the

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1 deadlines we're talking about? Okay. And is the Office of
2 Planning okay with the -- there's no deadline I guess, just
3 kind of the end of the week. Okay. All right. Then we're
4 good, Mr. Moy? So we're going to do a decision on the 30th.
5 And otherwise, the record is closed except for what we're
6 requesting.

7 MS. GLAZER: And any responses.

8 CHAIRMAN HILL: And any responses from the ANC if
9 there are any, because the ANC is the only party.

10 MS. GLAZER: Correct.

11 CHAIRMAN HILL: But I believe they're not going
12 to have any responses.

13 MS. GLAZER: Mr. Chair?

14 CHAIRMAN HILL: Yes.

15 MS. GLAZER: Any party gets, under the reg, seven
16 days to respond. So I don't know if that's contemplated in
17 the timing. So if it's refiled by May 23rd, you have to
18 count seven days that they get for that.

19 CHAIRMAN HILL: Okay. Well, I love the Office of
20 the Attorney General. They're here to make sure we're doing
21 things the correct way. So do you want to get it in earlier?

22 MS. VAIAS: We'll get it in on the 22nd.

23 CHAIRMAN HILL: Right. So --

24 MS. VAIAS: -- and that will give us seven days
25 till the 29th and then decision on the 30th.

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1 CHAIRMAN HILL: Right. Okay.

2 MS. VAIAS: Will that --

3 CHAIRMAN HILL: Okay. Does that work, Mr. Moy,
4 now?

5 SECRETARY MOY: Absolutely.

6 CHAIRMAN HILL: Okay. All right. Thank you.

7 MS. VAIAS: And we'll try sooner.

8 CHAIRMAN HILL: That's fine. I just have to give
9 seven days for people. But still, this hearing is closed now
10 except for we're going to have a decision on the 30th. And
11 Mr. --

12 MS. GLAZER: Is there going to be a supplemental
13 OP report based on discussions with the ZA?

14 CHAIRMAN HILL: No, I think we, well, I thought
15 we just wanted something from the Zoning Administrator,
16 right. And so we'll get that through, we'll get that from
17 the Zoning Administrator. We'll just get that from the
18 Zoning Administrator.

19 MS. GLAZER: Okay.

20 CHAIRMAN HILL: Unless the Office of Planning
21 feels that there is a supplemental report that's necessary.
22 And you're shaking your head no. So I'm going -- okay. All
23 right. Okay. All right.

24 Well, thank you. Thank you all very much. Mr.
25 Turnbull, thank you so much. If you want to send in

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1 Commissioner May.

2 And, Ms. Vaias, again don't forget to give me
3 whatever it is you're, the new relief you're requesting,
4 okay, striking the driveway. Okay.

5 MS. VAIAS: Do you want me to submit that in a
6 letter --

7 CHAIRMAN HILL: Yes. Just submit it to the
8 record. Yes. Or you can check with Mr. Moy actually as to
9 whether or not you need to change the self-cert. I don't
10 know. Okay?

11 (Pause.)

12 CHAIRMAN HILL: All right. Commissioner May,
13 welcome. And, Mr. Moy, whenever you'd like.

14 SECRETARY MOY: Thank you, Mr. Chair. That would
15 be -- if we can have parties to the table to Appeal Number
16 19550 of ANC 6C, this is caption advertised for a, from the
17 decision made on March 31, 2017 by the Zoning Administrator,
18 Department of Consumer and Regulatory Affairs to issue
19 building permit number B17006219 to permit the renovation of
20 a one-family dwelling to two separate one-family dwelling
21 units, RF-1 Zone, at premises 1125 Seventh Street, N.E.,
22 Square 886, Lot 35.

23 Mr. Chair, there's a number of preliminary matters
24 here. First is DCRA's motion to postpone under Exhibit 36.
25 There are responses to that from both the ANC 6C and the

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1 intervenor under Exhibits 37 and 39. And I believe the
2 property owner representative filed a motion to dismiss as
3 moot under Exhibit 42.

4 CHAIRMAN HILL: Wasn't there also a motion to
5 incorporate?

6 SECRETARY MOY: Yes, sir.

7 CHAIRMAN HILL: Okay, okay. All right. Let's
8 see. So welcome. If you could introduce yourselves, please,
9 from my right to left.

10 MS. KAPRELOVA: Anna Kaprelova for DCRA.

11 CHAIRMAN HILL: How do you say your last name?

12 MS. KAPRELOVA: Kaprelova --

13 CHAIRMAN HILL: No, you have to press the
14 microphone again. I'm sorry. Can you --

15 MS. KAPRELOVA: Kaprelova, K-A-P as in Peter, R-E-
16 L-O-V as in Victor-A, Kaprelova.

17 CHAIRMAN HILL: Okay. Thank you.

18 MS. LORD-SORENSEN: Hi. Good morning. Adrienne
19 Lord-Sorensen, Assistant General Counsel for DCRA.

20 MR. LeGRANT: Good morning. Matt LeGrant, Zoning
21 Administrator, DCRA.

22 MR. ECKENWILER: Good morning, Mr. Chairman.
23 Welcome back. Mark Eckenwiler for ANC 6C.

24 MR. CUMMINS: My name is Kevin Cummins. I'm an
25 intervenor in this case.

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1 MR. BROWN: Patrick Brown from Greenstein, DeLorme
2 & Luchs on behalf of the property owner, Atlas Squared, LLC.

3 CHAIRMAN HILL: Okay, great. Thank you. And,
4 Commissioner Eckenwiler, thank you for welcoming me back.
5 Nice to see everybody here. So, Mr. Tondro is gone. And now
6 there's two?

7 MS. LORD-SORENSEN: Not quite. So my name again
8 is Adrienne Lord-Sorensen. I'm replacing Max Tondro on
9 behalf of, representing the agency before the BZA.

10 CHAIRMAN HILL: Okay.

11 MS. LORD-SORENSEN: My colleague here, Anna
12 Kaprelova, sorry, she has a lot of intimate knowledge about
13 these cases because she was working with Max.

14 CHAIRMAN HILL: Okay, okay. Okay, great. Just
15 curious. All right.

16 So there are a few motions on the table. I think
17 I kind of know just from the record and from kind of speaking
18 with OAG, and we'll see what the rest of the Board has to
19 say, kind of where we are.

20 But to begin with, I am sorry for all of you that
21 this has gone on as long as it has. I mean, I'm pointing
22 that out because it was mentioned in the record several times
23 that I said that this was going to be it. And it was going
24 to be over. And we're never going to postpone or continue
25 this again. I don't think that's going to happen. So but

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1 that's just my thoughts as we kind of go through this.

2 So what I thought there was, there was a motion
3 to dismiss as moot. And who's was that?

4 MR. BROWN: That was mine on behalf of the
5 property owner. And I picked up on a suggestion made in Mr.
6 Eckenwiler, ANC 6C's opposition to the motion to incorporate.
7 And he suggested that the original permit, as I'll refer to
8 it, from March of 2017 was moot and that we should dismiss
9 the appeal on the basis of that because the revised permit,
10 which was issued on April 18th of 2018, is now the operative
11 permit for purposes of this property and the proposed work.

12 Quite frankly, I think DCRA's motion to
13 incorporate, subject to certain time frames that are fair to
14 all the parties, is an equally acceptable way to go.

15 The goal I think that everybody I've talked to so
16 far, with the exception perhaps of Mr. Cummins, is that we
17 have a revised permit and that everybody should have the
18 right to file an appeal of that permit and the time frames
19 that they're allowed to do so, and then we have a full and
20 fair hearing on a timely basis before this Board. And like
21 you say --

22 CHAIRMAN HILL: Okay.

23 MR. BROWN: -- resolve this case.

24 CHAIRMAN HILL: Okay. Commissioner Eckenwiler?

25 MR. ECKENWILER: Thank you, Mr. Chairman. As a

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1 threshold matter, I would propose that the Board hear Mr.
2 Brown's motion first. I think that's the most expeditious
3 way.

4 I do want to quibble a little bit. Our proposal
5 in the opposition to one of the earlier motions, we do not
6 in fact assert that this was moot. We suggested that DCRA,
7 because DCRA is the gatekeeper here, that they file such a
8 motion so that we could dispose of it.

9 But we have a motion. I think the issue was
10 fairly presented before the Board. And I think it's probably
11 the most expeditious way to proceed.

12 CHAIRMAN HILL: Okay. So, Mr. Eckenwiler, I mean,
13 sorry, Commissioner Eckenwiler just opened it up for you, Mr.
14 Cummins. So what are your comments?

15 MR. CUMMINS: I filed a written prehearing
16 statement as well as an opposition to the DCRA motions. I'd
17 just like to highlight again not only your assurance that
18 this would be heard today. This was a date that was also
19 agreed to by all the parties at the last, excuse me, January
20 24th hearing.

21 And also I think Board Member White had also
22 insisted that prehearing statements be filed in advance of
23 this hearing today. And I will note that neither the DCRA
24 or the property owner filed prehearing statements.

25 So there does seem to be a real, a lack of

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1 interest in defending this permit. So I think it would be
2 rather expeditious to go forward with the hearing today on
3 the 2017 permit. And given the lack of defense of the zoning
4 violations contained in that permit, that should be something
5 that the Board could consider expeditiously today.

6 And the fact that that permit exists does have
7 implications beyond just the property development rights of
8 the owner, but also implicates how neighbors can develop
9 their property as well.

10 CHAIRMAN HILL: Okay. So, Mr. Cummins, anyway,
11 I agree with you that this has gone on a long time. And I
12 do appreciate that both the ANC and yourself actually did
13 your homework and actually did what you were supposed to do.
14 But that might not necessarily mean we can or can --
15 unfortunately, it doesn't necessarily mean we are going to
16 be able to move forward with this.

17 I think that the -- and please, by the way, if any
18 Board members want to speak up, please go right ahead. I was
19 going to kind of turn to Ms. Cummins, no --

20 MS. LORD-SORENSEN: Lord-Sorensen.

21 CHAIRMAN HILL: Lord-Sorensen, Lord-Sorensen.
22 That, now so the incorporation, can you kind of explain that
23 to me again or the Board?

24 MS. LORD-SORENSEN: So the appeal stems from, of
25 course, the original permit. A couple of weeks ago a revised

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1 permit was issued allegedly addressing the issues, the
2 underlying issues that formulated the appeal before the BZA.

3 Based on representations, it appears as though the
4 revised permit addresses the underlying issues that were
5 raised regarding the original permit, and thereby should moot
6 this particular case.

7 So there is precedent, Chairman Hill, for example
8 in Appeal Number 17980 where this Board -- there was a
9 similar case where there was an original permit. A revised
10 permit was presented, which addressed and ultimately resolved
11 the issues originally raised pertaining to the original
12 permit. And in this case, again 17980, the Board dismissed
13 it because they deemed that the case was moot --

14 CHAIRMAN HILL: Sure, I see. Okay. I'm sorry to
15 cut you off.

16 MS. LORD-SORENSEN: No worries.

17 CHAIRMAN HILL: I got you. So, Commissioner
18 Eckenwiler, that's not the one that you were on, was it?

19 MR. ECKENWILER: Not to my recollection --

20 CHAIRMAN HILL: Okay.

21 MR. ECKENWILER: -- Mr. Chairman.

22 CHAIRMAN HILL: So when I -- I was going to turn
23 to the Office of Attorney General here just to kind of help
24 clarify a couple things, because what -- well, there's two
25 things I guess, right.

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1 I mean, it sounds as though if we were to -- what
2 I had thought originally was that if the permit was revised,
3 then the original permit was now dead. Okay. But it sounds
4 like that's not necessarily the case.

5 However, now if we incorporate the revised permit
6 into the original permit and then -- would we have to dismiss
7 this appeal? I mean, I'm trying to figure out how then to
8 get everybody back. I know everybody's going to -- how to
9 get everybody back here again to a point where we can hear
10 this in a very timely manner where that everyone would have
11 time to look at the revised permit and understand what their
12 positions are on it. I'm looking to OAG.

13 MS. GLAZER: Do you want OAG's input on this?

14 CHAIRMAN HILL: Yes, please.

15 MS. GLAZER: Okay. Mr. Chair, OAG recognizes that
16 there have indeed been times in the past where an appeal has
17 been dismissed as moot because a subsequent revised permit
18 rendered it moot.

19 However, mootness under the case law and the
20 regulations is when there's no longer a live controversy or
21 an issue in dispute. I don't hear that, that that has
22 necessarily happened. And there is no really proof in DCRA's
23 submissions that the revised permit addressed all of the
24 issues that the appellant raised. It may have. But I don't
25 think that's been established before the Board.

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1 So I would -- OAG's position on this would be that
2 we haven't heard enough facts to even know whether or not the
3 corrections have been made. So it would be more -- it would
4 make more sense to incorporate the revised permit into the
5 appeal. You would have one appeal but two -- and one permit,
6 because under the building code now the revised permit is
7 part of the original permit.

8 But that doesn't make the original permit moot.
9 It just means that you have an appeal of one permit. It's
10 an original permit as revised.

11 CHAIRMAN HILL: Okay, okay.

12 MS. GLAZER: I know it sounds funny.

13 CHAIRMAN HILL: No, I understand.

14 MS. GLAZER: So then you have -- all you would
15 need to do really is amend the caption to include the second
16 revised permit as part of it.

17 CHAIRMAN HILL: Okay.

18 MS. GLAZER: The ANC's complaints about not having
19 enough time under DCRA's proposed timeline can be addressed
20 to make them more equitable since they are correct.

21 CHAIRMAN HILL: Yes.

22 MS. GLAZER: The ANC is correct that they would
23 have had 60 days from the time that the revised permit was
24 issued or when they knew about it. So I think it could be
25 easy for the Board to work with the parties and establish a

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1 timeline.

2 CHAIRMAN HILL: Okay, Ms. Glazer. I'm going to
3 turn back to the parties in a second to hear your comments.
4 But does the Board have any thoughts on this because that
5 sounds good to me?

6 MEMBER WHITE: That sounds good to me.

7 CHAIRMAN HILL: Okay. So let's see. So,
8 Commissioner Eckenwiler, do you understand everything that's
9 going on here? At this point now we're going to -- what I
10 believe is going to happen is we're going to incorporate the
11 revised permit into the original permit and come up with a
12 timeline now that is fair to everyone.

13 MR. ECKENWILER: Mr. Chairman, I think that raises
14 a host of procedural questions including, if you'll recall,
15 there is a requirement under the regulations under Subtitle
16 Y that when one files an appeal that, you know, all the
17 documents have to be presented as part of that initial
18 filing.

19 So obviously this new permit and the new drawings
20 were not previously available. But at what point are we
21 obliged to put those into the record?

22 I mean, I think there is some, frankly,
23 imponderables here. And it's a lot cleaner if that's simply
24 filed as a new appeal, and we are proceeding within ANC 6C
25 to take a separate appeal of the revised permit.

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1 It's a brand new set of plans. Without going into
2 detail, it raises even more issues and frankly much more
3 complex issues than the original permit. So I'll leave it.
4 It's really an entirely different --

5 CHAIRMAN HILL: Okay. So even if we did do that,
6 it still comes down to kind of like a timeline as to how much
7 time you think you need, meaning whatever the original -- if
8 we did it your way, or it's just not your way, if it was a
9 new appeal, how much time then would you be having as a new
10 appeal?

11 MR. ECKENWILER: So we would have until May,
12 excuse me, June 18th. That's technically more than 60 days.
13 But the 60th day falls on a weekend, and so it puts us into
14 June.

15 Part of my concern here is, and we mentioned this
16 in some of our opposition papers, we don't yet have all the
17 relevant documents. And I've been told by others, not those
18 present here, in DCRA that I cannot expect to receive the
19 documents until at the earliest May 25th.

20 I haven't received other -- I frankly have
21 received no response in a request for other documents. And
22 those are documents that I think may bear directly on the
23 issues, I mean, even for us to understand what issues we want
24 to raise on an appeal of the revised permit, I mean, to have,
25 you know, a fair opportunity to assess what's really happened

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1 here, what's been done, what the implications are.

2 CHAIRMAN HILL: Okay. Okay, Commissioner
3 Eckenwiler. I understand. And I don't disagree. Mr. Brown?

4 MR. BROWN: Well, whether we incorporate based on
5 just a revision of the current appeal or we allow Mr.
6 Eckenwiler and ANC 6C to file a separate appeal, which then
7 I think we would probably want to incorporate for hearing
8 purposes at a later date, he should have the time he needs
9 within reason.

10 CHAIRMAN HILL: Okay, okay.

11 MR. BROWN: So I don't --

12 CHAIRMAN HILL: All right. Okay. Well, depending
13 upon what the Board thinks, I mean, I'm kind of just in line
14 with what -- and what has been offered as the position with
15 the Office of the Attorney General, which is to incorporate
16 the revised permit, and that would then keep that other
17 permit alive. I mean, that's why I'm looking at the
18 Commissioner here because he's making, he's pondering I
19 suppose.

20 But if this appeal -- then the only other way to
21 do it would be to then dismiss this appeal as moot. And we
22 can't do that yet because we don't have enough, we don't know
23 enough to -- I'm trying to get expeditiously as possible as
24 to where we are, right.

25 And so I don't see how it harms the ANC if we just

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1 revise, add the revised permit into this appeal and,
2 therefore, still give you the amount of time that you think
3 you need to do everything.

4 VICE CHAIR HART: Mr. Chairman?

5 CHAIRMAN HILL: Sure.

6 VICE CHAIR HART: I think we also, from what I
7 understand from Commissioner Eckenwiler, he's requesting,
8 he's saying that we're kind of outside of the process because
9 we are adding something, we are amending something that has
10 already kind of lost the original building permit, which has,
11 there are deadlines that were within the, the zoning
12 regulations have already expired.

13 And so we would really have to kind of create some
14 other deadlines to be able to allow the ANC and others, Mr.
15 Cummins, time to be able to say this is what our case is,
16 this is what the appeal is. And so I think that's what the
17 issue that we're trying to kind of grapple with --

18 CHAIRMAN HILL: Okay. So what's your suggestion?

19 VICE CHAIR HART: Well, I mean, I think that it's,
20 I think that what we need to do is just to set some time
21 limits that are fair to be able to give that, the ability for
22 the ANC to be able to, you know, present the case that is
23 with, present their case using the most up-to-date
24 information that we have.

25 And I don't know if, you know, the end of May was

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1 when they would be able to get the documents is a actual
2 deadline or if it's something that, you know, somebody from
3 DCRA said. And I don't know if we start counting the time
4 from that point or we start counting it from now.

5 But that, you know, 60-day window from which they
6 are able to, you know, start the clock for submitting an
7 appeal is I think the question.

8 CHAIRMAN HILL: One second, Mr. Cummins.

9 Ms. Glazer, you -- okay. Mr. Cummins?

10 MR. CUMMINS: Yes, I would also point out that
11 that 60-day window is really for any party to file an appeal.
12 So there may be someone who is not present here today that
13 may be contemplating --

14 VICE CHAIR HART: And I understood that. I was
15 just trying --

16 MR. CUMMINS: -- may not be aware of the new
17 permit yet and may not -- so, again, I don't think that this
18 body should circumvent the zoning regulations to the
19 detriment of potentially other parties that may be affected
20 by the new revised permit.

21 CHAIRMAN HILL: Okay. Mr. Cummins, just to let
22 you know, so I think we're all kind of on the same page here.
23 I'm just trying to figure out how to do it. Like the -- yes,
24 so I'm just trying to figure out how to do it.

25 MR. CUMMINS: Again, it seems very

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1 straightforward. My understanding from the previous
2 statements on the hearing is that DCRA recognizes that the
3 permit they issued, the 2017 permit, clearly does not meet
4 the zoning regulations.

5 So moving forward today with the hearing on the
6 2017 permit that would result in a revocation of the 2017
7 permit would be a very straightforward matter. And in fact,
8 the prehearing statements clearly point out a number of
9 zoning violations that, again, DCRA has not defended, neither
10 has the permit holder --

11 CHAIRMAN HILL: Okay. All right.

12 MR. CUMMINS: And that would be a very efficient
13 way of dealing with the matter that's pended for over a year
14 now.

15 CHAIRMAN HILL: Okay. Mr. Cummins, I disagree.
16 Okay. I don't think it's straightforward. And if it were,
17 then we wouldn't have this discussion -- this would have been
18 over in 30 seconds.

19 MR. CUMMINS: Well --

20 CHAIRMAN HILL: So you --

21 MR. CUMMINS: -- if we move to the 2017 issues,
22 that could be the 30-second period of this hearing. But
23 again, there seem to be a lot of procedural issues to kick
24 the can down the road and avoid really a reckoning with do
25 these permits truly meet the zoning regulations or not. And

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1 there is a lack of accountability in DCRA in issuing permits
2 that don't meet code --

3 CHAIRMAN HILL: Oh, no, no, no, hold up, hold up,
4 hold up. Okay, okay. You're -- okay, thank you so much.
5 So all right --

6 MR. BROWN: Mr. Chairman --

7 CHAIRMAN HILL: Yes.

8 MR. BROWN: -- can I suggest, and Commissioner
9 Eckenwiler is looking for certain documents to complete his
10 package of the revised permit. I don't think I have custody
11 of those documents, or at least I don't have the official
12 custody of them. They're with DCRA. And, one, we ought to
13 figure out how to get him those documents and move the
14 process along. Do you agree?

15 CHAIRMAN HILL: So, Mr. Eckenwiler, I'm trying to
16 figure out how much time do you -- I'm happy to give you as
17 much time as you want and, Mr. Cummins, also as much time as
18 you want. And I'm sorry that it's not going to get resolved
19 today.

20 I don't have anything from DCRA, right. DCRA has
21 lost their previous attorney, which is just the way it is
22 right now, right. So I can't go forward with anything right
23 now, right. So I'm sorry that, you know, that's the case,
24 but that's the way it is. It's not having a comment. I'm
25 just telling you what I think, right. And so --

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1 MR. ECKENWILER: Again --

2 CHAIRMAN HILL: -- you know, I'm now talking to
3 your ANC commissioner as to how much time you need, Mr.
4 Eckenwiler, to -- this is your appeal. And Mr. Cummins is
5 the intervenor. So how much time would you need? And you
6 are -- and I'm still not understanding the incorporation of
7 the revised permit. Like what would you like us to do is
8 what I'm asking you.

9 MR. ECKENWILER: Mr. Chairman, I think it would
10 be cleaner if we were able to get to a dismissal of the
11 current appeal on grounds of mootness. And again, I want to
12 make clear our position is not that it's moot. I am waiting
13 for DCRA to make some additional commitments. And I'm happy
14 to expand upon that if you want.

15 If we were to dismiss this as moot -- so let me
16 just walk you through one possible route --

17 CHAIRMAN HILL: I read your filings. You had
18 three examples.

19 MR. ECKENWILER: Well, no, but this is a little
20 different now. If we were to file a new appeal, we would
21 have until June 18th to file that. Then under the
22 regulations, there would be a minimum of 40 days to set a
23 public hearing on that. Our prehearing filing would be due
24 21 days in advance of that hearing.

25 The catch here for that timeline is that I'm going

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1 to be on travel from the date, that 40th day out, until
2 August by which you're gone. So and I've discussed this with
3 Mr. Brown. We could certainly agree to a hearing date in,
4 you know, the earliest available hearing date in September.

5 CHAIRMAN HILL: Okay, okay. Hold on. I'm still
6 listening to you, sorry. Okay.

7 MR. ECKENWILER: Let me just pause there. And
8 perhaps you'll hear from Mr. Brown.

9 CHAIRMAN HILL: Okay. Mr Brown?

10 MR. BROWN: Well, and the Commissioner and I have
11 discussed that. And I think again we want to give the ANC,
12 Mr. Cummins, and DCRA, and my client the opportunity and the
13 time to allow the process to go forward orderly.

14 So would I like it sooner? Yes. Is September,
15 first of September, first available date in September
16 acceptable? Yes.

17 CHAIRMAN HILL: Okay. Well, Mr. Cummins would
18 like it to happen today. So, you know, he wants it even
19 sooner than you.

20 So the -- okay. So as far as the Board, I mean,
21 to me this -- now I'm kind of turning to DCRA, Ms. Lord-
22 Sorensen?

23 MS. LORD-SORENSEN: Yes, that's correct.

24 CHAIRMAN HILL: And, I mean, is the first permit
25 moot now because it's been revised?

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1 MS. LORD-SORENSEN: Well, it's DCRA's position
2 that the original permit is moot because the revised permit
3 addresses the issues that were raised by Eckenwiler with
4 respect to the original permit.

5 CHAIRMAN HILL: Okay. So then what does the Board
6 have to think or say about dismissing this appeal as moot,
7 that the permit is moot?

8 MS. GLAZER: Mr. Chair, OAG wants to caution the
9 Board that there's nothing in any of the filings from DCRA
10 or anyone else that explains with particularity what changes
11 were made and how they correct any potential errors in the
12 underlying permit. The Board really does not have a basis
13 for saying it is moot --

14 CHAIRMAN HILL: Okay.

15 MS. GLAZER: -- without -- and possibly the Board
16 could hold a hearing. But it does not seem that practical.
17 And it certainly wouldn't be in the interests of efficiency
18 or judicial administrative, if you will, economy.

19 CHAIRMAN HILL: Okay. Mr. Eckenwiler?

20 MR. ECKENWILER: Yes, thank you, Mr. Chairman.
21 So if this appeal is moot, it's not because DCRA may assume
22 the conclusion. As Ms. Glazer says, they can't just on their
23 own say so, declare the issues having been resolved by this
24 new permit. That's not evident, you know, at all.

25 Why it may be moot is if the original permit is

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1 dead and, you know, to quote not scripture but cinema, not
2 only nearly dead but really most sincerely dead and can never
3 come back to life, then it truly is moot.

4 And in our opposition to the property owner's
5 motion to dismiss, we concede that right now this question
6 has been answered by DCRA. Can the property owner build
7 under the original permit? Do they have a choice, build
8 under original permit or revised?

9 DCRA has made clear, I think, and there's no
10 argument on this point, that the property owner may not right
11 now build under the original permit.

12 The pending question -- and let's be very clear.
13 I have no interest in wasting the Board's time or anybody
14 else's time litigating something that truly is moot.

15 But here's the issue. We're going to appeal the
16 revised permit. What happens if that revised permit is held
17 invalid, surrendered, you know, basically ceases to exist,
18 you know, in some manner or form. What's the result then?
19 Where do we go?

20 We don't want to be -- and this is the one
21 procedural pitfall I'm trying to avoid. And frankly, I would
22 love to have an assurance from DCRA that this cannot happen.
23 But they have declined to give it. I want to know if we get
24 to that point, whether or not the original permit somehow
25 springs back to life where it's not really moot, and if it

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1 cannot spring back to life, then we would consent to Mr.
2 Brown's motion to dismiss because that original motion,
3 excuse me, original permit is really and truly dead. And so
4 the initial appeal would be moot. I hope that makes sense.

5 CHAIRMAN HILL: Yes, it made a little bit of sense
6 or it made sense. But now I'm just going to ask, so --

7 MEMBER JOHN: Mr. Chairman?

8 CHAIRMAN HILL: Yes. Sorry. Ms. John?

9 MEMBER JOHN: I'm trying not to be confused. But
10 it seems to me that the revised permit would supercede the
11 original permit. And so if the ANC wanted to appeal the
12 revised permit, it would retain those -- the right to do
13 that.

14 And so the most efficient use of our time, yours
15 and ours, is to set a procedure to appeal the revised permit
16 and to incorporate the original permit into the revised
17 permit so that everybody gets a chance to address all of the
18 underlying issues.

19 I agree with the recommendation of OAG that we
20 cannot reach a determination of mootness until we have
21 compared both permits side by side. And so I see a full-
22 blown evidentiary hearing to determine if the new, if the
23 issue is moot, because you have to have evidence in the
24 record. And as OAG says, we don't have that now.

25 So I don't see any way around some sort of

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1 evidentiary hearing. That's --

2 CHAIRMAN HILL: Okay, okay. All right. Ms.
3 White?

4 MEMBER WHITE: Yes, I agree with Ms. John. I
5 mean, I'm very uncomfortable with making a determination
6 about whether or not the original permit is moot. And I'm
7 just concerned that, you know, ruling, making that type of
8 ruling would be inappropriate for the Board to do based upon
9 lack of information and evidence.

10 So if there is an alternative way to sort of
11 consolidate these things together to try to push forward as
12 soon as possible, that would be my preference.

13 CHAIRMAN HILL: Okay. So what I'm hearing from
14 the Board is we're going to incorporate the revised permit
15 into this appeal. And then now we're going to set timelines
16 for that appeal.

17 COMMISSIONER MAY: I think the only other scenario
18 is if the initial permit were somehow voided, in which case
19 the appeal that we're looking at right now truly would be
20 moot, right, if the permit application were withdrawn or it
21 went away, you know, DCRA invalidated it in some way. If
22 that went away, then we would be into the situation where
23 what could be before us is an appeal of the second permit
24 once that appeal is filed by the ANC or anyone else who would
25 choose to file it.

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1 But, you know, that resets the clock for all those
2 things. So --

3 CHAIRMAN HILL: Ms. Lord-Sorensen?

4 MS. LORD-SORENSEN: In response to Board Member
5 May's comment, at this time we're not revoking or cancelling
6 the original permit. We just want to, DCRA just requests
7 that this Board incorporates by reference the revised permit
8 into this action.

9 And along the same vein as the arguments presented
10 by Board Members White and John, we ask that the Board just
11 sets new timelines so that way it gives Commissioner
12 Eckenwiler and possibly Mr. Cummins, if necessary, the
13 opportunity to review the plans associated with the revised
14 permit.

15 CHAIRMAN HILL: Mr. Brown?

16 MR. BROWN: That's acceptable to me.

17 CHAIRMAN HILL: Okay. Mr. May?

18 Hold on one second. Commissioner May?

19 COMMISSIONER MAY: So I'm not trying to argue that
20 DCRA should, you know, on the spot here revoke the permit or
21 something like that.

22 However, it is very easy to see just by looking
23 at the plans that the issues that are likely to be brought
24 up on the appeal of the second permit are, you know, the same
25 kinds of things, I mean, the same reasons that people would

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1 want to object to it. And it is a much cleaner path to be
2 considering one permit rather than two.

3 So if whatever we do, we're not going to do it
4 today. But, I mean, if between now and whenever we get
5 together again, DCRA determines, yeah, we're going to revoke
6 that permit or the property owner decides they're going to
7 withdraw that permit, then I think it would be cleaner and
8 easier for this Board to consider an appeal of the subsequent
9 permit, the second permit, rather than having to deal with
10 it combined.

11 I mean, if we have to deal with it combined, so
12 be it. But I'm just saying it would make everything simpler
13 if it became one.

14 So and I'm making this observation not necessarily
15 for you to comment. I think this is something that you all
16 can consider as you move forward as to the applicant or to
17 the property owner and to DCRA to consider. So --

18 CHAIRMAN HILL: Thank you, Mr. May. I wasn't, I
19 don't think anyone is disagreeing with your thought other
20 than the Office of the Attorney General had some comments.

21 MS. GLAZER: I just want to state for all parties
22 and the Board to consider that the Building Code 12A, Section
23 105.3.8 essentially says that the revised permit is deemed
24 to be a part of the original permit.

25 And so, therefore, we really only have one permit.

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1 I know it seems counterintuitive because there are two permit
2 numbers. But it's really the original permit as amended or
3 as revised. That's what would happen if the second permit
4 were incorporated. So it's part, it's one permit now by law,
5 by operation of law.

6 MR. ECKENWILER: Mr. Chairman?

7 CHAIRMAN HILL: Yes, sir.

8 MR. ECKENWILER: The ANC's position is it is a new
9 permit. Obviously, it incorporates aspects of the old
10 permit.

11 Just to make a sort of fine point here that I
12 think may have implications for the regulations, recall that
13 the ANC itself has not yet appealed the revised permit.
14 We've appealed the original permit.

15 It is entirely possible that my colleagues will
16 have had enough of this and will not vote -- I think it's
17 likely they will vote to appeal the revised permit. And I
18 will urge them to do so. But that has not happened yet. So
19 to the extent that we think that has legal significance, I
20 just want to make sure that you bear that in mind.

21 COMMISSIONER MAY: Well, if I could just say to
22 that, I mean, what we're hearing from OAG is that it's all
23 connected and that you may not even have to do an appeal on
24 the second permit because it's all still the same permit,
25 right?

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1 MS. GLAZER: Yes. Essentially, you're being given
2 an opportunity to file supplemental pleadings for grounds
3 that pertain to those things that may have changed in the
4 revised permit.

5 MR. ECKENWILER: And I would just offer, again,
6 without getting into the details of it, it has changed in a
7 number of ways. The regulations have also changed. But I
8 don't want to -- we're not going to litigate the merits here
9 today.

10 MS. GLAZER: Well, I don't think it's mandatory
11 that you file something new. You don't have to. But it's
12 an opportunity to file it.

13 What I'm hearing, we're going around in a circle,
14 that perhaps --

15 CHAIRMAN HILL: Okay. So I'm going to --

16 MS. GLAZER: -- DCRA should state how long it will
17 take to provide the documents that the ANC and intervenor
18 want and then establish a reasonable time period to file any
19 supplemental appeal statements and then a reasonable time
20 period for everybody to file new prehearing statements if
21 they wish.

22 CHAIRMAN HILL: Okay. All right. So what
23 everyone on the Board is saying seems to be the same thing,
24 that we were kind of going back around with.

25 But just so everybody knows here in the audience,

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1 we're going to take a break after this. So just to let you
2 know.

3 (Laughter.)

4 CHAIRMAN HILL: No, I just want everybody to know,
5 right, so you all got, you're informed.

6 So I'm still back to my original thought, which
7 is we're going to incorporate the revised permit, okay, and
8 now set a timeline for the appeal.

9 And it has been I guess somewhat already discussed
10 in terms of that early September is when we would be back
11 here with the revised permit and, or one permit, whatever,
12 however you want to now talk about it, and everyone would
13 have an opportunity to file preliminary filings on the
14 revised permit.

15 And so, Mr. Moy, I would look to you to help me
16 kind of come up with a timeline on that.

17 SECRETARY MOY: My initial thought, Mr. Chair, is
18 that if we're looking into September, the earliest in
19 September I would suggest for the Board would be September
20 12th. So if we work backwards from there in terms of when
21 DCRA can make their filings into the record and then a
22 timeline for parties to respond.

23 MR. CUMMINS: I have a work obligation through
24 September 11th that would make it very difficult for me to
25 accommodate a hearing on September 12th given what the filing

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1 deadlines will be in advance of the hearing date.

2 CHAIRMAN HILL: How about the 19th?

3 MR. CUMMINS: That would suit me better.

4 CHAIRMAN HILL: Okay. Let's do the 19th. Hold
5 on, Mr. Brown.

6 MR. BROWN: The 19th is --

7 CHAIRMAN HILL: You need to turn on your
8 microphone, Mr. Brown.

9 MR. BROWN: The 19th is Yom Kippur. I don't know
10 whether that alters people's plans.

11 CHAIRMAN HILL: Okay. That's interesting. I just
12 got back from Israel. So does that alter anyone's plans?
13 Okay. All right. So we're good.

14 MS. GLAZER: You know, in the interest of not
15 having another request for a continuance, we don't know who
16 may appear in this case or who may want to come and testify.
17 And they could conceivably have a problem with that date.

18 My suggestion would be to start with when DCRA can
19 provide records and go from there since the real concern is
20 not -- I mean, it's partially the hearing date, but it's
21 mostly how much time the appellants need and the intervenor
22 needs to prepare their filing.

23 CHAIRMAN HILL: Okay.

24 MS. LORD-SORENSEN: I believe Commissioner
25 Eckenwiler has indicated that DCRA said it would provide the

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1 documents by May 25th. So we would like to stick with that
2 date.

3 CHAIRMAN HILL: Okay.

4 MR. BROWN: Should we also identify those
5 documents on the record so --

6 CHAIRMAN HILL: Commissioner Eckenwiler?

7 MR. ECKENWILER: Well, I have a FOIA request into
8 DCRA. I have also separately requested the final stamped
9 permit documents. That was not part of the FOIA request
10 because D.C. statute says I don't have to make a FOIA
11 request. They're just supposed to be made available online
12 to everybody.

13 I did ask someone in the permit office. And that
14 was Ms. Sarah Bouldin-Carr. But I have not yet received a
15 response.

16 CHAIRMAN HILL: Well, outside of the FOIA request
17 stuff, like whatever, what do you normally provide?

18 MS. LORD-SORENSEN: Anything that doesn't fall
19 under one of the FOIA exemptions.

20 CHAIRMAN HILL: Okay. So can you provide all that
21 by the 25th?

22 MS. LORD-SORENSEN: We will look into that
23 definitely.

24 CHAIRMAN HILL: Okay.

25 MR. CUMMINS: By law --

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1 CHAIRMAN HILL: Hold on one second, Mr. Cummins.
2 Go ahead.

3 MR. CUMMINS: I have a document request into DCRA
4 that they have not been responsive to. By law I do not have
5 to file a FOIA request. All permit documents, including the
6 application file, by law are supposed to be available online
7 for free. I should be able to just Google it. But DCRA does
8 not comply with that law and also does not comply with
9 requests from citizens for access to documents.

10 So it's not just the stamped permit plans that Mr.
11 Eckenwiler referred to. It's also the permit application
12 files and any submittal documents. And again, DCRA has not
13 provided those. And that does not need to be FOIA'ed.
14 They're just not complying with the law period, hands down.

15 So they should be able to -- that should, by law,
16 should be available online at this instant. But they are
17 withholding these documents. And again, that's --

18 CHAIRMAN HILL: Mr. Cummins, you keep saying by
19 law and doing things --

20 (Simultaneous speaking.)

21 CHAIRMAN HILL: You make it sound as though, you
22 know, it's turning into a whole -- I mean, you're just,
23 you're making accusations is all I'm trying to like --

24 MR. CUMMINS: I refer you to Commissioner
25 Eckenwiler's statements before, testimony before the D.C.

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1 Council. And there was also a Bureau of Ethics in Government
2 --

3 MR. ECKENWILER: If I can, Mr. Chair. DCRA is,
4 in fact -- I think it's Section 2-536. But I can get you the
5 cite. They are required to have the entire permit
6 application file available online. It's in the D.C. Official
7 Code.

8 (Simultaneous speaking.)

9 CHAIRMAN HILL: That's okay. I think this is
10 probably outside of our purview. And so that's all I'm
11 trying to kind of get through.

12 So whatever you normally submit, please submit by
13 the 25th. Okay? And then, Commissioner Eckenwiler, you will
14 have an opportunity to respond to that. The 25th of May?

15 Okay. And so then that gives -- June, July,
16 August, wow, okay, so it's three months. So then, if you go
17 from that date, Mr. Moy, can you help me out with the other
18 dates?

19 MS. GLAZER: The Board can set the timeline.
20 We're obviously not going by the rules. The ANC should state
21 how much time it needs and the intervenor once they receive
22 the documents on May 25th.

23 CHAIRMAN HILL: All right. Commissioner
24 Eckenwiler?

25 MR. ECKENWILER: Well, our -- so let me ask a

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1 threshold question. We obviously would want to file a
2 prehearing statement.

3 MS. GLAZER: No, this is -- we're talking about
4 the appeal. Then in response to the appeal, everybody can
5 file their prehearing. And you can submit anything
6 supplemental before the hearing, too.

7 MR. ECKENWILER: Right, but I mean, so let me
8 just, you know, round out the question, though.

9 We will file a prehearing statement. Does the
10 Board or does OAG anticipate that the ANC would be required
11 to file anything in advance of that that would be the analog
12 to an initial appeal filing? Or is that the point at which
13 we attach all the documents relevant to consideration of the
14 permit as revised?

15 MS. GLAZER: I'm not sure I understand the
16 question --

17 MR. ECKENWILER: So we're going to -- in order to
18 present a full appeal of the revised permit, there are a lot
19 of documents that are not currently in the record from the
20 ANC that need to be put in the record. Some of those are,
21 well, a lot of that is the permit drawings for the revised
22 permit itself.

23 Some of that will also be permit drawings from the
24 original permit which are not, which ANC 6C did not submit.
25 And they become relevant because one of the issues that will

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1 be presented on appeal for the revised permit is whether or
2 not it has substantially changed from the original permit.

3 And that goes to a vesting provision under
4 Subtitle A. Commissioner May may recall this. This is -
5 it's basically the exception to the 1411B ten-foot pop-back
6 rule. There was a grandfathering provision that was added
7 in. And I expect that one of the issues will require us to
8 consider, to weigh both application packages including -- we
9 didn't put the full set of drawings in for the original
10 permit on our original appeal. It wasn't necessary.

11 With the triggering of the relevance of this
12 vesting provision, we're going to want to put in additional
13 documents.

14 And so I'm just asking what is the point? Is it
15 the prehearing statement at which we would present all of
16 those, put those all in the record? Or would the Board
17 anticipate that we would have to do that at some earlier
18 point?

19 MR. BROWN: I think the question -- it's a good
20 question Commissioner Eckenwiler is asking. Does he actually
21 have to file a new or incorporated appeal document to -- or
22 are we all going to do this in the context of the prehearing
23 statements and responses from the parties? I mean --

24 MS. GLAZER: What I would suggest or OAG is
25 suggesting is that the appellant and the intervenor, since

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1 they have similar positions, file any supplemental appeal
2 statements that they want to file as they -- as it relates
3 only to the revised permit portion, not to, in other words,
4 reiterate everything from the old appeal, and then the
5 procedure be followed as in the rules after that with
6 prehearing statements by both -- all parties.

7 The only variation is to give people an
8 opportunity to get information they need and to file later
9 than they ordinarily would.

10 CHAIRMAN HILL: Mr. Cummins and Commissioner
11 Eckenwiler, honestly, we're trying to just give you as much
12 time as you need. We have until the end of September. I'm
13 just trying to figure it out. I kind of understand some of
14 your questions. The 25th is when, supposedly, DCRA is going
15 to get everything into the record for you to take a look at,
16 correct? And so your next question is when you need to
17 submit your preliminary statement?

18 MR. ECKENWILER: It's even more basic than that.
19 There will be new exhibits that we will want to put in the
20 record. Do we simply put that in 21 days in advance of the
21 hearing date? I mean, Mr. Brown really put it in a nutshell
22 very well. Do we have to file a revised initial appeal
23 statement? Because remember, under the regs, you have to say
24 here are the provisions that you relied upon --

25 CHAIRMAN HILL: I'm just trying to -- do they have

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1 to file a revised -- I don't think so, right?

2 MS. GLAZER: Well, OAG is actually suggesting they
3 file a supplemental. It's not revised, it's not necessarily
4 changing anything they said before. It's just supplemental
5 to add any new legal issues that may be presented by the
6 revised appeal portion. It's like any other statement on
7 appeal that they would file. It's listing what the alleged
8 violations are or how the ZA erred, essentially. That's all
9 it is. And it's not evidence, per se, it's just a statement,
10 in broad brush terms, of how they erred. Then the prehearing
11 statements and the hearing takes care of the evidence part
12 and the document submission and the testimony during the
13 hearing.

14 MR. ECKENWILER: I'm sorry, Ms. Glazer. Maybe
15 I've lost the thread here. Are you saying we can do it all
16 in the prehearing statement?

17 MS. GLAZER: Actually, no, I'm not. I'm saying
18 that initially, it's a chance, it's an opportunity. It's not
19 compulsory; it's just an opportunity to allege what -- it's
20 really to effectuate notice to everybody, so that now the
21 owner and DCRA know what your new arguments and claims are
22 with respect to ZA error on the revised permit.

23 MR. ECKENWILER: And I'm just trying to figure out
24 at what point the Board wants us to do that, whether it's at
25 the --

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1 MS. GLAZER: That's what they're trying to
2 determine now. They want to know how much time you need to
3 do it after you receive documents May 25th. And I would
4 suggest not working back from September because the hearing
5 may end up being after September. It all depends on how much
6 time you need to start the process.

7 MR. ECKENWILER: I'm at a little bit of a loss,
8 Mr. Chairman, here, but let me have a go at it. If we
9 receive all the documents that we have requested, either
10 under FOIA or otherwise, from DCRA, if we receive those by
11 May 25th, then --

12 MS. GLAZER: Excuse me. Mr. Chair, I just want
13 to say the Board really has no jurisdiction over the FOIA
14 part of this.

15 CHAIRMAN HILL: I know. I was going to wait until
16 Commissioner Eckenwiler could at least process the math one
17 way or the other here. I can't say anything to the FOIA
18 stuff, obviously.

19 MR. ECKENWILER: I understand that. Ms. Glazer's
20 absolutely right. But the point is we're entitled -- this
21 permit was just issued on April 18th, so we are entitled to
22 time to assemble documents, review the documents, try and
23 understand what the legal implications are of those
24 documents. And that hasn't happened yet. I think we're --
25 you're really right.

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1 We're all trying to get to the same place, where
2 we can have a disposition of this appeal. Let's come back
3 to if we get the documents by May 25th, I would anticipate
4 we would be able to submit a revised prehearing statement --
5 that's how it will be styled -- which will attach all the new
6 documents. It will lay out all of the legal arguments for
7 why the revised permit is improperly issued. We can do that
8 by June 25th.

9 CHAIRMAN HILL: Okay. Mr. Moy.

10 SECRETARY MOY: Okay, that's one day. I'm just
11 following on the information that OAG has given. If this is
12 going to be referred to as a revised prehearing statement,
13 would that include supplemental filings, or is that a
14 separate filing date?

15 MR. ECKENWILER: I'm not sure I understand the
16 question, Mr. Moy.

17 SECRETARY MOY: Neither do I. This is a mutation
18 procedure for me.

19 MR. ECKENWILER: I would anticipate that would --
20 I don't know what day of the week that is, but --

21 SECRETARY MOY: That's a Monday.

22 MR. ECKENWILER: Is three weeks from the Wednesday
23 thereafter July 11th?

24 SECRETARY MOY: After July 11th?

25 MR. ECKENWILER: No, I'm asking is that more than

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1 21 days before July 11th?

2 SECRETARY MOY: Just a second.

3 MR. CUMMINS: What's the relevance?

4 MR. ECKENWILER: Because I'm trying to figure out
5 whether or not that's 21 days in advance of -- maybe not.
6 Anyway, we could get the prehearing statement in by June
7 25th. I can do that. Let's just pause it right there.

8 MR. BROWN: If we're talking about a prehearing
9 statement June 25th -- I don't know what people's calendars
10 are like, but if we're talking about that, that's generally
11 21 days before the hearing. Are we able to move the hearing
12 schedule up, subject to people's schedules?

13 MR. BROWN: I'm not available starting July 18th.

14 CHAIRMAN HILL: That's okay, Mr. Brown. We're
15 still back in September. If anything else, everyone here
16 should have plenty of time because obviously, this has taken
17 a very long time. I want to get this thing resolved, or at
18 least to the point where we can hear it.

19 I think that at this point, again, since the ANC,
20 as well as the intervenor, has actually done everything they
21 were supposed to do up until this point, they should have
22 enough time to do whatever they need. Thankfully, you're not
23 objecting to that. We're in September right now, which was
24 at September 19th. So I'm back to the 25th. Mr. Moy, the
25 25th, you're going to get the prehearing and supplementals.

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1 SECRETARY MOY: Okay, that would be June 25th,
2 that package of information. The other question I would have
3 is whether the Board would be asking for any responses to
4 this filing of June 25th? If so, then I could tack on
5 another two weeks, if we're still looking at September 19th.

6 CHAIRMAN HILL: Okay. I would think we would want
7 responses. We'd want to hear from DCRA and the property
8 owner.

9 MS. GLAZER: Mr. Chair, I need to go back
10 procedurally. This is not the way the process is supposed
11 to work. The owner and DCRA need to file their own
12 prehearing statements. The appellant and intervenor need
13 time to review those and respond to those.

14 CHAIRMAN HILL: But I thought that was the
15 information that's coming from DCRA on the 25th.

16 MR. ECKENWILER: That's just raw documents, Mr.
17 Chairman.

18 MS. GLAZER: DCRA is just providing documents to
19 the appellant, so that they can style their supplemental
20 statement on appeal.

21 CHAIRMAN HILL: Okay.

22 MS. GLAZER: That's all it is. It's really not a
23 prehearing statement. A prehearing statement has -- they can
24 do it early if they want, but then you need a timeline for
25 the owner, after they've seen the statement on appeal, to

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1 file a prehearing statement. The owner and DCRA, neither of
2 them have done that yet.

3 CHAIRMAN HILL: Okay, so Ms. Glazer, what would
4 you suggest the timeline to be?

5 MS. GLAZER: If the appellant and intervenor can
6 file a supplemental statement, they should do it by June
7 25th, as they said. Then there should be a time, then --
8 DCRA and the owner should get in their prehearing statements
9 soon after that.

10 CHAIRMAN HILL: Okay, when can you guys get that
11 in after June 25th?

12 MR. BROWN: Typically, you have -- in this case,
13 you'd have -- from when they file their prehearing statement,
14 we'd have two weeks.

15 CHAIRMAN HILL: Okay, that's fine.

16 (Simultaneous speaking.)

17 MR. CUMMINS: Sorry, this is circumventing my
18 rights, potentially, here, as well. I'm an intervenor. I
19 should have the same deadline not as the ANC. If the
20 deadline is June 25th, I should have the same deadline after
21 that as the permit holder and DCRA.

22 CHAIRMAN HILL: Okay.

23 MR. CUMMINS: Mine wouldn't be due the 25th,
24 either.

25 CHAIRMAN HILL: Okay, that's fine. So, then, Mr.

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1 Cummins would have two weeks after the 25th to submit, as
2 would the property owner, as would DCRA. Two weeks after the
3 25th is July 9th.

4 MS. LORD-SORENSEN: Excuse me, Chairman. Is it
5 possible to move the deadline to July 11th, that Wednesday?

6 CHAIRMAN HILL: Sure. Why?

7 MS. LORD-SORENSEN: I'm going to be on vacation.

8 CHAIRMAN HILL: Okay, so July 11th. I told
9 everybody we're taking a break after this, right? So these
10 people that are still staying here, I don't know what you all
11 are doing here.

12 MR. CUMMINS: Is that the deadline for DCRA to
13 provide documents, or the DCRA --

14 (Simultaneous speaking.)

15 CHAIRMAN HILL: Their stuff's still staying on the
16 25th. And then, DCRA and the intervener on July 11th, and the
17 owner on July 11th. Now what day is next, Mr. Moy? Is that
18 it?

19 MS. GLAZER: Responses.

20 SECRETARY MOY: Responses, yes.

21 CHAIRMAN HILL: When would that be, Mr. Moy, two
22 weeks after that?

23 SECRETARY MOY: Yes, I want to go on two weeks for
24 now.

25 CHAIRMAN HILL: So two weeks after July 11th.

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1 SECRETARY MOY: That would be July the 25th.

2 MR. ECKENWILER: I'd love to do that, Mr.
3 Chairman, but I'm going to be in the fjords of Norway.

4 CHAIRMAN HILL: No I got it, unfortunately,
5 Commissioner Eckwiler, then you can give it to us earlier,
6 okay?

7 MR. ECKENWILER: Okay.

8 CHAIRMAN HILL: So July 11th for everyone who's
9 not going to be in Norway, and then what else, Mr. Moy? Is
10 that it for the dates?

11 MS. GLAZER: Wait a minute.

12 MR. BROWN: No, July 11th is for --

13 MS. GLAZER: Prehearing statements.

14 MR. BROWN: -- for the owner, the intervenor and
15 DCRA. Then we were talking about a response date for --

16 CHAIRMAN HILL: I'm sorry, right. The response
17 date is July 25th.

18 PARTICIPANT: Yes.

19 MR. BROWN: But Mr. Eckenwiler will be --

20 CHAIRMAN HILL: Will be gone. When do you get
21 back?

22 MS. GLAZER: I would suggest everybody have the
23 same response date, and that's it for the hearing.

24 CHAIRMAN HILL: That's fine. I'm just trying to
25 figure it out. July 25th is when we need to hear something

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1 back from you, Mr. Commissioner.

2 MS. GLAZER: No, he's not available that day, and
3 there's no reason, if the hearing's in September, that it
4 can't be later.

5 CHAIRMAN HILL: Okay.

6 MS. GLAZER: I think the parties all agreed to
7 flexibility with these dates and just want something certain.

8 VICE CHAIR HART: I think that we can look at
9 having something in August. Even though we're not meeting,
10 you can still submit documents to us. I don't think we can
11 -- we have to get rid of those dates, unless you're still
12 there.

13 MR. ECKENWILER: Mr. Chairman, I'm entirely --

14 VICE CHAIR HART: Vice Chair.

15 MR. ECKENWILER: No, just to -- to both of your
16 points, Vice Chair Hart and Chairman Hill, I would happily
17 consent to having the other prehearing statements, not those
18 of the appellant. Those wouldn't necessarily need to be due
19 two weeks after our initial filing on June 25th. We can
20 expand out that timeline.

21 If we're really talking about a hearing date in
22 September, we can give them more than two weeks. Then you
23 give me until sometime in -- I don't know what it adds up to,
24 but mid-August would be fine. That would certainly give the
25 Board more than enough time to review things for an earlier

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1 mid-September hearing date.

2 CHAIRMAN HILL: Mr. Moy, are you following all
3 these dates?

4 SECRETARY MOY: Yes, I was going to suggest, on
5 that point, for August the 15th for responses.

6 CHAIRMAN HILL: Perfect.

7 SECRETARY MOY: We'll make that for everybody.

8 CHAIRMAN HILL: Mr. Moy, can you repeat
9 everything?

10 SECRETARY MOY: All right, let me take a stab at
11 this. DCRA to file all the materials, as discussed, by May
12 25th.

13 MR. ECKENWILER: Just to clarify, I think that's
14 to produce. They're not going to be filing into the record.
15 They're producing.

16 SECRETARY MOY: They have to serve all the
17 parties, right? Wouldn't you want that?

18 MR. ECKENWILER: I don't think they're obliged to
19 serve. These are requests that exist outside of the appeal,
20 but they bear on the appeal.

21 COMMISSIONER MAY: You're trying to just get
22 documents that you believe are public, right?

23 MR. ECKENWILER: Yes.

24 COMMISSIONER MAY: Don't you think those should
25 actually be in the record?

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1 MR. ECKENWILER: I plan to put some of them in the
2 record. I don't know that they're all germane, Commissioner
3 May.

4 COMMISSIONER MAY: Okay. But we don't get to
5 specify -- the only thing we can really talk about are things
6 that have to come into the record, right?

7 MR. ECKENWILER: Right. Part of the issue here
8 is --

9 COMMISSIONER MAY: Actually, forget it. I
10 withdraw my question. I just want to move on.

11 CHAIRMAN HILL: Mr. May, can you please -- Mr.
12 Moy, can you please start again?

13 SECRETARY MOY: All right.

14 CHAIRMAN HILL: The 25th, DCRA gives us their
15 stuff.

16 SECRETARY MOY: May 25th. June 25th are the, I
17 suppose, revised prehearing statements and any supplementals,
18 June 25th. July 11th are the prehearing statements from, I
19 believe, the property owner and DCRA. Then any responses by
20 --

21 CHAIRMAN HILL: And the intervener.

22 SECRETARY MOY: And the intervener, of course.
23 Then August 15th, any responses, if there are any, and then
24 we're at September 19th.

25 MS. LORD-SORENSEN: I have one quick question.

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1 When Commissioner Eckenwiler files his supplemental statement
2 on June 25th, that would just detail the issues, any alleged
3 violations pertaining to the revised permit, correct?
4 There's no evidence filed at that point?

5 MR. ECKENWILER: On the contrary. When I call it
6 a prehearing statement, that's really what I mean. It will
7 look exactly -- it will look, in form, like the two
8 prehearing statements we've already filed, which is there
9 will be legal analysis, and there will be numerous
10 documentary exhibits to accompany that. So you'll get all
11 the facts, all the underlying documents, and then on top of
12 that, something that analyzes it and explains what the Board
13 should do with that information.

14 CHAIRMAN HILL: Okay, great. Okay? Any questions
15 with the dates? Then the last comment, does the Board have
16 anything else? When did this start, again? It was a year
17 ago.

18 MR. ECKENWILER: We filed May 30th, Mr. Chairman.

19 CHAIRMAN HILL: You filed almost a year ago. The
20 property owner, Mr. Brown, hasn't come here yet at all.
21 You've just been here representing him.

22 MR. BROWN: That's correct.

23 CHAIRMAN HILL: I'm sorry; push to the microphone.

24 MR. BROWN: That's correct. They are watching.

25 CHAIRMAN HILL: What's going on with the property

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1 now?

2 MR. BROWN: The property's sitting idle. Rising
3 out of the building code issues, there was a stop work order
4 in place from essentially April 4, 2017 through early March
5 of 2018, for which -- that was withdrawn by DCRA, so there
6 was no work --

7 (Simultaneous speaking).

8 CHAIRMAN HILL: When you say idle, meaning they
9 started to do work, and then they received the stop work
10 order?

11 MR. BROWN: Yes. They did a little work.

12 CHAIRMAN HILL: Mr. Cummins, you live next door?

13 MR. CUMMINS: Yes, there has been work during the
14 stop work order, as well, that I reported to DCRA. There's
15 structural work that's been done to the rear addition.
16 There's also been a new gate and fence that's been installed.
17 DCRA did not respond to those reports and concern about
18 construction going on outside --

19 CHAIRMAN HILL: How long ago did that happen?

20 MR. CUMMINS: Some of it's happened quite
21 recently, in the last month or so. There also was
22 construction; I believe it was June or July of last year.

23 CHAIRMAN HILL: I'm merely asking just because I'm
24 curious because it's been a year, and you live next door.
25 Is the property kind of upkeep, is it okay?

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1 MR. CUMMINS: It's not being maintained by the
2 vacant property standards under which it has a tax exemption.
3 There's weeds that are two feet tall in the rear and front
4 yard.

5 CHAIRMAN HILL: Okay. Mr. Brown, if you could
6 just ask the property owner to try to maintain that property
7 as best they can while this is getting resolved one way or
8 the other because it's been a year. Okay?

9 MR. BROWN: Yes.

10 CHAIRMAN HILL: Okay, thanks. All right, thank
11 you all so much.

12 MS. GLAZER: Mr. Chair, this may be obvious, but
13 the Board really should vote. You can, by consensus, agree
14 as to the disposal of the motions and the time tables.

15 CHAIRMAN HILL: Okay. I would go as a consent
16 motion to dismiss all of the other motions that have been --
17 not dismiss -- everything that we just said, in terms of the
18 timeline, would everyone agree to that up here?

19 (Chorus of yes.)

20 CHAIRMAN HILL: All right, thank you so much.
21 Yes.

22 MS. GLAZER: You're granting the motion to
23 incorporate the revised permit. You're denying the motion
24 for mootness, and you're granting the motion for continuance,
25 as agreed to by all the parties today.

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1 CHAIRMAN HILL: Yes, I apologize for your clarity,
2 and mine not being so. Everyone understands what was just
3 -- I'm not going to repeat it, but I'm going to -- all right.
4 Thank you all so much. We'll see you in September. I hope
5 you guys have a nice summer. We're taking a break.

6 (Whereupon, the above-entitled matter went off the
7 record at 11:37 a.m. and resumed at 11:56 a.m.)

8 CHAIRMAN HILL: All right, Mr. Moy, if we could
9 get started again, I'm going to make a couple of
10 announcements with the schedule real quick, so everybody
11 knows. There is something that I think will go relatively
12 quickly, I hope, which is Application 19745, which we're
13 going to do next. Then I know we have some ANC members that
14 we're trying to take care of, and we're going to go ahead and
15 do Application 19633-A. I'm going to follow, Mr. Moy, your
16 lead after that, in terms of how we hear the rest of the
17 hearing cases. In terms of our decision cases, which are the
18 first two that we normally hear at the very beginning, we're
19 going to hear them at the end of the day. However, we're not
20 taking any testimony. We're not going to talk to anybody
21 about anything because last time I did that and opened up any
22 kind of discussion, it turned into a long situation.

23 If you're here for the decision cases, you're more
24 than welcome to stay if you like, but we will not be hearing
25 from anyone in the audience on those. That being the case,

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1 Mr. Moy, you can go ahead and call our next case.

2 SECRETARY MOY: Thank you, Mr. Chairman, that
3 would be Case Application No. 19745 of Fort Totten South,
4 LLC, captioned and advertised for special exception under the
5 zone boundary lines provisions, Subtitle A, Section 207.2,
6 and under Subtitle G, Section 409.1.

7 CHAIRMAN HILL: I'm sorry to interrupt you, Mr.
8 Moy. If you were here for decisions and everything,
9 obviously you can watch online. Okay, sorry, Mr. Moy. I
10 apologize.

11 SECRETARY MOY: No, that's fine, any time. Again,
12 Subtitle G, Section 409.1, from the side yard requirements
13 of Subtitle G, Section 406.1, to construct a mixed use
14 residential and retail development in the MU-4 and R-2 zones,
15 at premises 5543 through 5575 South Dakota Avenue Northeast,
16 Square 3760, Lot 22, and Parcel 125/30, and the adjacent
17 unimproved portions of a street to be closed. The
18 preliminary matter here, Mr. Chairman, is that under Exhibit
19 40, there is a motion, a request to postpone.

20 CHAIRMAN HILL: All right, thank you. Good
21 afternoon. If you would please introduce yourself.

22 MR. KADLECEK: Good afternoon, Cary Kadlecek, from
23 Goulston and Storrs, on behalf of the applicant.

24 CHAIRMAN HILL: Okay, Mr. Kadlecek, you've
25 requested for a postponement. Could you please explain your

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1 request?

2 MR. KADLECEK: Yes, it's pretty straightforward.
3 The Office of Planning, in their report, had requested that
4 we augment the record to show compliance with a certain
5 provision. We're just still working that out, so we just
6 need some more time to do that.

7 CHAIRMAN HILL: Okay. You had suggested May 30th?

8 MR. KADLECEK: Yes, please.

9 CHAIRMAN HILL: Does the Board have any questions
10 or concerns? Okay, I'm going to see, since this was -- the
11 reason why you're also here, Mr. Kadlecek, is I guess we got
12 this late, so just in case people did come, is there anyone
13 here wishing to speak in support of this application? Is
14 there anyone here wishing to speak in opposition to this
15 application? Is there anyone here from the ANC? All right,
16 Mr. Kadlecek, you seem to be all clear to go. So then we'll
17 see you on the 30th.

18 MR. KADLECEK: Great, thank you.

19 SECRETARY MOY: The next case application is
20 19633-A of six, or VI, Roman numeral, 3629 T Street, LLC,
21 captioned and advertised for a modification of significance.
22 This is to the relief approved by BZA Order No. 19633, to
23 include a special exception, under Subtitle D, Section 5201,
24 from the front setback requirements of Subtitle D, Section
25 1205.2.

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1 This would construct a three-story rear addition
2 to an existing principle dwelling unit, R-20 Zone, at 3629
3 T Street Northwest, Square 1296, Lot 804. Filed into the
4 record yesterday, May 8th, Mr. Chairman is a letter from ANC
5 2E, under Exhibit 39.

6 CHAIRMAN HILL: Okay, could you please introduce
7 yourselves for the record?

8 MR. BYRNES: I'm Rory Byrnes. I'm the owner and
9 developer of Vici Investments and the legal entity owning the
10 property.

11 CHAIRMAN HILL: Byrnes?

12 MR. BYRNES: Byrnes.

13 CHAIRMAN HILL: Okay.

14 MS. WILSON: Alexandra Wilson, from Sullivan &
15 Barros, on behalf of the applicant.

16 MS. SOLOMON: Ed Solomon, ANC Commissioner 2E.

17 CHAIRMAN HILL: Welcome, Mr. Commissioner. Let's
18 see. All right, Ms. Wilson, I guess you're going to be
19 presenting to us?

20 MS. WILSON: Yes.

21 CHAIRMAN HILL: Okay. So there are -- you're here
22 for, again, a modification of significance. I suppose this
23 hearing is limited to the scope of the modification of
24 significance. However, I wouldn't mind a little bit of
25 background, again, as to what the original application was

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1 for and the original relief that was requested, and then now
2 kind of getting us to the modification. I'm going to go
3 ahead and put 15 minutes on the clock, just so I know where
4 we are. Does the Board have any other specifics they'd like
5 before we begin? Okay. Ms. Wilson, you can start whenever
6 you like.

7 MS. WILSON: Great. Good afternoon, Chairperson
8 Hill and members of the Board. I'm Alex Wilson from Sullivan
9 & Barros, on behalf of the applicant. We are requesting a
10 modification of significance in order to obtain relief from
11 the front yard setback requirements of the R-20 zone.

12 In the previous BZA case, the applicant requested
13 and was granted relief from the ten-foot rule, pursuant to
14 Subtitle D § 5201. During permitting, it was brought to the
15 applicant's attention that the project would require front
16 setback relief because of an entryway vestibule that extends
17 approximately four feet from the existing facade. In the
18 R-20 zone, D § 1205.2 requires that a front setback must be
19 consistent with at least one of the immediately adjacent
20 properties on either side.

21 So there's only one adjacent property. The
22 subject property and adjacent property's walls differ
23 slightly. The adjacent property walls are set back
24 approximately two feet. However, the adjacent property's
25 roof extends two feet. So the front setback of our property

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1 and the adjacent property are the same, and that existing
2 setback is 26 feet and 2.4 inches.

3 With the front vestibule, we are requesting a
4 setback of 21 feet and 10.4 inches. Accordingly, we need
5 relief from D § 1205.2 for that additional 4'4" deviation.
6 The applicant is requesting a modification of significance
7 because the requested relief is reviewed under the same
8 standards as the previously approved relief.

9 Those are the standards of 5201. We're not asking
10 for a full BZA application, since the plans are not changing.
11 Accordingly, the scope of the hearing is limited to the
12 impact of the modification, which is the deviation in that
13 front setback and how that meets the standards of 5201. So
14 these are the renderings from the approved plans. These were
15 submitted in a previous hearing, and we're not changing these
16 plans. As you can see, the entryway vestibule extends only
17 4'4" from the current setback.

18 It's limited to one side of the building, and it's
19 the side closest to the alley, so the relief is only for that
20 portion of the facade. And the adjacent owner is in support
21 of the application. This is a side-by-side comparison of
22 what's currently there and what we are proposing. The
23 existing facade already has an entryway projection. The
24 regulations permit this relief, pursuant to D § 5201, from
25 yards.

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1 As noted by the Office of Planning in its report,
2 this includes relief from the front yard setback requirements
3 of D § 1205.2. The proposed relief safely meets the
4 requirements of 5201.3(a) and (b), as the vestibule will not
5 have any impact on the light and air or privacy. Again, it
6 is on the side closest to the alley, not the neighboring
7 building, and there are no windows facing the adjacent
8 neighbor's property. The adjacent neighbor continues to
9 support this application.

10 D § 5201.3(c) requires that the addition shall
11 not substantially visually intrude upon the character, scale,
12 and pattern of houses along the subject street frontage.
13 This was discussed at length at the last hearing. The Board
14 found that the proposed plans did not substantially visually
15 intrude upon the character, scale, and pattern of houses in
16 the area, and these plans have not changed. This area has
17 extremely diverse front setbacks. Just on this block of T
18 Street alone, the houses sit significantly closer to the
19 street as you get to the end of the block.

20 The adjacent block of 37th Place -- Street also
21 has varying setbacks. Further, the homes in this area vary
22 with respect to character, scale, and pattern. Those
23 brackets are pointing out the different setbacks on this one
24 to two-block area surrounding the property.

25 This photo was also submitted at the last hearing.

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1 As you can see, there is a large deviation in the front
2 setbacks, beginning in the middle of this block of T Street.
3 This photo was taken from the front porch of the subject
4 property. This photo shows about halfway down the block.
5 You can see there are varying setbacks.

6 Then this map shows a closer view of the subject
7 property and this block of T Street, in order to highlight
8 those setbacks. The request for a modification also safely
9 meets the requirements of D §§ 5201.3(d) and (e). The
10 applicant has provided photographs, renderings, and maps to
11 demonstrate compliance with this section. The lot occupancy
12 is only 45 percent, which is well below the permitted lot
13 occupancy.

14 The request for modification also safely meets the
15 requirements of D § 5201.4 through 5201.6, as the applicant
16 will comply with Board directives, is not requesting to
17 introduce or expand non-conforming use, and is not requesting
18 to introduce or expand non-conforming height or number of
19 stories.

20 A total of seven letters in opposition were
21 submitted as of last night, at around 5:00 p.m. Two of those
22 letters are from the same household. None of the properties
23 are within 200 feet of the subject property. This map
24 demonstrates where the letters came from, relative to the
25 subject property. The four foot deviation is unlikely to

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1 impact those properties.

2 We just wanted to go into a little bit of response
3 to the letters in opposition because some of the letters were
4 requesting clarity as to whether this relief is permissible
5 as a special exception. As I mentioned earlier, Subtitle D
6 § 5201 permits special exception relief for yards, which
7 includes front yard and rear yard setbacks.

8 This is the exact same provision under which we
9 requested relief for the rear yard setback in the last case.
10 Then there's Subtitle B § 315 which was brought up. This is
11 another provision which is categorized under general rules
12 of measurement. This rule is generally applicable to the R
13 and RF zones. The general rules work in concert with the
14 specific criteria for the development standards found in each
15 subtitle. In this case, D § 1205.2 governs the specific
16 front setback requirements of the R-20 zone. Moreover, OP
17 consulted with the zoning administrator and the Office of the
18 Attorney General, who determined this relief is appropriate.

19 The letters also stated that the block is
20 harmonious in character and that there was a consistency in
21 the front facades. This is simply not true, as demonstrated
22 by the photographs following this slide and at the end of the
23 presentation. There are varying setbacks in this area and
24 on this block. There are also different types of vestibules
25 and entryways in the surrounding area and on this block.

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1 The ANC and the letters assert that the vestibule
2 is not permitted under the regulations; however, there's
3 nothing that prevents a vestibule in the regulations. In
4 fact, the word vestibule does not appear anywhere in the
5 zoning regulations. We're only asking for a small deviation,
6 approximately four feet, and only a small portion of the
7 front facade.

8 To further demonstrate the diversity of character,
9 pattern and scale in the neighborhood, we've provided some
10 photos of the block. This is from the middle of the 3600
11 block of T Street, where the property is located. This is
12 another photo showing varying entryways and setbacks. This
13 is 1900 and 1902 37th Street, and this is about a half a
14 block away from the property. As you can see, these two
15 houses differ in character, scale, entryways, and setbacks;
16 1900 has a large front addition and rear addition; and 1902
17 has an entryway vestibule similar to the proposed vestibule.
18 This is a photo of 1913 37th Street, which has a trellis
19 entryway. This is also very close to the subject property.

20 Next door to that are 1909 and 1911. As you can
21 see, there is significant diversity in the style and pattern
22 of houses in this area. Here are four of numerous examples
23 of entry vestibules in the area. It is not an uncommon
24 feature, and all of these are within a block of the subject
25 property. This last photograph, 1901 37th Street, is

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1 directly to the west of the property, across an alley.

2 It has a covered porch at the entrance. If you
3 can see through the trees, I've also highlighted where the
4 proposed vestibule will go. It will hardly be noticeable
5 compared to many of the other types of entryways in the area.
6 We've included additional photographs of the surrounding area
7 to further emphasize this point. And I'm happy to go through
8 them after we've concluded, if the Board is interested.

9 As part of the original BZA hearing, the Board
10 specifically reviewed and deliberated on this exact front
11 facade, and its compatibility with the other houses on the
12 street. The Board not only approved the front facade, but
13 noted that the applicant's changes to the original plans
14 helped the proposed project to better fit the criteria. The
15 Board even requested additional photographic evidence from
16 the applicant, which was submitted after the close of the
17 hearing. Based on the photographic evidence, the Board found
18 that the proposed project does not substantially visually
19 intrude upon the character, scale, and pattern of houses
20 along the subject street frontage.

21 In conclusion, the applicant is not asking the
22 Board to approve new plans, only to grant requested relief
23 so the applicant may construct the previously approved plans.
24 We are not asking for relief for the vestibule, itself;
25 rather the deviation between the proposed front setback and

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1 the adjacent building's front setback.

2 A small deviation of only 4'4", and only on a
3 small portion of the building. The only adjacent neighbor
4 is in support of the project. The project safely meets the
5 criteria of D § 5201, and the exact same plans were approved
6 under this exact same criteria in the last hearing.

7 The Board already determined that the proposed
8 design does not intrude upon the character, scale, and
9 pattern of houses in the area. The applicant has provided
10 ample evidence to show the diversity of setbacks and
11 entryways in this area. The Office of Planning is in support
12 of the modification, and no one from within the 200-foot
13 radius is in opposition. Thank you.

14 CHAIRMAN HILL: Does the Board have any questions
15 of the applicant?

16 VICE CHAIR HART: Just one quick question. Just
17 looking at that entryway, are there any windows on the, I
18 guess, east side of it? Because the plans look like they
19 have one in it, but you don't have any --

20 (Simultaneous speaking.)

21 MR. BYRNES: -- there's actually not any windows
22 on the east side because it's got the French doors on the
23 other side of it. It's just a window on that west facade
24 side, which, to be honest, I'm probably going to delete
25 anyway.

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1 VICE CHAIR HART: I was just looking at some of
2 your drawings that you submitted as the ones that we had
3 already approved as part of the earlier case. It looks like
4 it includes a window on it. That's why I'm asking.

5 MR. BYRNES: Yes, the other side, on the east
6 side, which you do not see in that picture, does not have a
7 window.

8 VICE CHAIR HART: I'm just saying your plans
9 actually show that there is one. I'm looking at --

10 MR. BYRNES: On this picture in the plans, that's
11 the west facade.

12 VICE CHAIR HART: I understand.

13 MR. BYRNES: That --

14 (Simultaneous speaking.)

15 VICE CHAIR HART: I'm looking at the plans, which
16 are Exhibit Number -- I don't know what exhibit this is, 3,
17 is it? They are the plans that you submitted saying this is
18 what the BZA had already reviewed. I just was looking to see
19 whether or not that was actually there. You stated that
20 there was no window there, but the plans actually show one,
21 so I'm trying to figure out if what you're saying is correct,
22 or if the plans just need to reflect.

23 MR. BYRNES: The plans need to reflect that there
24 is no window on the east side, the east facade of that entry
25 vestibule.

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1 COMMISSIONER MAY: I did not participate in the
2 original case for this. The gist of the overall project is
3 that you're going to demolish the existing building and start
4 over? You're going to be adding on to it? What are you
5 doing?

6 MR. BYRNES: It's to keep the existing building
7 all together. We're just adding a front porch and the entry
8 vestibule, as well as a rear addition on the back.

9 COMMISSIONER MAY: And a new roof.

10 MR. BYRNES: And a new roof and a third story.

11 COMMISSIONER MAY: And a rear addition. The
12 existing brick facade will essentially stay in place, and
13 then you're going to add something else.

14 MR. BYRNES: Correct.

15 COMMISSIONER MAY: This is not subject to -- this
16 is not an historic district, right?

17 MR. BYRNES: No.

18 COMMISSIONER MAY: It's too bad, because that
19 would have addressed a lot of the issues that are a concern
20 to the neighbors. All right, thank you.

21 CHAIRMAN HILL: I was on the original case. This
22 was controversial, so it's really disappointing that you're
23 back here again. You're back here again because you didn't
24 know you needed this relief?

25 MS. WILSON: Correct.

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1 CHAIRMAN HILL: So the only -- so it's just the
2 4'4" for the front vestibule?

3 MS. WILSON: Correct.

4 CHAIRMAN HILL: So if you didn't get this, you
5 just wouldn't put the vestibule there?

6 MS. WILSON: Correct.

7 CHAIRMAN HILL: I'm just asking the architect.
8 What would you do? If you didn't get this, you'd continue
9 to already have what you need, overall, this is just to have
10 the vestibule.

11 MR. BYRNES: Correct --

12 (Simultaneous speaking.)

13 CHAIRMAN HILL: -- wouldn't kill the project; you
14 just wouldn't have a vestibule there.

15 MR. BYRNES: No, I wouldn't have the entry
16 vestibule. The way it's designed was specifically -- we have
17 a living room off the front. What that entry vestibule does
18 is to actually have a little bit of separation from your
19 living room. Had I known that we didn't have to -- I wasn't
20 allowed to have an entry vestibule designed or in the plans,
21 I may have changed the whole floor plan layout, where you'd
22 have more of a sitting room before you reach -- for the rest
23 of the first floor, if that makes any sense.

24 CHAIRMAN HILL: Okay. Again, the vestibule,
25 that's the part there, it would look much like the photo to

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1 the left, I suppose.

2 MR. BYRNES: Correct. What we would want to do,
3 at that point, is probably -- if we didn't get the entry
4 vestibule, we'd want some sort of portico. It'd have to be
5 open air, obviously, but that's basically how it would --

6 CHAIRMAN HILL: Then you'd be back before us to
7 have that, as well. Okay. That's okay. Does anybody else
8 have any more questions? Okay, going to turn to the Office
9 of Planning.

10 MS. THOMAS: Good afternoon, Mr. Chair, members
11 of the Board, Karen Thomas with the Office of Planning. We
12 would rest on the record of our report with respect to this
13 request. It was unfortunate that they missed this the first
14 time, but based on the regulations, it is a special exception
15 under Section 1210. We recognize that the vestibule is just
16 a small, 4'4". We don't think it changes the character of
17 the row. I'll stop there.

18 CHAIRMAN HILL: Anybody got questions for the
19 Office of Planning? Does the applicant have any questions
20 for the Office of Planning?

21 MS. WILSON: No, thank you.

22 CHAIRMAN HILL: Obviously, there is the ANC here,
23 and I'll let you have an opportunity. So Commissioner
24 Solomon, your ANC's quite active. We see your chairman here
25 every now and again. His fashion choices stick out. So I'm

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1 sorry you're back here again. You have to turn on your
2 microphone there. You'll have five minutes to present. Why
3 don't you go ahead and present.

4 You will have an opportunity to ask any questions
5 from the Office of Planning. Actually, I had a question from
6 OAG, real quick. Ms. Glazer, do we have to always go in
7 order with the ANC, and then support and opposition, or we
8 could do support and opposition first, and then the ANC, it
9 doesn't matter?

10 MS. GLAZER: The rules set out a procedure, but
11 you can waive most of the procedural requirements.

12 CHAIRMAN HILL: I was just curious. I see there's
13 people in the audience. I just was trying to figure out who
14 the Board might like to hear from last. That's what I'm
15 trying to figure out. Go ahead and we'll follow the way we'd
16 normally do it. We'll give you five minutes there,
17 Commissioner.

18 MR. SOLOMON: One bit of housekeeping that I have
19 to bring before you. Because we had a case, 19633, which was
20 the first case, and this case is 19633-A, at our ANC meeting,
21 I gave a little preamble about the mix-up. It got a little
22 confusing to the other members. What happened at that
23 meeting is that a motion to let me speak for the ANC was not
24 passed there.

25 I'm requesting that our chair will, for the

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1 record, will submit an authorization for me to speak for the
2 total ANC, if there's no objection from the applicant and no
3 objection from the Commission here. This is my single-member
4 district. If there is a problem, I can speak --

5 CHAIRMAN HILL: That's okay. I understand what
6 you're saying. I'm just curious to follow up with your
7 conversation. How come you guys didn't do the resolution?
8 You just didn't know?

9 MR. SOLOMON: No the resolution --

10 CHAIRMAN HILL: Not the resolution; I'm sorry.

11 MR. SOLOMON: We did a resolution on the case, but
12 we didn't do a resolution to allow me to speak for the total
13 --

14 CHAIRMAN HILL: I understand. What I'm saying is
15 you just forgot?

16 MR. SOLOMON: Either forgot, or it got mixed up
17 because we thought --

18 CHAIRMAN HILL: Okay, I don't have an issue. Does
19 the Board have an issue? Does the applicant have an issue?

20 MS. WILSON: No, we have no issue.

21 CHAIRMAN HILL: Mr. Solomon, go right ahead. If
22 you could have your chair submit that for the record, that
23 would be helpful.

24 MR. SOLOMON: Yes, will do.

25 CHAIRMAN HILL: Great, thank you.

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1 MR. SOLOMON: I can make this very simple and
2 clear and give you a little bit more context from the first
3 hearing. The one question that I'll get to ask and probably
4 clear up, I understand the Office of Planning had some issues
5 or concerns, as far as whether this was eligible for relief.
6 I believe they did consult with the zoning administrator and
7 the Office of the Attorney General.

8 We didn't receive any report. There's nothing in
9 the hearing, nothing in the record. That was the question
10 I was going to ask Office of Planning, what their concern was
11 that they had to seek counsel with the zoning administrator
12 and the Office of Attorney General.

13 CHAIRMAN HILL: Ms. Thomas, do you understand the
14 question?

15 MS. THOMAS: Yes. The concern was whether it
16 should have been under 5201, as part of 5201. That was
17 cleared up for us. It was explained that it is written like
18 that. In Section 1210 of the regulations, it says a special
19 exception to the development -- exceptions to the development
20 standards of this chapter shall be permitted as a special
21 exception, if approved by the Board, subject to the
22 provisions of Subtitle D § 5201. We just wanted to make that
23 clear, that that was included.

24 MR. SOLOMON: I understand. The reason I brought
25 that up, because the criteria that we're pulling from, which

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1 is 5201.3, which gives the elements, the elements are light
2 and air, privacy, and seeing it from the street. On a large
3 addition, the privacy issue and the light and air would not
4 be very meaningful for a vestibule, which is about four feet
5 square. For us to come and argue that there would be light
6 and air issues with a vestibule would be a very low bar.

7 We wouldn't even argue that because there's not
8 going to be light and air issues. As far as privacy issues,
9 there's ten windows -- I think nine windows on the side that
10 faces the alley to the west. I think there's maybe a
11 six-inch window that I see. I don't have the dimensions.
12 It's a small window on the vestibule. We would not argue
13 that. There's not a privacy issue. We'll go right to the
14 crux of the whole thing, which is 5201.3(c). That's the one
15 I want to zero in on. The addition of an accessory
16 structure, together with the original building, as viewed
17 from the street, alley, and other public ways should not
18 substantially visually intrude upon the character, scale, and
19 pattern of houses along the subject street frontage. We've
20 had numerous conversations about this, and numerous
21 testimony.

22 At the last hearing on this case, which is 19633,
23 the Commission expressed a lot of concern about how this
24 would impact on the street. We're talking about the large
25 structure, how it would impact. The Office of Planning had

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1 some concerns about this, as well, and even the applicant.

2 What they were concerned about is -- what Office
3 of Planning was concerned about is the door on the south
4 side, which is the front door, if you face the property, the
5 original architectural plans had that door on the right, and
6 they moved it. Then on the second plans, they moved it to
7 the left. If you go back to the transcript from the first
8 hearing, the Office of Planning was very pleased that this
9 was moved.

10 I would assume they were very pleased because it
11 didn't change the pattern of the street and what you could
12 see from the street, as far as -- what's the word we use --
13 the pattern of houses, scale, and the character of the
14 street. The other issue that the -- the other element on the
15 south facade was the roof. The original plans -- I think it
16 could be 14 is the original plans on the documents. The
17 first architectural plans had the front going straight up.
18 The second architectural plans, there was a setback with a
19 dormer. This was done, as I assumed from the testimony, to
20 be more in character with the street. So the applicant made
21 two changes there.

22 The zoning mentions that this fits into the
23 character of the properties around it. All the examples that
24 the applicant showed, as far as vestibules that are in our
25 community, they're all illegal if they were built after

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1 September 6, 2016. That's when the new regs came into
2 effect. The reg of 1205.2 was not on the old regs.

3 The reason I say that those, they're illegal --
4 I've been a commissioner for 12 years and representing this
5 community for ANC 2E01, and we've not had one request for
6 relief for a vestibule in Burleith. If anything was built
7 that went beyond what Regulation 1205.2 says, then all those
8 structures in Burleith have an illegal vestibule.

9 Those that are before, at the ANC hearing in our
10 motion and our resolution, I wasn't sure, at that time, if
11 this was a new reg or applied before the regs were changed.
12 Therefore, we said, just to cover our bases, we said they
13 were all illegal. However, anything that was built, that
14 required relief, after the regs came into -- after September
15 of 2016 and relief wasn't requested, then those vestibules
16 are illegal. There was one other -- I think I'm out of time.

17 CHAIRMAN HILL: It's all right; go ahead,
18 Commissioner.

19 MR. SOLOMON: A few other comments. As far as the
20 great weight to the permission of the applicant -- of the
21 property owner to the east, the property owner -- I'm not
22 sure we can give the property owner great weight when we're
23 talking about the character of the street and how you see
24 this vestibule, as far as the pattern of houses along this
25 frontage.

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1 This has to deal with the total street, not just
2 how that one resident next door views this. This is the way
3 we look at it. Our concern has always been that nasty word,
4 if you want to put it, how unduly it affects the character
5 of the street. This is right in front. It's a box
6 structure. All the other -- as you noticed in one of the
7 pictures, there's just a little bit -- what's the word for
8 the overhang when you come out of the --

9 PARTICIPANT: Portico.

10 MR. SOLOMON: -- a portico, and it's not enclosed.
11 That's the way the houses are. To take a picture of the one
12 from the porch of the applicant's residence and to look ten
13 houses down and you see --

14 CHAIRMAN HILL: Okay, I think I get it.

15 MR. SOLOMON: You get that.

16 CHAIRMAN HILL: Okay, thanks, Commissioner. Does
17 anybody have questions for the commissioner? I can start.
18 I've got a couple real quick. You guys were here the last
19 time because you were opposed to the overall project,
20 correct?

21 MR. SOLOMON: No, we did not support; we did not
22 deny.

23 CHAIRMAN HILL: Oh, that's right.

24 MR. SOLOMON: We dropped the ball. We did not
25 approve it. As a matter of fact, you bring up a good point.

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1 CHAIRMAN HILL: That's okay. I'm just trying to
2 remember what -- because I remember you were here. I thought
3 you were here, or was it another one?

4 MR. SOLOMON: I've been to a few of them. That
5 was on another street.

6 CHAIRMAN HILL: You guys were not in support or
7 denial for this particular case, when it came through the
8 first time.

9 MR. SOLOMON: Right.

10 CHAIRMAN HILL: The reason why, again, was?

11 MR. SOLOMON: At the hearing, we did not -- this
12 actually was the first house in our neighborhood that had to
13 come before the zoning to seek relief.

14 CHAIRMAN HILL: In your SMD.

15 MR. SOLOMON: In my SMD, for the ten-foot rule.
16 This caught our community off guard at the time of the ANC
17 meeting. At the ANC meeting, we did not have any opposition
18 to this.

19 CHAIRMAN HILL: You guys never actually took a
20 vote on the original application, and you still don't -- you
21 still haven't taken a vote on the original application.

22 MR. SOLOMON: We submitted a resolution, but we
23 didn't support or deny it.

24 CHAIRMAN HILL: I'm just asking curiously. I
25 don't know whether or not -- has, now, your ANC's position

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1 changed on that --

2 MR. SOLOMON: No. Our position is that this has
3 more of an impact on the frontage, as far --

4 CHAIRMAN HILL: I'm not talking about the
5 modification. I was kind of going back to the original
6 application. You don't know how that would go now, again,
7 had it been before you.

8 MR. SOLOMON: We thought this was a matter of
9 right. Where the confusion was is that the applicant is
10 self-certifying. What came before our ANC was only the rear
11 addition. We were not commenting on the property because I
12 was not aware of the regulation, just like everyone was.

13 CHAIRMAN HILL: I'm sorry if I already asked, does
14 anybody have any questions for the commissioner? Okay,
15 thanks, sir. You can sit there if you want to. Is anyone
16 here wishing to speak in support? Is there anyone here
17 wishing to speak in opposition? If you would please come
18 forward. If you can please state your name and your address.
19 Did you get sworn in this morning?

20 MS. JUPPENLATZ: Yes.

21 CHAIRMAN HILL: Okay, great.

22 MS. JUPPENLATZ: My name is Gail Juppenlatz. I
23 live at 3542 Whitehaven Parkway, which is about a block away
24 from this property.

25 CHAIRMAN HILL: I'm sorry; could you say your last

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1 name again?

2 MS. JUPPENLATZ: Juppenlatz.

3 CHAIRMAN HILL: You'll have three minutes, as a
4 member of the public, and you begin whenever you like.

5 MS. JUPPENLATZ: You have my name? Most of the
6 535 houses in Burleith have a flat front facade with a small
7 porch. Only four of the original Burleith houses built as
8 a PUD in the '20s and '30s had a vestibule. Those were
9 unique, on one block only.

10 Before the new zoning regulations were passed,
11 about 12 more houses have added a vestibule. That's a total
12 of less than 3 percent of the Burleith houses. Vestibules
13 look out of place and out of character with the pattern and
14 style of the Burleith Village streetscape. There are
15 currently no vestibules in this block of T Street on either
16 side. In order to grant a special exception to permit the
17 vestibule, the BZA must consider X § 901.2, which states the
18 special exceptions will be in harmony with the general
19 purpose and intent of the zoning regulations. We've already
20 talked about 315.1 and 3.512, and specifically four our R-20
21 zone, the rules that are specific to us say a front setback
22 consistent with at least one of the immediately adjoining
23 properties on either side shall be provided in the R-20 zone.

24 Clearly, this is against that. To provide relief
25 from the development standards, the special exception must

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1 comply with 5201.3, that states the addition or accessory
2 structure, together with the original building, as viewed
3 from the street or alley, shall not substantially visually
4 intrude upon the character, scale, and pattern of the houses
5 along the street. This certainly would do that.

6 Additionally, there are no sliding doors, front
7 doors, on any houses in Burleith that I'm aware of. This
8 property has a sliding front door on it. Clearly, it doesn't
9 comply with the look and the feel and the character scale of
10 those houses. In closing, this application doesn't meet the
11 standards that it comply with the purpose and intent of the
12 zoning regulations, which was to have this setback, the same
13 as the neighbors. It prevents a totally different look from
14 the original building and the neighborhood. It visually
15 intrudes upon the character, the scale, and the pattern of
16 houses along the subject street front into Burleith. In
17 addition, not only did several of the DCRA technicians
18 reiterate, over the phone and in writing, that a vestibule
19 in the R-20 zone was not permitted, but also, Mr. Joel
20 Larson, of OP, spoke at a zoning town hall meeting in
21 Burleith, on March 15, 2017, when the new zoning regulations
22 were presented.

23 He responded to a specific question and said that
24 an enclosed front vestibule would not be permitted under the
25 new zoning regulations. The issue is this enclosed thing.

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1 They can put an awning. They can do other things, if they
2 want protection for their front door, but they cannot do the
3 enclosed area.

4 I feel the BZA should affirm this limitation,
5 which was the intent of the zoning regulations, and that this
6 special exception should not be granted. They should agree
7 with our ANC that this application should not be approved.
8 In addition, he talked about the way these houses look.
9 There's a ten-house grouping that this is on one end of.

10 He showed you a picture of part of them. They all
11 have flat fronts. Their house is exactly the same as the
12 tenth house. In between, there are houses that have dormers
13 and things, but they are all alike. It's a pattern that all
14 of Burleith is built the same way. Every block has a
15 pattern. They're not necessarily unique, but they're unique
16 to that block. Yes, at the end of the block that he was
17 talking about, there are four -- I think it's four or five
18 houses that have big front porches. They're not enclosed;
19 it's just a big front porch. It's a different style. There
20 are similar houses to that in other parts of Burleith, but
21 the ten-house section that he's involved with here is totally
22 symmetrical, totally harmonious, and this would be so
23 different from all the rest of them, as well as different
24 from all the houses in Burleith, and I think it should be
25 denied.

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1 CHAIRMAN HILL: Okay, thank you. Does anybody
2 have any questions for the witness?

3 MEMBER WHITE: I guess my one question is did you
4 have a detailed discussion within the ANC about the enclosed
5 vestibule, why that was significantly different than just
6 having just an overhang type of vestibule? What type of
7 response have you gotten with respect to that, or was that
8 never raised in an ANC --

9 MS. JUPPENLATZ: This wasn't raised -- the ANC had
10 a meeting and a couple people spoke at that meeting, but this
11 is just the way the people that have been involved with this
12 in the community feel. This just changes the look and the
13 feel of the whole community. In fact, we're trying to apply
14 for historic designation for Burleith just because of these
15 kinds of things that are changing our community. It's a very
16 small community, 535 houses. It's a total of ten blocks this
17 way and five blocks that way. Everything was a planned
18 community. It all looked alike. People moved down there
19 because they liked the look and the feel of this small
20 community. This kind of thing is just changing it.

21 Certainly, this third-floor addition is changing
22 it, and this huge addition of 27 and a half feet that he
23 didn't mention is something that we would have opposed
24 vehemently, had we known about it, but it was sprung on us
25 at the last minute. Nobody knew about it. The ANC didn't

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1 know about it, and the community didn't know about it.

2 The second one that he's referring to was the one
3 on S Street, and yes, many people spoke against it, and we
4 were very much against that. That would have happened with
5 this, had we known about it. It's the feel of the community,
6 and they're very much opposed to these kinds of changes.
7 We've lost the back thing. We're going to have these big
8 additions. We don't think we can do much about that, but the
9 front, we're trying to at least maintain the look and the
10 feel of the neighborhood.

11 MEMBER WHITE: Thank you.

12 CHAIRMAN HILL: Okay, Ms. Juppenlatz?

13 MS. JUPPENLATZ: Juppenlatz.

14 CHAIRMAN HILL: I just wanted to clarify. You all
15 might not have understood what was going on, but there was
16 a placard that was put up. People did get the two -- I'm
17 just saying within the regulations, it did happen. You did
18 get notices within 200 feet.

19 MS. JUPPENLATZ: No, they did not get notices.

20 CHAIRMAN HILL: You can say no, but I know that
21 it did happen, so it's done within the regulations. That's
22 how it happens. You might not have understood what was
23 happening, and maybe the ANC didn't also understand what was
24 happening, but I just want to be clear on the record. They
25 did follow the processes to get to where we got, so you were

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1 notified, but you just didn't necessarily understand, if
2 you're within that 200 feet. The ANC did -- there was a
3 placard. There was an application.

4 There was a presentation that was given to you,
5 and you chose not to -- all I'm just trying to do is just
6 clear it up. I'm just trying to clear it up. They did
7 follow the process. We are now here for the vestibule, which
8 is the modification. Now in the future, I possibly -- we,
9 as a Board, might see you guys more often if this comes
10 before you again, but I just wanted to be clear that the
11 applicant did follow the process. That's all I'm trying to
12 be clear on. Commissioner.

13 MR. SOLOMON: I'm not questioning the 200 feet or
14 people responding to that. What I'm saying that the ANC did
15 notice that our meeting took place. We do that in listservs
16 and in the newspapers. We do give notice, as far as when
17 we're having a hearing. We're not questioning whether the
18 200-foot notification to the neighbors was or was not sent
19 out.

20 CHAIRMAN HILL: Okay.

21 MS. JUPPENLATZ: Actually, they didn't get it.

22 CHAIRMAN HILL: Again, I can't testify to that, and
23 I don't know --

24 MS. JUPPENLATZ: They --

25 (Simultaneous speaking.)

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1 CHAIRMAN HILL: Nonetheless, we're here for -- we
2 can have this back-and-forth if you like; I'm just saying
3 that they did do what they were supposed to do at the last
4 hearing. We went through all that. I hope that, again, the
5 community is just more aware of it. That's all. We're here
6 for the vestibule. That's all I'm just trying to point out.

7 MS. JUPPENLATZ: Was the notification sent out for
8 the vestibule?

9 CHAIRMAN HILL: Yes.

10 MS. JUPPENLATZ: It was? So far, no one's
11 mentioned they've gotten it, really.

12 CHAIRMAN HILL: I would assume that you followed
13 the --

14 MS. WILSON: Those were sent out to the people
15 that live within the 200-feet --

16 MS. JUPPENLATZ: They were supposed to have been.

17 MS. WILSON: It's my understanding.

18 CHAIRMAN HILL: Ms. Juppenlatz, again, it's the
19 vestibule you're opposed to, but if there weren't a vestibule
20 and there was just a covering, there would be no opposition
21 from -- for you, obviously, but then also -- are you in the
22 SMD with Commissioner Solomon?

23 MR. SOLOMON: Yes.

24 MS. JUPPENLATZ: Yes --

25 CHAIRMAN HILL: Commissioner Solomon, you're

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1 opposed to the vestibule. That's what -- you have the
2 microphone.

3 MR. SOLOMON: That is correct.

4 MS. JUPPENLATZ: That's why we're here is just the
5 vestibule. It's the only thing we can discuss, at this
6 point.

7 CHAIRMAN HILL: All right. Ms. Wilson -- just
8 back to the architect. There was some conversation that the
9 door was moved. I'm confused about that. I thought that
10 what -- it wasn't moved from one right side to the left side.
11 Isn't this what we had approved originally?

12 MR. BYRNES: It is. I think -- you have the first
13 set of plans that are submitted on the initial application.
14 I believe the design drawings, we had the door on the right,
15 but I think we followed up in two weeks with the final design
16 change.

17 VICE CHAIR HART: So what you're saying is that
18 when the BZA heard Case 19633 itself, the original case, you
19 all came in with a design -- there was a design that had the
20 door moved from this location, which is on the left, and the
21 door had been moved to the right. By the time we heard it,
22 you're saying that we -- I'm just making sure that I'm
23 understanding this. You're saying that you moved the door
24 to the left-hand side, and what we approved was the left-hand
25 side of the --

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1 MR. BYRNES: Correct.

2 CHAIRMAN HILL: I see the Office of Planning
3 nodding that's correct, correct?

4 MS. THOMAS: That's correct because we asked them
5 to do that. We had a little bit of objection to it being on
6 that side, being removed from its original position.

7 CHAIRMAN HILL: Right. And it was this way as an
8 enclosed entryway.

9 MS. THOMAS: Yes.

10 CHAIRMAN HILL: Okay. Just to some of the
11 discussion that came up in terms of the harmony or the
12 pattern, can you speak a little bit more to that, again?

13 MS. THOMAS: Yes. With respect to this, the way
14 we look at it is this is the edge of a row. It doesn't
15 really -- having this vestibule or this setback -- I don't
16 want to keep referring to the vestibule because really, we're
17 looking at a setback. That four-foot difference does not
18 impact the row to a great extent. Because if you switch to
19 the -- yes, go back -- the site.

20 CHAIRMAN HILL: Go a couple forward, I guess.

21 MS. WILSON: I apologize; which --

22 MS. THOMAS: Right there. If you look at
23 setbacks, with the respect to the R-20, you only have to be
24 -- you only have to meet the setback with one adjacent
25 neighbor. In this case, there is only one because he's at

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1 the end of the row.

2 If you look down, just for argument's sake, if you
3 look at what's going on, on 37th Street, looking down, you
4 don't see -- it's a variety, with respect to the setback, the
5 front setback. With this 4'4", we do not think that -- being
6 at the end of the row, it doesn't have a significant impact
7 or unduly affect -- what is the correct wording --
8 substantially impact the character.

9 CHAIRMAN HILL: All right, Ms. Thomas. Anybody
10 have anything for the Office of Planning? Does the applicant
11 have anything further they'd like to add?

12 MS. WILSON: No, thank you.

13 CHAIRMAN HILL: Does the Board have anything
14 further they'd like to comment upon or ask questions of? All
15 right, then we can close the hearing. Is the Board ready to
16 deliberate? Does somebody want to start?

17 COMMISSIONER MAY: I'd be happy to. It's
18 interesting that this case actually came up because it's the
19 first time since we made this change to the zoning
20 regulations with ZR16 having to do with front setbacks. This
21 is the first case that I can recall where this has really
22 come up as an issue.

23 It's interesting because what we were really
24 focused on was those unusual circumstances where there is a
25 front yard and somebody could come in and build a house that

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1 would go ten feet -- project ten feet beyond what every other
2 house was, or that the reverse might happen, those really
3 anomalous kinds of circumstances that we were trying to avoid
4 because we saw the value in keeping consistent facades where
5 they were, if you have an existing row, as opposed to
6 creating a sawtooth facade.

7 It wasn't really with the thought of this kind of
8 vestibule that we were thinking about it, but I see how it
9 has become relevant in this circumstance. All that being
10 said, I think in this circumstance -- first of all, let me
11 just say that I kind of wish I was on the original project
12 because I would have had a lot to say about that, and
13 frankly, it wouldn't have been very favorable. I think
14 really, I think the original project that the Board has
15 already approved could arguably substantially intrudes on the
16 visual character of the row.

17 It helps that it is the last house in a row, but
18 it's easy enough to imagine that somebody might want to do
19 a project like this in the middle of the row. And the houses
20 in Burleith are really quite diminutive, especially the ones
21 where you have the mansard treatment at the front, because
22 it's deliberately designed to look small and feel small.

23 It's got a very distinct character, and it is
24 prevalent throughout the entire neighborhood. I didn't know
25 it was 535 houses, but now I know. I think that there's a

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1 real character issue that the neighborhood must address, in
2 order to preserve it in the long run, because there is
3 certainly plenty of flexibility in the zoning regulations
4 that allow for all sorts of changes that could affect that
5 character.

6 I'm glad to hear that the neighbors are
7 considering the historic district designation because I think
8 that would be a very important protection for the character
9 of the neighborhood as it was originally built, or how it was
10 built and has evolved to this date and largely been
11 preserved. So back to this case. Unfortunately, I don't see
12 that the addition of a vestibule really is that much of an
13 intrusion on that visual character. I think that if we were
14 just talking about even the current house, just adding a
15 vestibule to the current house, when there's already a little
16 bit of a porch roof kind of thing, going from that to a solid
17 vestibule, as we have seen in a number of the photos that
18 were provided, I don't think is that far out of character.
19 Again, there may not be a whole lot of them, but the ones
20 that we see photographs of in other circumstances I don't
21 think are really that problematic.

22 The rest of the project remains problematic, and
23 I think the vestibule is the least of the problems. I
24 certainly hope -- I'm sorry; I don't know if you are the
25 developer or the architect, but whatever you are, there's a

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1 lot of problems with this the way I've seen it drawn and the
2 way I can fear that it will be built, because you're making
3 changes to the facade, changing windows, adding something,
4 a brick addition on the front of it, on brick that's probably
5 very hard to replicate.

6 This is going to be an extraordinarily challenging
7 thing to do well. You could do it, and you could do a really
8 lousy job of it. And even historic districts, people do
9 lousy jobs on stuff like this. A lot of it has to do with
10 the quality and care that goes into the construction.

11 But this is a challenging thing for you to execute
12 properly, and I hope that you take it very seriously, or
13 whoever is actually doing the building takes it very
14 seriously and does a good job with it. But I don't see enough
15 of a problem with the vestibule, itself, to say no. I want
16 to say no to the whole thing, but I think that the vestibule,
17 I think that there is ample evidence in the record to say
18 that the vestibule is acceptable.

19 CHAIRMAN HILL: Okay, anyone else?

20 MEMBER WHITE: I'll just weigh in a little bit.
21 I was asking questions about the vestibule because this block
22 and this neighborhood is very unique. As Mr. May said,
23 they're moving towards an historic designation, so I am
24 definitely supportive, in terms of understanding why this is
25 a change to your block. But I did have to look at the

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1 criteria for front setback under the special exception
2 criteria.

3 While I think that this is visually a little
4 intrusive, I don't think it meets the standard of being
5 substantially visually intrusive upon the character, scale,
6 pattern of houses along the subject street frontage. I think
7 there is some intrusion, but it doesn't reach the level, I
8 think, under the special exception criteria, under the front
9 setback rule, to require that the relief not be given.

10 Again, I'm very -- I understand why you have
11 issues with this because it does change the look and feel,
12 but I don't think it reaches the level of not meeting the
13 criteria under the special exception rule. I would concur
14 with Mr. May on this particular issue, Mr. Chair.

15 CHAIRMAN HILL: No one else?

16 MEMBER JOHN: I concur, Mr. Chairman. There's
17 already a vestibule of sorts, or a portico, so this is not
18 a totally new intrusion into the setback, but I think that,
19 as others have said, it is not a substantial intrusion.
20 Based on the regulations, I would concur.

21 I appreciate all of the concern about maintaining
22 the historic look of the houses in that row, but there's also
23 a house on T Street that I believe there's a row of smaller
24 houses and a big house to the right. It's shown in one of
25 the photographs. I believe it's 3611 T Street. So there's

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1 already some basis for changing the look of the facade of the
2 houses in that neighborhood. And so even without that
3 consideration, based on all of the testimony, I would support
4 the application.

5 CHAIRMAN HILL: Okay. I'm, again, just
6 disappointed we're here. The fact that this was something
7 that we had gone through, that there was a long discussion
8 about it, and that I believe there was a lot of opposition
9 to it, and there was a lot of -- there has been discussion
10 about -- I'm just now making a statement, I suppose, about
11 similar projects.

12 I guess I just struggle with it. I just want to
13 vote no just to vote no because I'm just so -- the community
14 doesn't seem to get anything half the time. We've been here.
15 We went through this. I appreciate that the applicant just
16 missed something, because then you would have put that in
17 your original application, and we would have gone through the
18 process, and you would be where you are now. But instead,
19 you're back to us again, and now we again have to, in my
20 opinion, definitely struggle with what some members of the
21 community -- you guys don't represent everybody, but some
22 members of the community are having issues with, that we've
23 heard again and again with kind of similar projects.

24 But at the same time, I'm just kind of torn with
25 what I think about the community and their opinions, even on

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1 this particular project, about the look and feel of the
2 front. I don't know.

3 VICE CHAIR HART: I'll make the motion to approve
4 Application No. 19633-A of VI 3629 T Street, LLC, as read and
5 captioned by the secretary. Do I have a second?

6 MEMBER JOHN: Second.

7 VICE CHAIR HART: All those in favor, say aye.

8 (Chorus of ayes.)

9 VICE CHAIR HART: Any opposed?

10 CHAIRMAN HILL: Nay.

11 VICE CHAIR HART: Motion carries, Mr. Moy.

12 CHAIRMAN HILL: I can do all that other stuff.
13 You just have to make the motion.

14 SECRETARY MOY: Staff would record the vote as
15 4-1-0. It is on the motion of Vice Chair Hart to approve the
16 application for the relief being requested. Seconding the
17 motion, Ms. John, also in support, Mr. Peter May and Ms.
18 White. Chairman Hill opposing the motion. The motion
19 carries.

20 CHAIRMAN HILL: Summary order? No, a full order.

21 SECRETARY MOY: No, there's an opposition --

22 CHAIRMAN HILL: Right, okay, full order. Thank
23 you all.

24 SECRETARY MOY: I believe the next application
25 before the Board is No. 19739, of Ben Safran and Margot

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1 Locker. This application is amended for special exceptions
2 under the use requirements of Subtitle U, Section 301.1(e),
3 under Subtitle E, Section 5201, for the lot occupancy
4 requirements of Subtitle E, Section 404.1, and under Subtitle
5 E, Section 5007, from the accessory building rear yard
6 setback requirements, Subtitle E, Section 5004.1, and
7 pursuant to Subtitle X, Chapter 10, for area variance from
8 the accessory structure dwelling access requirements of
9 Subtitle U, Section 301.1(c).

10 This would construct a two-story rear addition to
11 the existing principal dwelling unit and to construct a
12 two-story accessory structure in the RF-2 zone, at 1828 15th
13 Street Northwest, Square 191, Lot 58.

14 CHAIRMAN HILL: Thank you, Mr. Moy. If you can
15 please introduce yourselves.

16 MS. DOWNEY: Megan Downey. I'm the architect on
17 the project.

18 MR. SAFRAN: Ben Safran. I'm the owner.

19 CHAIRMAN HILL: Okay, Ms. Downey, are you going
20 to be presenting to us?

21 MS. DOWNEY: Yes.

22 CHAIRMAN HILL: Basically, I guess there's a
23 couple of questions. If you could go ahead and walk us
24 through what you're trying to do and the relief you're
25 requesting, as well as how you're meeting that relief. There

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1 also seems to be some question about amending your
2 application for a variance?

3 MS. DOWNEY: Yes, that's correct. I believe that
4 was supposed to be the first thing on the agenda, yes.

5 (Simultaneous speaking.)

6 CHAIRMAN HILL: -- that's okay.

7 MS. DOWNEY: Essentially, we have submitted a
8 motion to waive re-noticing.

9 CHAIRMAN HILL: Okay. Could you speak to that,
10 please?

11 MS. DOWNEY: Yes, certainly. Essentially, there's
12 four points we really wanted to make about why we are
13 submitting this motion and believe it should be passed.
14 Firstly, and most importantly, the project that we are
15 presenting today is the same project that we presented at the
16 ANC, and that has been -- it was originally submitted.

17 The ANC voted to support this project, and the
18 neighborhood has had the opportunity to comment on and
19 deliberate on the project, as originally proposed, since it
20 was processed on March 1, 2018. Secondly, we're only asking
21 for minor relief, and this type of relief has been granted
22 before. The area of relief is regarding a minor technical
23 issue that can be worked out between planning officials and
24 the owner.

25 We have already been in communication with FEMS

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1 to resolve it. Additionally, there's also a precedent for
2 this Board granting this type of relief. Thirdly, the
3 proposal complies with the regulation, as written. The
4 zoning related to accessory access only applies to a
5 principal dwelling unit, which is clearly defined in Subtitle
6 B as the primary residential structure on the lot.

7 The proposed structure in the project is an
8 ancillary structure. That said, we want to recognize the
9 importance of working with planning officials to comply with
10 DCRA's interpretation of the law, which is to consider the
11 ancillary structure as a potential primary structure.
12 Lastly, the project has already received significant
13 deliberation by a number of agencies, including -- we've
14 received support from the ANC, HPRB, and the Dupont Circle
15 Conservancy.

16 CHAIRMAN HILL: What's the variance relief you're
17 trying to add?

18 MS. DOWNEY: The area variance, essentially, we're
19 proposing an accessory structure in the alley. It's located
20 on a ten-foot alley. I believe the exact regulation requires
21 that an accessory structure be located on an alley with
22 minimum of 15 feet.

23 CHAIRMAN HILL: But there's already a variance
24 that you have advertised for, correct?

25 MS. DOWNEY: We've amended the application to

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1 include it.

2 CHAIRMAN HILL: So you never advertised as a --
3 you never had this advertised -- that's why I was confused
4 with the Office of Attorney General there, also. I thought
5 that, Ms. Glazer, there was a variance, at one point, on this
6 application. Am I mistaken?

7 MS. GLAZER: I believe the applicant submitted a
8 revised self-certification form, but that does not mean it
9 was noticed and advertised.

10 CHAIRMAN HILL: Okay. The only reason why I'm
11 trying to struggle through this -- not the only reason -- is
12 that, again, you're requesting a higher level of relief. And
13 I understand your argument is that it's the exact same thing
14 that you'd already gone through the process with; it's just
15 that it hadn't been advertised as a variance.

16 MS. DOWNEY: That is correct, but same project
17 that's approved by neighbors, agencies.

18 CHAIRMAN HILL: Okay. Does the Board have any
19 thoughts?

20 MEMBER WHITE: One question is whether or not, in
21 going through those steps, did you have any communications
22 with OP before they issued their report, or have they weighed
23 in on this at all?

24 MS. DOWNEY: So actually, OP was helpful in
25 realizing how DCRA would interpret this interpretation of the

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1 law. They're the one that flagged it, and that's when we
2 amended the application.

3 MEMBER WHITE: Okay.

4 MS. GLAZER: Mr. Chair, I'm sorry; I just wanted
5 to call the Board's attention to Y 402.11 because those are
6 the factors that the Board needs to look at for waiving
7 notice and posting for the variance relief.

8 CHAIRMAN HILL: Okay. Commissioner May.

9 COMMISSIONER MAY: I'm just curious whether the
10 Office of Planning actually has submitted something to the
11 record on this yet? I didn't see anything as of yesterday.

12 MS. VITALE: Elisa Vitale, with the Office of
13 Planning. No, we -- as indicated in our original report,
14 dated April 27, 2018, we noted that we thought the variance
15 relief from the access requirements was required. At that
16 time, the applicant hadn't requested that relief, so we had
17 not evaluated that request. There was information filed late
18 into the record, and we did not -- I've read the additional
19 filings, but we have not filed a supplemental OP report.

20 COMMISSIONER MAY: Are you prepared to speak to
21 that today?

22 MS. VITALE: I'm happy to speak to the revised
23 request today, yes.

24 COMMISSIONER MAY: You're going to be able to give
25 us a verbal report on whether or not you concur that we

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1 should grant this variance?

2 MS. VITALE: If you guys get to the point of
3 hearing the variance request, I can speak today, yes.

4 COMMISSIONER MAY: That was the key question for
5 me because part of the issue is that it may be moot to waive
6 the re-noticing if we need to give OP more time to actually
7 evaluate this and give us some kind of opinion on it. I
8 guess we're back to 402.11.

9 CHAIRMAN HILL: Which I'm reading right now. I'll
10 follow up with the questioning with the Office of Planning
11 real quick. What was your conclusion for the variance
12 relief?

13 MS. VITALE: I'm sorry; when you say our
14 conclusion, I think through consultation with DCRA, with the
15 Office of the Zoning Administrator, it was determined that
16 variance relief was appropriate, in this instance, because
17 the proposed accessory structure that would house a second
18 dwelling unit would be located on a ten-foot alley. The
19 requirement is for either a 24-foot-wide alley, or a 15-foot
20 alley that is connected to a public street no less than 300
21 feet away.

22 CHAIRMAN HILL: So, I guess what I'm trying to ask
23 -- I'm sorry, Ms. Vitale -- is the Office of Planning in
24 support of approving that variance?

25 MS. VITALE: I think, actually, our comments would

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1 remain the same. We're not opposed to the use of an
2 accessory structure constructed after 2013 for immediate
3 occupancy as a second dwelling unit. However, we would
4 request a written statement from Fire and Emergency
5 Management Services indicating that that ten-foot alley does
6 provide sufficient access for health and life safety reasons.

7 That statement from FEMS was not provided in the
8 record when I checked yesterday. I'm not sure if the
9 applicant can provide that today. I think without that
10 confirmation from FEMS, we can't recommend that an accessory
11 unit be located in --

12 CHAIRMAN HILL: Ms. Downey, did you get anything
13 from FEMS?

14 MS. DOWNEY: I've been in talks with FEMS.
15 Unfortunately, they couldn't provide me anything before
16 today. They said they would get it to me, earliest, this
17 Friday.

18 CHAIRMAN HILL: Okay. So, I'm going to go ahead
19 and let you go through your presentation. Well, now we're
20 back to the beginning. The notice --

21 MS. GLAZER: That's the threshold question is
22 whether you continue the case or hear it.

23 CHAIRMAN HILL: I understand. I read through the
24 regulations for me. What does the Board have to say about
25 whether or not they --

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1 MEMBER WHITE: My feedback, and maybe it's a
2 question, is whether or not we're required to give the public
3 an opportunity to weigh in on this. I'm just looking at the
4 portion of Y § 402.11 where it says the nature and extent of
5 the actual notice received by the parties and the public from
6 all sources. My question is whether or not -- if they get
7 the information from FEMS, whether or not we could go forward
8 without having to provide the public with further notice that
9 this also incorporates a variance request.

10 CHAIRMAN HILL: I don't know. Again, from Y §
11 402.11, if the Board finds failure or defect in the notice
12 of public hearing, the Board shall determine whether to
13 postpone, continue, or hold the public hearing as scheduled,
14 based on the following considerations: a) the nature and
15 extent of the actual notice received by the parties and the
16 public from all sources; b) attendance, or lack thereof, at
17 the public hearing; and c) the nature and extent of the
18 construction and/or use proposed under the application.

19 I suppose for me, if we get to the application,
20 and what the applicant is saying is that this is no different
21 from what they have presented, then I would be comfortable,
22 moving forward, that this is the exact same application. But
23 we have, in the past, not done it that way. They have had
24 to repost if they go from a -- if they're increasing their
25 relief to a variance. I don't know -- now we're just having

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1 a discussion, so you all can tell me what you all think.

2 COMMISSIONER MAY: I think generally speaking,
3 going from notice for a special exception to going to notice
4 for variance, I tend to be pretty conservative about this and
5 want to make sure that there is adequate public notice about
6 all of the required relief. In this circumstance, I think
7 it is slightly different.

8 I would not call it just a mere technical matter.
9 This is a very substantive matter, and it was something that
10 we debated extensively during the ZR-16 hearings and
11 deliberations. But in this circumstance, I think it's the
12 sort of requirement that most people would not know or pay
13 that much attention to. It's a little bit different from
14 circumstances where you would need a variance from the
15 regulations to have a lot more square footage or a variance
16 to get relief from parking or things like that, that could
17 actually have a more substantive impact on the neighborhood.

18 I think that the essential question that people
19 might be concerned about is this issue of whether there is
20 -- the property can be adequately accessed in the event of
21 a fire. I think that's what we would get to if we got a
22 response from fire and EMS. What all that boils down to is
23 I don't see a need, in this circumstance, to require the
24 re-noticing of the property. That's not to say that we'll
25 be able to make a decision about this today, but I don't

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1 think a re-noticing of the property --

2 CHAIRMAN HILL: Anyone else?

3 VICE CHAIR HART: Just one final point. I agree
4 with my colleagues and Commissioner May in what he just
5 stated. I'll also just point out that we have eight letters
6 of support from the case. I don't think we have anybody that
7 is --

8 MS. DOWNEY: Ten.

9 VICE CHAIR HART: Ten, excuse me. I don't think
10 we have anybody that has actually been in opposition. The
11 ANC is also in support. It's not like they haven't had a
12 chance to kind of look at this. I think that if there were
13 some issues that needed to be addressed, we may need to look
14 at the issue of notice, but I don't see that as being
15 something -- I think folks would have come forward already
16 if there were some issue that they were interested in.
17 Again, I think Mr. May brought up an important point. A lot
18 of folks may not even understand this aspect of it, but they
19 may understand that a development is happening, and they
20 would be in support or opposition to that. So, I would be in
21 support of granting the motion.

22 MEMBER JOHN: Mr. Chairman, I would take an
23 opposing position.

24 COMMISSIONER MAY: We can't hear you.

25 MEMBER JOHN: I would take an opposite position

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1 to that because we're moving from a request for a special
2 exception to a variance. That is a higher standard of
3 relief. I don't think the public has had an opportunity to
4 weigh in on that --

5 MS. DOWNEY: Can I make one comment?

6 MEMBER JOHN: -- even though --

7 CHAIRMAN HILL: Just not yet; sorry.

8 MEMBER JOHN: -- even though it was discussed.
9 It was not discussed in terms of a variance. And so the
10 question is what is the exceptional condition, go through all
11 of the three prongs and all of that. Based on those
12 considerations, I would prefer re-posting in this case.

13 CHAIRMAN HILL: Okay. In general -- and we've
14 done this before -- I have not been in support of waiving the
15 reposting notice. In this case, I don't think -- I would be
16 comfortable, again, for more or less the reasons that
17 Commissioner May mentioned, but I definitely do appreciate
18 what Board Member John just mentioned, in that in the past,
19 we have actually not done this. So I will make a motion to
20 waive the re-noticing requirements, as requested by the
21 applicant, and ask for a second.

22 COMMISSIONER MAY: Second.

23 CHAIRMAN HILL: Motion made and seconded. All
24 those in favor?

25 (Chorus of ayes.)

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1 CHAIRMAN HILL: All those opposed?

2 (Chorus of nay.)

3 CHAIRMAN HILL: Oh, nay? Okay. Mr. Moy, the
4 motion passes.

5 SECRETARY MOY: Just a second, Mr. Chair. Staff
6 would record the vote on the motion to waive the time
7 requirement on reposting, this on the motion of Chairman
8 Hill, seconded by Mr. Peter May, also in support, Vice Chair
9 Hart. Opposed to the motion is Ms. White and Ms. John. The
10 motion carries.

11 CHAIRMAN HILL: All right. Do you have to record
12 that? I don't even know what -- that's just it, right?
13 There's no -- I always say something afterwards, like summary
14 order, full order. I don't have to say anything, so I'm just
15 trying to --

16 MS. GLAZER: It would be part of the rest of the
17 case.

18 CHAIRMAN HILL: It would be part of the rest of
19 our case, okay. We're going to go ahead and move forward.
20 I guess if you would, again, now, go ahead and present your
21 case, Ms. Downey --

22 MS. DOWNEY: Yes.

23 CHAIRMAN HILL: -- and what you're requesting of
24 us, including, now, the variance, and how you are meeting the
25 standards for that. Then I don't think we're going to get

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1 to -- we don't seem to have enough information yet already,
2 that I can tell, in terms of what you've got to get from
3 FEMS, but at least we can go ahead and hear what you have to
4 say. I'm going to go ahead and put 15 minutes on the clock,
5 and you can start whenever you like.

6 MS. DOWNEY: Okay, perfect. Moving into the meat
7 of the matter, I'm just going to quickly walk you through the
8 site and the project, and then I'll move on to how the
9 project meets the standards of exceptions for both the
10 variance and the exception. The project is located 1828 15th
11 Street Northwest. It's just roughly south of U Street and
12 the U Street historical region. It's bounded by Swan Street
13 and T Street, and directly fronts 15th Street. The project,
14 it's located in RF-2 zone, and it's to add a three-level
15 addition to a single-family house and to construct a
16 two-story accessory structure with a dwelling unit on the
17 second level. Just looking at some of the context, as you
18 can see, along 15th Street, there's a wide variety of
19 different types of buildings across.

20 Moving to the alley, there's also a different
21 range of buildings. I want to call attention to this picture
22 right here, where there are three accessory structures, two
23 newly constructed garages and a two-story accessory
24 structure. Our proposed project will be going, currently,
25 next to it, which you'll see on the next page.

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1 Here's some site photos of the surrounding site.
2 This is the front of the house. You will not see any of the
3 work from the front of the house. This is the entrance into
4 the alley. This property is located right here. The site
5 is right here, so it's directly behind the site. What you
6 see, it's an open lot.

7 It's currently used for parking spaces. Then
8 right here is where the three accessory structures and the
9 current property is. This is where the proposed accessory
10 structure will go. Moving along, this is currently what
11 exists today. It's a single-family home, with a large deck
12 out the back, and then a paved area for parking. This is
13 what we're proposing is to put in a two-story accessory
14 structure in the back, directly adjacent to the accessory
15 structures just to the north, and then to build a ten by
16 thirteen, roughly, addition to the back of the property that
17 will directly abut this windowless wall.

18 We'll talk about the first part of the project,
19 the addition, then go to the second part, which is the
20 carriage house. As you can see, this is the addition we're
21 proposing. It's kind of continuing the nature of the light
22 brick, continuing the nature of the facades. Here are the
23 elevations. One thing to note is that we plan to keep the
24 roof height to keep the continuous feel of it.

25 We're not exceeding any height limits. Then

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1 moving along to the plans, let's quickly go through these.
2 Now we're into the carriage house. When we sat down to look
3 at how we were going to design this carriage house, we
4 actually did a lot of research about what currently exists
5 in the, I would say, four to five-block radius and alley
6 structures.

7 So we went out and researched all the different
8 kind of alley structures to see what kind of things existed.
9 We found that there's actually a strong pattern for alley
10 structures in the area, and not only that, but two-story
11 alley structures. Here are some of the pictures I'm calling
12 out. A lot of these structures are two-story alley
13 structures that either exist currently on ten-foot-wide
14 alleys, or their access is through a ten-foot-wide alley,
15 then goes to a 15-foot-wide alley.

16 VICE CHAIR HART: And Ms. Downey, you're the blue
17 --

18 MS. DOWNEY: Yes, our site is right here, yes.
19 I should point out that the red rectangles represent the
20 two-story brick alley structures. The lighter pink
21 rectangles represent one-story brick structures. Then the
22 purple rectangles represent two-story accessory structures
23 that are non-brick.

24 There was a study, I think, done in 2014 about
25 alley structures, so we've taken some of these pictures. I

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1 believe it was either from HPRB or HPO. Together with the
2 current conditions of alley structures around us, and then
3 with that guideline, we pulled together some common features
4 that were found in a lot of these structures to come up with
5 our proposed project.

6 So essentially what we're proposing is kind of
7 continuing this very traditional front, so that it matches
8 with the context, with three windows, and then the carriage
9 doors, and then move along to the back, it's something a
10 little more playful. What I want to point out with the
11 elevations is that we're not asking for height relief. We
12 are going to completely comply with the height requirement.
13 The plan, so, the first level will be a garage. The second
14 level is a very small space. Because it has a shower and a
15 cooktop, it will be considered a dwelling unit. And so that's
16 essentially what we're asking relief from. The three special
17 exceptions that we're asking for are -- the first one is the
18 exception from E § 5004.1, which is the requirement that an
19 accessory structure be set back 12 feet from the center line
20 of the alley.

21 We're asking an exception from U § 301.1(e),
22 which is the requirement that a dwelling unit in a new
23 accessory structure not be permitted five years after the
24 building permit, if it was constructed after 2013. And then
25 the third exception is the 60 percent lot occupancy. We're

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1 requesting that we -- what we're proposing is 4.1 percent
2 over the 60 percent, so a 64.1 percent lot occupancy.

3 Then lastly, we're asking for a variance, and that
4 is because this will be considered a primary dwelling unit,
5 and it's on a ten-foot alley, which the minimum requirement
6 is 15 feet. Moving along into how we satisfy the three-prong
7 test for the special exceptions. As you all know, the first
8 test is how is it in harmony with the general purpose and
9 intent of zoning regulations and maps?

10 One of the first tenets of the primary provisions
11 for RF zone is that it recognize and reinforce the importance
12 of neighborhood character, walkable neighborhoods, housing
13 affordability, aging in place, preservation of housing stock,
14 improvements to the overall environment, and low and moderate
15 density housing to the overall housing mix and health of the
16 city. What we're proposing, the proposed improvements
17 actually -- we believe they will enhance the neighborhood and
18 alley environment. The treatment of the alley facing facades
19 reference the historic context and continues the historic
20 character of the Dupont Circle neighborhood.

21 We have support from the ANC, HPRB, and the Dupont
22 Circle Conservancy, which reinforces the project as
23 positively contributing to the neighborhood character. The
24 addition of a unit adds to the housing stock, while also
25 retaining the low to moderate density of the neighborhood.

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1 The existing residential use will be maintained,
2 and there's a general provision in the RF-2 zone that allows
3 for two dwelling units. We are satisfying the two dwelling
4 units and not asking for any more. The second part of that
5 test, which is the relief will not adversely affect
6 neighboring properties, the adjacent neighbors are in support
7 of the project.

8 With the setback relief, the carriage house
9 alignment with adjacent structures minimizes impact on the
10 neighbors. We believe the project will improve quality of
11 the alley and the surrounding environment. Then the third
12 part of the test, which is the project meets special
13 exception requirements set out in Subtitle E, and there's
14 five of those. The first one, the light and air to
15 neighboring properties should not be unduly affected. The
16 proposed location of the alley building as adjacent to
17 existing accessory structures has the least impact on light
18 and air. Additionally, the proposed location of the house
19 addition, as adjacent to a windowless wall, has the least
20 impact on light and air.

21 No. 2, the privacy of use and enjoyment of
22 neighboring property should not be unduly compromised. The
23 proposed structures will abut existing windowless walls,
24 which have the least impact on neighbors, as mentioned above,
25 and that we plan to preserve, re-establish the current visual

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1 privacy screens, i.e. the fence and plantings between the
2 properties.

3 No. 3, the addition, together with the original
4 building, as viewed from the street, alley, and other public
5 ways, shall not substantially visually intrude upon the
6 character, scale, and pattern of the houses along the subject
7 street frontage. The project cannot be seen from 15th
8 Street.

9 The project continues the historic tradition of
10 neighborhood. The proposed alley structure includes facade
11 details typical of traditional alley buildings. It should
12 be noted that HPRB voted to approve the project, indicating
13 they believe the project to be consistent with the
14 architecture of the neighborhood, and the project will
15 aesthetically enhance the alley and improve its current
16 conditions. No. 4 is provide graphical representations,
17 which we've already gone through. Then No. 5, the BZA may
18 approve lot occupancy of all new and existing structures, up
19 to a maximum of 70 percent. Our requested lot occupancy is
20 64.1 percent, which is under the 70 percent that this Board
21 is allowed to grant.

22 Moving along to the three-part test for the area
23 variance, No. 1, the applicant proves that as a result of the
24 attributes of the specific property described in Subtitle X
25 § 1000.1, the strict application of a zoning regulation would

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1 result in exceptional and undue hardship upon the owner of
2 the property.

3 Existing conditions do not satisfy the zoning
4 requirements, as the alley is currently ten foot wide, and
5 there are currently existing buildings that confine the alley
6 to ten feet at its entrance from Swan Street. Additionally,
7 setting back the accessory structure to attempt to comply
8 with the 15-foot width will have greater impacts on light and
9 air and will eliminate the opportunity for alignment with
10 current adjacent alley structures.

11 No. 2, relief can be granted without substantial
12 detriment to the public good. The relief asked has little,
13 if any, impact on the public, as we believe -- although it
14 might not be -- it's a technical issue that we believe can
15 be worked out between planning officials and the owner. The
16 project satisfies the intent of the law. The alley structure
17 is in a close proximity to a fire hydrant and the street,
18 which enables easy access to fire and emergency vehicles.
19 We'll go through a diagram shortly that explains that.

20 CHAIRMAN HILL: Can I interrupt you just one
21 second?

22 MS. DOWNEY: Yes.

23 CHAIRMAN HILL: You keep saying it's a minor
24 technical issue that can be worked out between the owner and
25 the -- what are you talking about?

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1 MS. DOWNEY: We believe because it's only -- it's
2 impacting the one person, the owner of the lot, it's a
3 technical issue. So I've been corrected; it's not a minor,
4 but I can't change the presentation.

5 CHAIRMAN HILL: That's okay; I'm just trying to
6 understand what you're talking about.

7 MS. DOWNEY: What I've told is that the spirit of
8 the law really is about a -- is a fire and safety thing. We
9 believe it's not affecting -- it's affecting the owner of the
10 lot and the city.

11 CHAIRMAN HILL: If the owner of the lot isn't
12 worried about a fire, then it's okay? That's okay. Just
13 keep going. Keep moving forward.

14 MS. DOWNEY: Thirdly, we believe enhancing the
15 neighborhood is a benefit to the public. Granting this
16 variance will allow the applicant to deliver a project that
17 drastically improves the character of the alley, which is a
18 benefit to the community. No. 3, the relief is in harmony
19 with the general purpose and intent of the zoning regulations
20 and maps.

21 The project is line with the greater goal of the
22 RF zone, which permits two dwelling units to exist on one
23 lot. The variance will allow for the creation of an
24 additional unit, which adds to the housing stock. The scale
25 of the proposed project is consistent with the neighborhood,

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1 is in keeping with the preference for low to moderate
2 density.

3 A pattern of alley structures has already been
4 established in the neighborhood, some of which are located
5 on ten-foot-wide alleys. Additionally, many of the alley
6 structures appear to have dwelling units. Relief is
7 consistent with the overarching rule that allows residential
8 dwellings to exist in alley structures. Lastly, a precedent
9 has been established by this Board to grant this type of
10 relief, which was Case 19618. And I wanted to add that that
11 was granted as a special exception. Then moving along, here
12 is the --

13 CHAIRMAN HILL: You don't remember the title of
14 19618, do you?

15 MS. DOWNEY: The person was Gillette Wing. No,
16 I don't.

17 CHAIRMAN HILL: That's okay. Please continue.

18 MS. DOWNEY: Here's the quick fire safety diagram,
19 which currently, I've showed and working with FEMS. We're
20 showing that the fire hydrant's right here. It's roughly 230
21 feet of distance, maybe even closer, from the fire hydrant
22 to the property. And that also, the path from the edge of
23 the lot, the farthest edge, so this one right here, to the
24 road is 83 feet. It's roughly 65 feet from here.

25 Then lastly, I just want to talk about the

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1 neighborhood outreach. Both the applicant and the architect
2 have conducted door-to-door knocking to inform nearby
3 neighbors. The project has ten letters of support, including
4 a letter of support from one adjacent neighbor. The other
5 adjacent neighbor has given us informal support, in the form
6 of an email.

7 We presented to ZPD ANC on 4/4, and the at-large
8 ANC on 4/11. The project receives ANC support. We presented
9 to the Dupont Circle Conservancy on 4/10, and the project
10 received their support. Lastly, the project has received
11 HPRB support. And, that's the end.

12 CHAIRMAN HILL: Okay, thank you. It's Gillette
13 Wing. Does the Board have any questions for the applicant?
14 Please, go ahead.

15 COMMISSIONER MAY: I think the area variance --
16 sorry, the area special exception having to do with the 64
17 percent lot occupancy, that's not a big deal. The other
18 one's not a big deal. I think the addition to the house,
19 there's really not much question in my mind about that. I
20 do have questions about the variance relief.

21 First of all, just so everyone understands the
22 context of this, the whole issue of building in alleys was
23 a big topic in the zoning rewrite. The original proposal we
24 got was something like you'd have to be on a 20-foot alley
25 in order to have a dwelling unit. We pushed back on that.

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1 The Zoning Commission pushed back on that a bit and managed
2 to come up with the 15-foot rule.

3 I remember asking specifically for that, talked
4 to fire and EMS about what the distance could be because you
5 can have hoses, and they can go a long distance, and you can
6 fight fires. Certainly, we have alley dwellings right now.
7 What's the safe circumstance that they would find acceptable?
8 It came back at 15 feet and within 300 feet of a hydrant or
9 something like that, I forget exactly what we got back from
10 them.

11 But the rules were written that way, and they were
12 written that way for a reason that had to do with being able
13 to fight fires, regardless of whether it was a principal
14 structure or an accessory structure. Now, it may have been
15 written up as applying to a principal structure, and there
16 may be -- it may be that you can make the case that this
17 should be a variance. It certainly would be helpful to have
18 the fire and EMS report on this. I think that the real --
19 the thing I still struggle with, and I'm not sure how you
20 will get to it, is the first prong of the variance test.

21 It's not an exceptionally unique property. There
22 are many properties on the row that are on the ten-foot
23 alley. The uniqueness of it or the exceptional circumstance
24 of it is -- does not cause a hardship, except to the extent
25 that you want to have an apartment there. Basically, your

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1 argument so far is that well, we need an exception because
2 it's a ten-foot alley, and the reason for it is because it's
3 a ten-foot alley. I'm not getting it yet. I think that --
4 I don't know what the circumstances were under 19168,
5 certainly going deeper on that to find out what the reasoning
6 was for it, not that it will prevail here because not
7 everything is actually -- sets a precedent in this
8 circumstance.

9 And I just -- it's a hard thing to really
10 demonstrate. Maybe because if you did not have a kitchen and
11 a bathroom, it would not be considered a dwelling unit and,
12 therefore, it's just a second-story garage or something like
13 that. I don't know. I'm not sure what the rule needs to be
14 in that circumstance. This is particularly key because when
15 we took this up, we did not consider the possibility --
16 certainly the possibility of things like this existed at that
17 time. We didn't consider whether this should be something
18 that could be taken up as a special exception. Because it's
19 much easier to demonstrate something on a special exception
20 basis. It's currently a variance, I don't know how you clear
21 that.

22 This is not really a question. This is just --
23 these are the things that I think you're going to need to
24 prove because you're going to have to come back, and the
25 Office of Planning is going to have to give us, I think, a

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1 supplemental report on that question. There are other things
2 that I do have questions about. One is you say that you have
3 HPRB approval. You have a final approval for them?

4 MS. DOWNEY: Mm-hmm.

5 COMMISSIONER MAY: Is that based on the drawings
6 that you gave us?

7 MS. DOWNEY: Yes.

8 COMMISSIONER MAY: So they didn't look at color,
9 and they didn't look for realistic renderings of the brick
10 or anything like that?

11 MS. DOWNEY: No. It's delegated to the staff
12 level now, so I'll be working with the staff as we make the
13 material selections.

14 COMMISSIONER MAY: But you did originally present
15 to HPRB?

16 MS. DOWNEY: Yes, we presented a light brick to
17 them.

18 COMMISSIONER MAY: That's surprising, too, because
19 all the other brick that I saw was darker.

20 MS. DOWNEY: It surprised me, too. That was their
21 direction, to go with light brick.

22 COMMISSIONER MAY: Wow, that's really weird. You
23 had a presentation to the board, itself, and they said this
24 is okay, and they delegated final to staff?

25 MS. DOWNEY: It went on the consent --

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1 COMMISSIONER MAY: It went on consent. Okay.
2 They didn't actually talk about it. So I am an architect, and
3 I have dealt with detailing brick buildings. I can tell you
4 there's some things in that rendering that are either not
5 shown, or they are not correct. I think the things that --
6 this is not really relevant to the relief, so I'll just be
7 very quick about it. The very narrow arched opening, you
8 can't do that without doing a shaped brick. Shaped brick is
9 very expensive. You know that.

10 MS. DOWNEY: Yes.

11 COMMISSIONER MAY: Okay, good. The second one,
12 the big opening, is that actually going to be a brick arch?
13 Because it's just shown with brick leading up to it.

14 MS. DOWNEY: It would have to be a shaped opening.

15 COMMISSIONER MAY: You'd have to do a brick arch
16 over that whole thing.

17 MS. DOWNEY: Yes, I'm aware, and that should be
18 updated, and it's not.

19 COMMISSIONER MAY: I just wanted to make sure that
20 you were thinking that way because the way you're showing it
21 right now, you couldn't actually build it without a really
22 complex piece of steel that you probably don't want to buy.

23 MS. DOWNEY: Architect to architect, I appreciate
24 it.

25 COMMISSIONER MAY: Okay, so the last thing I'll

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1 point out -- and this, again, not relevant to the case, but
2 relevant to the utility of this property, and maybe relevant
3 to your final approval at HPRB, is that your door to the
4 garage is too narrow. Unless you have a smart car, you're
5 not going to be able to get a car into that garage off a
6 ten-foot alley without going back and forth and back and
7 forth 12 times, unless you're assuming that you can pull into
8 the parking space across the street -- across the alley.

9 MR. SAFRAN: I can speak to that. We set up cones
10 to try to make sure that it was going to be functional. We
11 have the benefit of the crosshatch of the alley coming pretty
12 directly into our property.

13 COMMISSIONER MAY: It's that close to that cross?

14 MR. SAFRAN: Yes.

15 COMMISSIONER MAY: I didn't think it was in the
16 plan. Can you show that on the plan?

17 MR. SAFRAN: Yes.

18 COMMISSIONER MAY: No, that's not close enough.

19 MR. SAFRAN: You take it through the corner. We
20 set up cones.

21 COMMISSIONER MAY: It's not going to work; believe
22 me. I'm on a tight alley right now, and I have a wide garage
23 door. And mine actually is across from a crossing, and that
24 works. But if I had to back in from the other direction,
25 where it's 12 feet, wouldn't ever work, and I have a wide

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1 door. So I think you should look very seriously at making the
2 widest possible door there. That will change your
3 renderings.

4 MS. DOWNEY: Okay, thank you.

5 COMMISSIONER MAY: Then, of course, you have to
6 think about that with HPRB.

7 MS. DOWNEY: Yes.

8 COMMISSIONER MAY: That's it for my mostly
9 comments. Thank you.

10 CHAIRMAN HILL: Okay. Anyone else?

11 (No response.)

12 All right. Okay.

13 MEMBER WHITE: My only comment was I kind of
14 concur with Mr. May regarding the area-of-variance test, the
15 first prong. That's one that I'm definitely going to need
16 a little help on to feel comfortable with making sure that
17 you've met that first prong as part of the criteria for area
18 of variance.

19 CHAIRMAN HILL: Okay. Mr. Safran, I'm just
20 curious, it's your home?

21 MR. SAFRAN: That's right.

22 CHAIRMAN HILL: How long have you been there?

23 MR. SAFRAN: Two years.

24 CHAIRMAN HILL: Oh, two years.

25 MR. SAFRAN: Three years. Three years.

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1 CHAIRMAN HILL: Three years. What are you guys
2 going to do? I'm just curious. What are you guys going to
3 do with the accessory structure?

4 MR. SAFRAN: The accessory structure, yes. So,
5 in the short-term I think it will be an affordable unit that
6 we'll rent out to somebody. Help us defray the cost of the
7 mortgage. Over time it would be nice to have as like an in-
8 law suite. It's just my wife and I. So, we don't have kids
9 now, but it will be, hopefully, a place for in-laws. So,
10 very concerned about fire safety, obviously --

11 CHAIRMAN HILL: Burnout.

12 (Laughter.)

13 MR. SAFRAN: -- depending on how you feel about
14 your in-laws.

15 (Laughter.)

16 So, yes, it could be used as a guesthouse or for
17 a in-law suite or sort of a home office. But, in the interim
18 term, and the reason why we wanted to pursue it as an extra
19 unit, I think sort of what we're excited about is being able
20 to have a very affordable place to live that really helps us
21 defray the cost of the mortgage.

22 CHAIRMAN HILL: Okay. Great. Just curious.

23 MR. SAFRAN: Yes.

24 CHAIRMAN HILL: Nice doing that affordable unit
25 in there, too. That's great. All right.

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1 MR. SAFRAN: My understanding, that was part of
2 the intentional law, which is also why I am sort of
3 personally excited about the project.

4 CHAIRMAN HILL: Sure, sure, sure.

5 Office of Planning?

6 MS. VITALE: Again, Elisa Vitale with the Office
7 of Planning.

8 I'm not sure the best way to do this. I guess we
9 can kind of dispense with the relief related to the addition.
10 As stated in the OP report, we recommend approval of the
11 special exception relief for E404.1. That's related to the
12 lot occupancy, to permit the 64.1 percent.

13 I think -- and Commissioner May touched on this
14 -- I think the way that the relief came in, it could be that
15 accessory building, they obviously are requesting relief from
16 the centerline setback. Were that accessory structure not
17 proposed for use as a dwelling unit, if it was just a garage
18 and, then, additional space on the second level, I believe
19 DCRA, once you have a full bathroom and, then, cooking
20 facilities, it becomes a dwelling unit. So, as we saw in the
21 plans provided, the subject property and what is being
22 proposed does fall under DCRA's contemplation of a dwelling
23 unit.

24 So, I think we wouldn't have an issue, and we
25 indicated as much, with the alley centerline setback relief.

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1 I think that would be required, regardless, for an accessory
2 structure that is only 5 -- it's a 10-foot alley, so they're
3 only proposing 5 feet from the centerline. So, I think we
4 would recommend approval of that relief.

5 The other piece of relief that's been requested
6 at this time would be from U301.1(e). That's the use
7 requirement to permit a dwelling unit in an accessory
8 building constructed after 2013 for immediate occupancy. We
9 also recommended approval of that special exception relief.

10 The new issue is the variance relief from the
11 access requirements, again, for a dwelling unit in an
12 accessory building on an alley that's not 15 feet in width
13 and within 300 feet of a street or a 24-foot alley. I think
14 the Applicant is beginning to make the case for that variance
15 relief. Again, as we have stated previously, I don't think
16 OP can recommend approval of that without documentation from
17 FEMS that they support that relief. And I do think that the
18 Applicant would need to provide additional justification.
19 This is an RF zone. Two dwelling units are permitted as a
20 matter of right. I don't think the Applicant has yet
21 addressed why that second dwelling unit couldn't go in the
22 principal structure as a basement unit. I do think that
23 would need to be addressed as part of their variance
24 justification in this case, you know, why that second unit
25 should be located in the accessory structure. So, I think

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1 it would be important to hear the Applicants' kind of
2 justification for the variance and have that more fully
3 developed. And we would certainly be happy to provide a
4 supplemental report once the Applicant submits additional
5 information. Then, obviously, that additional information
6 should include a statement from FEMS.

7 I'm happy to answer questions.

8 CHAIRMAN HILL: And I'll turn it over to the
9 Board.

10 Just to be clear, so if it were not a residential
11 unit, it didn't have the bathroom or the kitchen, they
12 wouldn't need the variance?

13 MS. VITALE: They would still -- as I said, it's
14 a little bit nuanced. They would no longer need relief under
15 U301.1(e) because they wouldn't be proposing a dwelling unit
16 in a newly constructed accessory building, but they would
17 need the E5004.1 for alley centerline setback. So, they
18 would still need that relief.

19 And that actually reminds me, Case 19618, I
20 checked quickly, and I believe that was an existing accessory
21 building, not a new accessory building. So, again, it's a
22 bit of a different situation.

23 CHAIRMAN HILL: But, again, they wouldn't need a
24 variance? I'm just trying to --

25 MS. VITALE: That's correct, they would not need

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1 a variance if it was not a dwelling unit in that accessory
2 structure.

3 CHAIRMAN HILL: Right. Yes, and I did look back
4 at that other one. It was an existing building that was
5 there, but still --

6 Okay. Does anyone have any questions for the
7 Office of Planning?

8 COMMISSIONER MAY: I've forgotten, was there a
9 requirement on the 15-foot alley circumstance that the
10 dwelling unit be sprinklered? Was that one of the things
11 that we had said in --

12 MS. VITALE: We did not include that as a
13 provision. I know that's come up before the Board in some
14 other cases. Most recently, I think everyone agreed that
15 that would be something that would be caught at the time of
16 building permit as a Building Code issue.

17 COMMISSIONER MAY: Right.

18 MS. VITALE: And that that would be left to
19 Building Code officials at the time of permit review.

20 COMMISSIONER MAY: Okay. Yes, I know it has been
21 part of the discussion. I just didn't remember where it
22 landed. Certainly, it may be something that FEMS may want
23 to specify, if they were going to be supportive of it.

24 CHAIRMAN HILL: I thought that it was non-
25 sprinklered that last time? That was also an in-law suite.

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1 VICE CHAIR HART: Yes, there was a discussion that
2 we had regarding sprinklers. It was, as Ms. Vitale said,
3 that I think that we ended up on it that it --

4 COMMISSIONER MAY: And I was talking about the
5 Zoning Commission's discussion of the rule.

6 CHAIRMAN HILL: Oh, no, no, I knew that.

7 COMMISSIONER MAY: Yes. Okay.

8 CHAIRMAN HILL: Okay. Anyone else from the Office
9 of Planning?

10 (No response.)

11 Okay. Does the Applicant have any questions for
12 the Office of Planning?

13 MS. DOWNEY: No.

14 CHAIRMAN HILL: Okay. Is there anyone here from
15 the ANC?

16 (No response.)

17 Is there anyone here who wishes to speak in
18 support?

19 (No response.)

20 Is there anyone here who wishes to speak in
21 opposition?

22 (No response.)

23 Okay. Ms. Downey? Downey?

24 MS. DOWNEY: Yes, Downey.

25 CHAIRMAN HILL: Sorry. Downey. So, I guess I

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1 think we're going to actually have a continued hearing with
2 this.

3 MS. DOWNEY: Okay.

4 CHAIRMAN HILL: Oh, I mean, and a supplemental
5 report from the Office of Planing, of course, in terms of how
6 the variance standard is being met. I think that there is
7 some question as to that first prong, as to how you're
8 meeting that first prong of the test.

9 You mentioned kind of the prongs as you were going
10 through this. The only one you have is the variance in terms
11 of the prongs. All the other ones were special exceptions.
12 But I guess if you could kind of converse with the Office of
13 Planning and see what their thoughts are in your discussion.

14 And then, I guess if we can get something from
15 FEMS as well, and then, if you could, I guess, maybe giving
16 us some drawings that accurately reflect what you're actually
17 trying to do?

18 MS. DOWNEY: Uh-hum.

19 CHAIRMAN HILL: And that's in terms of if there's
20 any changes from what you are doing now to what you might end
21 up doing based upon some discussions that you've heard here,
22 because we would just like to hear, see whatever it is that
23 finally we're approving.

24 MS. DOWNEY: Okay.

25 CHAIRMAN HILL: And I think that's it. When do

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1 you think you might be able to do all of this?

2 MS. DOWNEY: A few weeks or a month?

3 CHAIRMAN HILL: Okay.

4 MS. DOWNEY: I don't know what the timeline is.

5 CHAIRMAN HILL: No, I'm trying -- so, you don't
6 have anything from FEMS yet?

7 MS. DOWNEY: No.

8 CHAIRMAN HILL: But you say you're supposed to get
9 something? You've already talked to them?

10 MS. DOWNEY: I talked to them yesterday.

11 CHAIRMAN HILL: Okay.

12 MS. DOWNEY: And they said they would get me
13 something Friday.

14 CHAIRMAN HILL: Okay. Okay. Assuming you get
15 something from FEMS before you talk to the Office of Planning
16 again --

17 MS. DOWNEY: Okay.

18 CHAIRMAN HILL: And then, we would like a
19 supplemental report from the Office of Planning. So, maybe
20 if we do put this on the agenda for a month from now, then
21 maybe if you get whatever you need, get together with the
22 Office of Planning, and maybe we can get a supplemental
23 report from the Office of Planning a week before the hearing,
24 Mr. Moy? I always forget, have people have time to respond,
25 right? Like can you tell me the dates if we do this a month

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1 from now?

2 Peter, when are you back? I mean, Commissioner
3 May.

4 SECRETARY MOY: June 13th. I'm sorry.

5 CHAIRMAN HILL: June 13th. Okay, June 13th. June
6 13th.

7 So, would that be okay with you guys, June 13th?

8 MS. DOWNEY: Yes.

9 CHAIRMAN HILL: Okay. All right. Okay. Then,
10 we'll put you back on for June 13th, so that Commissioner May
11 will be here.

12 SECRETARY MOY: Did the Board discuss a date when
13 you would want the filings to be submitted into the record?

14 CHAIRMAN HILL: I mean, however we get enough
15 time, then, to review them for June 13th. If you want to
16 work back or tell me what you think, Mr. Moy, in terms of I
17 know that they, the Applicant says that they'll be able to
18 get whatever they need from FEMS by Friday. Then, they can
19 work with the Office of Planning.

20 SECRETARY MOY: Okay. Let's give it Monday, June
21 the 4th.

22 MS. DOWNEY: Okay.

23 SECRETARY MOY: Is that possible?

24 MS. DOWNEY: Yes, if we get from FEMS by Friday,
25 as they say.

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1 SECRETARY MOY: Okay, done.

2 CHAIRMAN HILL: Monday, June the 4th, for what,
3 Mr. Moy? I'm sorry.

4 SECRETARY MOY: Submission from the Applicant.

5 CHAIRMAN HILL: Okay. Got you.

6 SECRETARY MOY: Of course, it hinges on --

7 CHAIRMAN HILL: So, Monday, June the 4th, then we
8 get something from the Office of Planning the same day? No?
9 Right?

10 MS. VITALE: We would need time to review whatever
11 supplemental information is submitted.

12 SECRETARY MOY: Let's say Monday, June 11th. Or
13 do you want something sooner than that, Mr. Chair?

14 CHAIRMAN HILL: No, no, I'm just looking at the
15 Office of Planning. So, we would get a report? So, Monday,
16 June the 4th, we would get stuff from the Applicant. June
17 the 11th, we would get something from the Office of Planning?
18 And then, that only gives three days before the hearing?

19 SECRETARY MOY: Yes, it's a continued hearing.

20 CHAIRMAN HILL: Right. So, then, does anyone need
21 to have any time to respond? I thought there was seven days.
22 I always get confused about it. No?

23 SECRETARY MOY: Yes, that would be seven.

24 CHAIRMAN HILL: Okay. So, could you repeat
25 whatever the days were, Mr. Moy?

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1 SECRETARY MOY: Submission from --

2 MS. GLAZER: The Applicant may want time to
3 respond to OP's supplemental.

4 SECRETARY MOY: Yes, it is a continued hearing.
5 I mean, you could do it that way if you like, or the
6 Applicant could respond at the time of the hearing.

7 MS. DOWNEY: Well, the Applicant, I believe, hopes
8 to work with OP even before June 4th.

9 SECRETARY MOY: Yes.

10 MS. DOWNEY: So that, hopefully, we know
11 responses.

12 CHAIRMAN HILL: I love a big calendar right here.
13 I mean, I'm just trying to get back to Mr. May here on the
14 13th. So, whatever days you tell me, Mr. Moy, I'm going to
15 say yes.

16 SECRETARY MOY: Okay. The Applicants are smiling.
17 So, I think that works for them.

18 (Laughter.)

19 CHAIRMAN HILL: Okay. And I apologize. Could you
20 repeat that again for me?

21 SECRETARY MOY: All right. Submission from the
22 Applicants by Monday, June 4th. Of course, it could be
23 sooner, right?

24 MS. DOWNEY: Yes. Yes.

25 SECRETARY MOY: And then, the continued hearing

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1 on June 13th.

2 CHAIRMAN HILL: And the Office of Planning is
3 going to give us stuff on Monday?

4 SECRETARY MOY: The 11th.

5 CHAIRMAN HILL: Which is a Monday?

6 SECRETARY MOY: Which is a Monday.

7 CHAIRMAN HILL: Can we have it on Friday for the
8 Office of Planning? Or is that too tight? Oh, then, they've
9 got to -- okay, never mind. All right. Never mind. Never
10 mind. So, Monday, the 11th, it is. Okay. Right. Okay?
11 So, everybody understands?

12 All right. So, other than that, we're going to
13 close the hearing, except for the information that we
14 requested.

15 MS. GLAZER: No, it's a continued hearing. So,
16 the record's not closed yet.

17 CHAIRMAN HILL: I always love that. I always love
18 you to tell me things that I've done wrong.

19 So, okay, yes, what they said.

20 All right. Okay. So, we'll see you guys on the
21 13th of June.

22 Okay. We'll take a quick break. We'll go take
23 a quick break.

24 MS. DOWNEY: Thank you.

25 MR. SAFRAN: Thank you.

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1 CHAIRMAN HILL: Thank you.

2 (Whereupon, the foregoing matter went off the
3 record for lunch at 1:53 p.m. and went back on the record at
4 2:39 p.m.)

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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 2:39 p.m.

3 CHAIRMAN HILL: Okay. Actually, we are going to
4 take a longer break because we are going to try to grab
5 something real quick. So, I'm going to say 2:20. Okay?

6 (Whereupon, the foregoing matter went off the
7 record at 1:53 p.m. and went back on the record at 2:39 p.m.)

8 CHAIRMAN HILL: Okay, Mr. Moy, whenever you'd
9 like.

10 SECRETARY MOY: Thank you, Mr. Chairman.

11 The hearing is reconvened, and it's approximately
12 2:42 in the afternoon.

13 The next case application is No. 19740, of
14 Francisca Vigaud-Walsh, as amended for a special exception
15 under Subtitle F, Section 5201, from the lot occupancy
16 requirements of Subtitle F, Section 304.1.

17 This would construct a partial second-story rear
18 addition to an existing principal dwelling unit in a RA-2
19 zone at premises 2241 13th Street, Northwest, Square 271, Lot
20 232.

21 CHAIRMAN HILL: Thank you, Mr. Moy.

22 Good afternoon. I'll let you plug in there.

23 Okay. Is that what you're looking for? No?

24 MR. CRUICKSHANK: A Mac is what I'm more
25 comfortable with.

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1 CHAIRMAN HILL: Oh, a Mac? Yes. No, we don't do
2 that.

3 (Laughter.)

4 All right. If you guys could please introduce
5 yourselves?

6 MS. VIGAUD-WALSH: My name is Francisca Vigaud-
7 Walsh, and I'm the Applicant.

8 MR. CRUICKSHANK: My name is Neil Cruickshank.
9 I'm the architect.

10 CHAIRMAN HILL: Apologies. Cruickshank?

11 MR. CRUICKSHANK: Cruickshank.

12 CHAIRMAN HILL: Cruickshank.

13 MR. CRUICKSHANK: That's how my dad pronounced it.

14 (Laughter.)

15 CHAIRMAN HILL: Am I pronouncing wrong?
16 Cruickshank. Cruickshank.

17 MR. CRUICKSHANK: Cruickshank.

18 CHAIRMAN HILL: Cruickshank. Okay. Cruickshank.

19 Okay, Mr. Cruickshank, let's see, you've been
20 here, obviously, quite a few times. And I apologize, I'll
21 take a more realistic approach as to how much time lunch is
22 going to take next time. But I'm going to go ahead and let
23 you walk us through what it is you're trying to do in terms
24 of your application, and then, also, the standard in which
25 you're meeting the criteria for us to grant the relief.

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1 I'm going to go ahead and put 15 minutes on the
2 clock, just so we know where you are. And you can begin
3 whenever you'd like.

4 MR. CRUICKSHANK: Okay. Good afternoon.

5 Essentially, we are requesting a special exception
6 for a rear yard addition which turned out to be -- well, at
7 first, it was the memo labeled it a variance because the
8 owner has an existent pagoda in her backyard which apparently
9 counts as part of the lot occupancy, based on a memo issued
10 by the Zoning Administrator. Once we discovered that, with
11 the help of the Office of Planning, we revised the project
12 to make the footprint of the addition just 70 percent of the
13 lot, so that we could comply for this special exception
14 requirement.

15 So, just to walk you through the proposed addition
16 real quick, it's a second-floor addition over an existing
17 rear porch/mechanical room. Our addition is going to expand
18 over that rear porch by approximately a foot 6, plus or
19 minus. I can't see the numbers on here. And we're going to
20 support that off of columns, and then, create a rear room and
21 access to the rear room adjacent to an existing bathroom.

22 The colored-in area shows the extent, the full
23 extent, of the proposed addition. It's a very modest
24 addition. Let me just show you the site plat. And so, that
25 shows the full extent of the addition, the location of the

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1 existent pagoda, and the bottom lefthand corner of the plat
2 sheet shows the lot coverage that we're asking for the
3 relief.

4 I feel we have met the requirement of light on
5 here and being in harmony with the rest of the neighborhood.
6 Along that alley, there are several additions -- I didn't
7 work with any pictures of those -- that are very similar, but
8 it was in some of the pictures that we uploaded to the IZIS
9 website.

10 Francisca was very proactive and was able to get
11 probably 20-plus of her neighbors to sign an approval letter.
12 She shared the project with them, including her two adjacent
13 neighbors and the neighbors right behind her across the
14 alley.

15 We believe the proposed addition will not in any
16 harmful way affect the air and light of those adjacent
17 neighbors, and it will fit harmoniously with the rest of the
18 neighborhood. The neighboring properties, their use will not
19 be in any way adversely affected. I mean, it still remains
20 a single-family residence. All it gives is an extra room to
21 Francisca in her house to improve her property value.

22 We believe, because we have met the requirements
23 of the proposed addition being in harmony and that there is
24 no affected light and air of the neighboring properties, that
25 this project should be approved by the Board.

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1 That's it.

2 CHAIRMAN HILL: Okay. Thank you.

3 I just have a real quick question. Does it kind
4 of overhang there from what's underneath? There's a little
5 bit of an overhang?

6 MR. CRUICKSHANK: Yes. It's like about a 2-foot
7 6 overhang. That's going to be supported on its own columns.

8 CHAIRMAN HILL: Okay. Okay. Does the Board have
9 any questions for the Applicant?

10 COMMISSIONER MAY: So, immediately to the north,
11 I guess, of this, there's another house that has a dog leg.

12 MR. CRUICKSHANK: Right.

13 COMMISSIONER MAY: And it has some windows that
14 are going to be 5 feet away from this addition, right?

15 MR. CRUICKSHANK: Correct.

16 COMMISSIONER MAY: And I thought I saw -- maybe
17 I got a little confused about the addresses -- but did I see
18 a letter in the record from the owner of that property?

19 MR. CRUICKSHANK: Yes, sir.

20 COMMISSIONER MAY: So, they're completely fine
21 with it?

22 MR. CRUICKSHANK: Yes.

23 COMMISSIONER MAY: Okay.

24 CHAIRMAN HILL: Okay. May I turn to the Office
25 of Planning?

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1 MS. FOTHERGILL: Good afternoon.

2 For the record, I'm Anne Fothergill with the
3 Office of Planning, and we rest on the record in support of
4 the application and are happy to take any questions.

5 CHAIRMAN HILL: Okay. I guess now that I am
6 thinking about it, so your Office of Planning was thinking
7 that C202.2 is also needed? And did the Applicant add that
8 to the -- or do you know what C202.2 is? Okay. Could you
9 explain it real quick, Ms. Fothergill?

10 MS. FOTHERGILL: Sure. I thought we did talk
11 about this. The existing lot occupancy is already over 60
12 percent. And so, that's an existing non-conformity. So,
13 you're doing an addition to a non-conforming structure. And
14 so, the relief for that is Subtitle C, Section 202.2.

15 MR. CRUICKSHANK: I do remember Anne contacting
16 us and explaining that to us. I did not self-certify this
17 project. It was done through the Office of Zoning. I
18 contacted the Zoning Technician who wrote the memo, and he
19 never really responded to it.

20 CHAIRMAN HILL: Okay. So, does that mean that we
21 can add that now?

22 MS. GLAZER: The Applicant can request to amend
23 it to add that provision. I think that is really a technical
24 amendment.

25 CHAIRMAN HILL: Okay. So, you would be

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1 comfortable amending that?

2 MR. CRUICKSHANK: I would.

3 CHAIRMAN HILL: Okay. And the Office of Planning
4 is in support of that?

5 MS. FOTHERGILL: That's right.

6 CHAIRMAN HILL: Okay. Anyone else for the Office
7 of Planning?

8 (No response.)

9 Applicant, have any questions for the Office of
10 Planning?

11 (No response.)

12 Okay. Is there anyone here from the ANC?

13 (No response.)

14 Is there anyone here who wishes to speak in
15 support?

16 (No response.)

17 Is there anyone here who wishes to speak in
18 opposition?

19 (No response.)

20 Okay. Mr. Cruickshank or Ms. Vigaud-Walsh, you've
21 been here all day. Do you have anything you would like to
22 say?

23 You need to speak into the microphone. Sorry.

24 MS. VIGAUD-WALSH: Pardon.

25 Just that I think I have roughly 30 applications

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1 of support, and the ANC voted unanimously in support as well.

2 CHAIRMAN HILL: Okay. Yes. Actually, that does
3 bring up another question. So, I didn't see the ANC report
4 filed. Did I miss that?

5 Okay. So, you're stating for the record that you
6 went to the ANC and they voted in support?

7 MS. VIGAUD-WALSH: I was not able to go
8 personally. I was on travel for work. But Mr. --

9 MR. CRUICKSHANK: Yes. So, I went and presented
10 the case to the ANC, and they voted unanimously to support
11 the project.

12 CHAIRMAN HILL: Okay. You just don't know why
13 they haven't submitted anything?

14 MR. CRUICKSHANK: No.

15 CHAIRMAN HILL: Okay. All right. Well, you're
16 stating on the record that they did vote unanimously.

17 MR. CRUICKSHANK: Correct.

18 CHAIRMAN HILL: Okay. You've got sworn-in earlier
19 this morning?

20 MR. CRUICKSHANK: I did.

21 CHAIRMAN HILL: Okay. All right. Okay. Do you
22 have anything else you would like to add?

23 (No response.)

24 Okay. All right. I am going to go ahead and
25 close the hearing.

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1 (Whereupon, the above-entitled matter went off the
2 record at 2:49 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: Board of Zoning Adjustment

Date: 05-09-2018

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

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