

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

JUNE 27, 2018

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

ROBERT MILLER, Vice Chair

OFFICE OF ZONING STAFF PRESENT:

TRACEY W. ROSE, Sr. Zoning Specialist
ALISON MYERS, Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
JONATHAN KIRSCHENBAUM
MATT JESICK

The transcript constitutes the minutes from the Public Hearing held on June 27, 2018.

CONTENTS

Application No. 19758 - 1505 Neal Street LLC	3
Application No. 19760 - Rhode Island Condos LLC	34
Application No. 19768 CDDC 1735-1737 10th St NW LLC	38
Application No. 19764 4926 Wisconsin Avenue	44
Application No. 19780 79-81 U Street LLC	144
Adjourn	183

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

10:03 a.m.

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VICE CHAIRPERSON HART: And you may call the --
I guess we have a few preliminary matters to --

MS. ROSE: Preliminary matters, yes --

VICE CHAIRPERSON HART: -- to deal with.

MS. ROSE: -- the hearing.

The first would be 19758, application of 1505 Neal Street LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the residential conversion requirements of Subtitle U, Section 320.2 to convert the existing principal dwelling unit into a seven-unit apartment house in the RF-1 Zone at premises 1505 Neal Street N.E., Square 4072, Lots 48 and 47.

There are two preliminary matters regarding this case. First, the Applicant is requesting a postponement. And second, there are three party status requests filed in this case. The Applicant has also filed opposition.

VICE CHAIRPERSON HART: Okay. So, welcome, everybody. If you could, provide your name and address starting from my right. You have to push the button.

MS. BONDS: Terinee Bonds, 1232 Montello Avenue N.E.

VICE CHAIRPERSON HART: B-O-N-D-S?

MS. BONDS: Um-hmm.

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1 MR. WITZKE: Thomas Witzke, 1515 Neal Street N.E.

2 VICE CHAIRPERSON HART: Witzke?

3 MR. WITZKE: W-I-T-Z-K-E.

4 VICE CHAIRPERSON HART: Thank you.

5 MS. MERCHANT-STOUTAMIRE: Roberta Merchant-
6 Stoutamire, 1509 Neal Street N.E.

7 MR. HORGAN: Kevin Horgan, 1501 Neal Street N.E.

8 MS. MOLDENHAUER: Good morning, Vice Chart Hart
9 and members of the Board. Meridith Moldenhauer from the law
10 firm of Cozen O'Connor here on behalf of the Applicant.

11 MR. OLUGBUY: Israel Olugbuy, 1401 New York Avenue
12 N.E.

13 VICE CHAIRPERSON HART: Can you spell your last
14 name, please?

15 MR. OLUGBUY: O-L-U-G-B-U-Y.

16 VICE CHAIRPERSON HART: Thank you.

17 MS. BIGLEY: Alyssa Bigley of the law firm Cozen
18 O'Connor on behalf of the Applicant.

19 VICE CHAIRPERSON HART: Okay. So we have a
20 request for a postponement.

21 MS. MOLDENHAUER: Good morning. I will provide
22 some additional information.

23 So we have been working with a solar company.
24 And, you know, there's opposition from some of the neighbors
25 indicating that, you know, why is this taking so long.

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1 We've actually been working quite diligently. And
2 we've modified the design now going on three to four
3 different times trying to reduce the structure in order to
4 come into compliance and to come under any fibers and impact
5 of the solar panels in the property that abuts to the north
6 of the structure. So that is why we are asking for this.

7 We have been working with the solar company, as
8 well as the architect. Once, obviously, the solar company
9 comes back with information we then have to work with the
10 architect or the third party to then modify the design, then
11 to go back. And it's been an iterative process.

12 And we are obviously not in a position where we
13 have revised plans yet. And so it would not be prudent to
14 move forward until we actually have a set of plans, along
15 with the solar study, that we can then put forth to Office
16 of Planning to review and to move forward with this project,
17 which would be, you know, requesting a special exception for
18 seven units, two of which would be IZ affordable. Thank you.

19 VICE CHAIRPERSON HART: And, Ms. Moldenhauer, the
20 changes to the design would be that you are trying to alter
21 the roof structure to be able to, or the height of the
22 building to be able to reduce the amount of impact to the
23 solar array, I guess, that's nearby.

24 MS. MOLDENHAUER: Absolutely correct. So we had
25 originally proposed to have a three-story structure on top

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1 of the existing two-story structure. Some of the
2 modifications has been to actually reduce and eliminate the
3 third-story structure on top of the original building and to
4 pull that back so it's only a three-story structure on the
5 new addition, as well as pulling in the structure based on
6 work from an arborist, as well as then reducing the parapets,
7 so that way the overall impact on the solar panels and
8 abutting properties.

9 VICE CHAIRPERSON HART: Yes, Ms. White.

10 MEMBER WHITE: One question I had is whether or
11 not you're working on making any reductions in the rear of
12 the building as well, because I noticed in the, what you have
13 now it's going back 50 feet, almost 50 feet from the
14 adjoining property, correct?

15 MS. MOLDENHAUER: Correct, yes.

16 MEMBER WHITE: Not to get into the nuances of the
17 case, but I wondered if that was something that was being
18 looked at as well.

19 MS. MOLDENHAUER: Yes, we do, we are looking,
20 obviously we are requesting a waiver from the rear addition
21 requirements. But we have been also looking at pulling that
22 in, especially based on the root impact of an existing
23 heritage tree. And so we are reducing that and pulling that
24 in so it's not as large of an addition in the rear, yes.

25 MEMBER WHITE: Thank you.

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1 VICE CHAIRPERSON HART: Any other questions?
2 Okay.

3 So we have several folks that have, that are
4 requesting party status. And I understand that. We'll get
5 to that in a minute. But I was trying to kind of figure out
6 about the postponement request.

7 Several of you have -- I'm talking to you all
8 because I know that you've submitted these requests. You
9 have also submitted some documents that are in, I guess in
10 opposition to the postponement? I don't know who wants to
11 speak about it.

12 MR. HORGAN: Yes, I have.

13 VICE CHAIRPERSON HART: Sure.

14 MR. HORGAN: I respect that they are waiting on
15 a solar study. But we met with the Applicant on February 9th
16 in my home.

17 At that time just coincidentally, they bought a
18 property next to somebody who has a 3D model of his house in
19 Google SketchUp. And I immediately within minutes, I showed
20 them. They described to me the depth and the width of what
21 they were going to do verbally. I dropped that into the
22 model.

23 They've known for almost four months what they
24 were doing consistently. At two SMD meetings, at two ANC
25 meeting we have shown them models of what this will do. This

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1 is not a surprise in any shape or form.

2 I have previously submitted a letter in support
3 of their last postponement request because we thought that
4 they would address some of the community's concerns.

5 They have -- you know, while I respect the effort
6 to address the solar issue, the number one concern of our
7 community is the massing and the depth of the rear addition,
8 which is going to damage our rear light.

9 And we have seen no good faith effort whatsoever
10 of them addressing that concern. And now two days before the
11 hearing, we're told, oh, this is a surprise and we don't have
12 time to get a solar analysis. Well, I was able to get a
13 solar analysis in a few weeks. This is not that difficult
14 of a thing.

15 You know, there already has been one change to the
16 drawings. And, you know, I've gone to the expense of having
17 an arborist look at the house, having a solar analysis look
18 at the house.

19 You know, this is a burden. And it's a toll on
20 all of us. And, you know, we don't want this house to remain
21 abandoned. But we don't -- you know, we haven't seen, you
22 know, a good faith effort to address the community's single
23 biggest concern. It has come up time and time again in the
24 two SMD meetings on April 17th, May 19th, and then at the
25 ANC. There's a reason why the ANC voted unanimously in

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1 opposition to this proposal.

2 Now, you know, two days before the hearing to
3 request a postponement we believe that the Board has all of
4 the information at hand already as of this morning to make
5 a ruling. That's why I would oppose their request to
6 postpone this case, sorry.

7 VICE CHAIRPERSON HART: Any questions for Mr.
8 Horgan?

9 MEMBER WHITE: So what is the biggest concern?
10 Is it the rear of the, the proposed rear development of the
11 building?

12 MR. HORGAN: It is --

13 MEMBER WHITE: You said that that was one of your
14 concerns. But I just wanted to just kind of confirm that.

15 MR. HORGAN: Yes, it is the fact that the building
16 fails to meet Subtitle U 320.2(i). It is going to impact our
17 light, our privacy, you know, the airflow.

18 We have detailed shadow studies that show it's not
19 even like a maybe. It is just devastating. It will be
20 devaluing to our properties.

21 When neighbors get home from work right now -- I
22 submitted a presentation that perhaps I'll show it today that
23 shows that even when, you know, Tom arrives home from work,
24 you know, even two hours before sunset, his house, the back
25 of his home is in darkness.

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1 You know, we have -- this is not new information.
2 This has been sent to them, provided multiple times the past
3 four months. And now two days before the hearing they want
4 to postpone one more time. I don't feel there's been a good
5 faith effort.

6 MEMBER WHITE: So Mr. Vice Chair --

7 VICE CHAIRPERSON HART: Sure.

8 MEMBER WHITE: -- we're just dealing with the
9 postponement issue --

10 VICE CHAIRPERSON HART: Yes.

11 MEMBER WHITE: -- not the party status issue at
12 this --

13 VICE CHAIRPERSON HART: Well, we're dealing with
14 the postponement issue because I think it's probably easier
15 to do that, because I don't know, if they make some changes
16 and, in that time period, then we may not be -- I don't know
17 if we're going to be dealing with the, how we're going to be
18 dealing with the party status issue. But it seems like we
19 need to deal with this particular piece first unless the
20 Board has some other, you know, ideas about it.

21 Ms. Moldenhauer, so what date are you again
22 looking at for postponing until?

23 MS. MOLDENHAUER: Well, I would assume that we
24 would most likely be in September. I looked at the Board's
25 July calendar, and it's quite cumbersome.

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1 So I'm assuming that, you know, whatever, you
2 know, Ms. Rose can identify for another date where this Board
3 is together -- I mean, I'm assuming sometime in September or
4 October, whenever this whole Board is back and has
5 availabilities. I don't know.

6 VICE CHAIRPERSON HART: Any other questions from
7 the Board? Go ahead.

8 COMMISSIONER MILLER: Thank you, Vice Chair. I
9 just wanted to thank Mr. Horgan for providing the shadow
10 studies. I did look at those. And I think they were pretty
11 compelling. But we'll see what the heritage tree effect is
12 maybe.

13 But I think the 49-plus feet or 49 feet is just
14 way beyond the 10-foot rule. And I won't be able to get
15 there unless I see something very compelling whenever this
16 comes up later today or later in the year.

17 VICE CHAIRPERSON HART: Okay. Does the Board feel
18 like we've got enough information? I mean, I think I have.
19 But I just wanted to understand if the Board wanted to, was
20 ready to decide on the postponement action. Yes? Okay.

21 This is kind of where I am. I appreciate the
22 information that we've received on both sides. I understand
23 that the Applicant is looking to make some further
24 refinements to their design. And I understand that the, that
25 Mr. Horgan has stated his kind of opposition to the request.

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1 I would actually like to see some further
2 refinement of the design and would be supportive of the
3 Applicant providing additional drawings and updated drawings
4 to reduce the impacts of the proposal and like to hear
5 another Board member's thoughts on that.

6 MEMBER JOHN: Mr. Vice Chair, I am also in favor
7 of granting the postponement because it would allow the
8 Applicant an opportunity to go back and refine that design,
9 because I, too, am having difficulty with an addition that
10 goes back 49 feet, which is way beyond the 10-foot
11 requirement.

12 And I think it's always good when neighbors can
13 resolve these issues among themselves without the Board. I
14 appreciate the testimony of the neighbors in terms of the
15 shadow study. And I looked at it myself. I hate shadow
16 studies, by the way, but I spent a lot of time looking at
17 this one and the massing of the building.

18 So I would agree that in this case,
19 notwithstanding the difficulty that the neighbors have, I
20 would agree to the postponement.

21 VICE CHAIRPERSON HART: Go ahead.

22 MEMBER WHITE: I also think that this case is
23 problematic right now because of lack of support from OP, the
24 ANC, and you know, more importantly, the neighbors.

25 And I'm also very concerned about multiple

1 postponements, you know, because it becomes very inconvenient
2 for the neighbors to keep coming back and forth with the risk
3 that this thing could get postponed again further down the
4 road.

5 So, in this particular instance, I think this time
6 I could kind of get behind it. But if it occurs again, I
7 would probably be less inclined to grant any kind of
8 postponement.

9 But I would like to see some revisions. Some of
10 the concepts of the project seem very interesting. But
11 they've got to come up with something that OP and hopefully
12 ANC and the neighbors can get behind as well. So I would be
13 supportive of it this time.

14 VICE CHAIRPERSON HART: Mr. Miller?

15 COMMISSIONER MILLER: Thank you.

16 VICE CHAIRPERSON HART: Commissioner Miller --

17 COMMISSIONER MILLER: Mr. Vice Chair, I concur
18 with my colleagues and would encourage the Applicant to
19 provide, to revise the design in consultation with the
20 neighbors and for the rear yard extension.

21 And even recognizing that it's a very deep lot and
22 it's way under lot occupancy, it's just way beyond the 10-
23 foot rule that applies in conversion cases, appreciating the
24 two IZ units that would come out of this.

25 But, so I think OP and DDOT also are awaiting some

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1 information in this case. So we need to -- they need to have
2 that information. And we need to see a, as the neighbors do,
3 we need to see a revised design.

4 VICE CHAIRPERSON HART: Okay. It sounds like we
5 are granting the postponement request. Ms. Rose?

6 MS. ROSE: Yes, by consensus, the Board is
7 granting it.

8 VICE CHAIRPERSON HART: Yes.

9 MS. ROSE: Staff would recommend September 19th.
10 We have five cases that day, but two of them are appeals.

11 VICE CHAIRPERSON HART: That will be fun. Let's
12 see if Mr. --

13 MS. ROSE: September 12th is eight cases with one
14 appeal.

15 VICE CHAIRPERSON HART: I'm looking to see if Mr.,
16 if Commissioner Miller is available to join us.

17 COMMISSIONER MILLER: I'm trying to find the
18 Jewish calendar on my --

19 MS. ROSE: Oh --

20 COMMISSIONER MILLER: -- on my app, and I haven't
21 found it. It's somewhere around there. But hang on a
22 second.

23 MS. ROSE: Okay.

24 COMMISSIONER MILLER: I can't --

25 MS. MOLDENHAUER: We'd be fine with moving it the

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1 week after if that works.

2 VICE CHAIRPERSON HART: The --

3 MS. ROSE: The 26th.

4 VICE CHAIRPERSON HART: The 26th is already -- we
5 already have a lot of stuff on the 26th, don't we?

6 MS. ROSE: We have six cases. Two are appeals.

7 VICE CHAIRPERSON HART: Yes, I don't want to do
8 that.

9 MS. MOLDENHAUER: What is that then, the first
10 week of October?

11 MS. ROSE: October 3rd.

12 VICE CHAIRPERSON HART: We're just dealing away.
13 October 3rd, how does that look?

14 MS. ROSE: Seven cases right now. We don't know
15 what will happen ultimately.

16 VICE CHAIRPERSON HART: Yes. How about we look
17 at October, the October date?

18 MS. MOLDENHAUER: Does that work for Commissioner
19 Miller?

20 VICE CHAIRPERSON HART: Yes, it does.

21 MS. ROSE: October 3rd?

22 VICE CHAIRPERSON HART: October 3rd is fine.

23 MS. ROSE: All right. Then this application will
24 be postponed to October 3rd. Are we handling the party
25 status now or on October 3rd?

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1 VICE CHAIRPERSON HART: I think we probably should
2 handle it now. It seems like we -- I don't know. We'll see
3 where we are. But from what I understand, there are three
4 party status requests. And, Ms. Bonds, I'm not sure. Are
5 you with another person that's here?

6 MS. BONDS: I'm sorry. Can you repeat? I'm
7 hearing impaired.

8 VICE CHAIRPERSON HART: Oh, that's fine.
9 Currently what we are -- we are handling some preliminary
10 matters for this particular case. And the preliminary
11 matters, originally the first matter was whether or not we
12 were going to actually hear the case today. We have decided
13 to --

14 MS. BONDS: To postpone it to October 3rd.

15 VICE CHAIRPERSON HART: -- postpone it to October.
16 The second part of the preliminary matter is there were three
17 requests for party status. And the people that are sitting
18 to your right are all, had all put in requests. And I'm
19 trying to ascertain your connection to them, or I'm not sure
20 exactly --

21 MS. BONDS: Sure.

22 VICE CHAIRPERSON HART: -- why you're here.

23 MS. BONDS: I live in the neighborhood. I'm
24 opposed. This is my first time coming.

25 VICE CHAIRPERSON HART: Okay.

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1 MS. BONDS: So I do want to, you know, whenever
2 I have an opportunity to be heard on the record, I do want
3 to voice my concerns on record. They may not, can wait till
4 whatever time that is. But I'm opposed, and that's why I'm
5 here.

6 VICE CHAIRPERSON HART: Okay, okay. So the
7 process that we will typically go through for cases is we
8 kind of handle preliminary matters first, which is why they
9 are preliminary. And then we go through the actual case.

10 During that time, the Applicant has an opportunity
11 to present their case. If we grant the people that are
12 seeking party status the actual party status, then they will
13 have an opportunity to present an alternative or their case.
14 And then we actually hear from the public subsequent to that.
15 And you would be considered part of the public.

16 At this point, I think what we're, what we'll be
17 doing is hearing from the three people that are sitting to
18 your right to be able to understand if we should be granting
19 them the party status. And I'm not sure. I think that your
20 testimony will be not heard until --

21 MS. BONDS: At a later time.

22 VICE CHAIRPERSON HART: -- until October --

23 MS. BONDS: Okay.

24 VICE CHAIRPERSON HART: -- when we have the actual
25 case itself, the actual hearing itself. We're trying to get

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1 some of this kind of stuff together so that then we can be
2 ready for the October meeting. So I just wanted to make
3 sure. But I appreciate you for coming down. Thanks.

4 Okay. So, Mr. Witzer?

5 MR. WITZKE: Witzke.

6 VICE CHAIRPERSON HART: Witzke, sorry. You have
7 submitted an application for a party status request?

8 MR. WITZKE: Yes, that is correct.

9 VICE CHAIRPERSON HART: And could you explain why
10 you should, we should provide you or give you, grant you
11 party status?

12 MR. WITZKE: Yes, I believe with the, this
13 development, the massive size of the back of the property and
14 what they're proposing as planned, which is all I have to go
15 off now, if you look at Exhibit 76A2, page 12, you'll see
16 that an hour and a half before sunset my backyard and the
17 windows in my back of my house and the deck will be shaded,
18 which is a lot of time before sunset that I'll lose.

19 I'm also concerned by the windows they have on the
20 side of that massive addition affecting the privacy of my
21 backyard and might even be able to look into my daughter's
22 window in the back.

23 So I think, as designed, which is all we have to
24 go off of now, it will affect me more than somebody else in
25 the general public.

1 VICE CHAIRPERSON HART: And you're located in what
2 proximity to the Applicant, to the site?

3 MR. WITZKE: I'm four doors, four houses down to
4 the east at 1515 Neal. It's about 100 feet from the
5 property.

6 VICE CHAIRPERSON HART: And the Applicant has
7 filed an objection to this request, party status request.

8 MS. MOLDENHAUER: Initially, there was no
9 rationale behind these or how they satisfied the standard.

10 VICE CHAIRPERSON HART: And are you still in that
11 position?

12 MS. MOLDENHAUER: We would obviously, you know,
13 question the distance there. We will be filing some
14 additional information in regards to the amount of, you know,
15 trees in the back of the property. So the distance we
16 believe may not also satisfy the conditions.

17 VICE CHAIRPERSON HART: Okay. Thank you. Do we
18 want to, does the Board want to hear all of these, or do you
19 want to hear them individually?

20 (Off mic comments.)

21 VICE CHAIRPERSON HART: Sure.

22 MEMBER WHITE: So the exhibit that you were
23 referencing, what was it again?

24 MR. WITZKE: It was --

25 MEMBER WHITE: Just to show me a map of how close

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1 you are to the proposed development.

2 MR. WITZKE: The shadow study, 76A2, I think you
3 can see the houses. And if you look, I'm the fourth house
4 over. And I believe it was page 12.

5 MEMBER WHITE: 76A2?

6 MR. WITZKE: Yes, or page 12 of the shadow study.

7 MEMBER WHITE: Do you --

8 VICE CHAIRPERSON HART: Yes.

9 MS. MOLDENHAUER: Vice Chair Hart?

10 VICE CHAIRPERSON HART: Go ahead.

11 MS. MOLDENHAUER: Sorry. We would just object.
12 I mean, one of the questions is the shadow studies that were
13 provided provide no trees. This is actually a really nice
14 area where they actually have a lot of really big trees in
15 the back. And they provide a lot of canopies and a lot of
16 shadows.

17 So the shadow studies we don't believe actually
18 are accurate because they're not actually showing existing
19 conditions of what actually is happening right now in the
20 back.

21 So, while you may be looking at a shadow study,
22 I would just point out that, you know, we will be filing
23 additional shadow studies that actually do show, you know,
24 really more of a, you know, what is existing condition.
25 Right now you're looking at it in a very, very much a vacuum

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1 that, you know, may not be fully accurate.

2 So I would just put that out there as you're
3 trying to assess this. Thank you.

4 MR. HORGAN: May I make a comment?

5 VICE CHAIRPERSON HART: So, actually I had a
6 question for the Board. Are we looking to listen, to hear
7 all of these party status requests at the same time? I mean,
8 I do, too. But I just wanted to make sure that we were on
9 the same page.

10 Thank you very much, Mr. Witzke. I don't think
11 we have any other, any questions right now. But let's move
12 to Ms. Merchant-Stoutamire. Did I pronounce that correctly?

13 MS. MERCHANT-STOUTAMIRE: Yes, you did.

14 VICE CHAIRPERSON HART: Okay.

15 MS. MERCHANT-STOUTAMIRE: I live at 1509 Neal
16 Street, right next door to the house. And I've lived there
17 for 29 years.

18 And, you know, I appreciate what he wants to do.
19 But what I oppose is the massive building that he is about
20 to put up because we -- and I was under the impression that
21 when, you know, when I first spoke with him that it was going
22 to be something like a single-family home or a four-unit.
23 And then when he actually said it was going to be seven
24 units, I was like oh my god.

25 And I have a deficiency. And I use my deck to sit

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1 out there to soak up the sun as opposed to, you know, walking
2 around in the neighborhood. So it has helped me to sit out
3 on my deck with the privacy of, you know, to take in what I
4 need to, you know, to help heal my body.

5 And when I looked at the sun, the sun study, my
6 side is just actually dark. And it's not even 5:00. So, by
7 the time I get home to go out and sit out on my backyard on
8 my deck, there's no sun at all, you know. And we don't get
9 that much sun in the front. So I appreciate the sun in the
10 back.

11 And there are no trees next to the two of us. So,
12 if they decide to do a tree study for shading, I have no tree
13 in my yard. And there's no impact with the two houses with
14 trees trying to block the shading. It's all open.

15 So I appreciate, you know, whatever decision you
16 all make.

17 VICE CHAIRPERSON HART: Thank you. And are there
18 any questions for Ms. Merchant-Stoutamire?

19 Okay. Mr. Horgan, I apologize for -- I know that
20 you were trying to ask a question. I'm trying to make sure
21 that we are, you're asking questions of us or we're asking
22 questions of you. You're making a statement about, you know,
23 how this is impactful to you. I'm trying not to get into
24 kind of back and forth about what we don't or do have. And
25 we're just trying to take information in.

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1 So, like I said, I apologize for the, for kind of
2 shutting you down. It wasn't -- I'm just trying to take in
3 information. So, if you could, provide your statement as to
4 why you should be, should receive party status, opposition
5 party status.

6 MR. HORGAN: My home is 1501 Neal Street N.E. I
7 am the next door house to the Applicant's property at 1505.
8 Obviously, what gets erected immediately next to my house is
9 going to have a massive effect on my home.

10 I also have a rooftop solar system on my roof that
11 would be impacted by a large addition. I will say that I
12 actually have sent off a letter in the case or I've offered
13 to the Applicant that he could shade my solar system in
14 exchange so that they wouldn't destroy our backyard light.

15 So we have actually been, I feel we've been beyond
16 reasonable. But I realize we're not getting into the case
17 right now. But my home would be directly affected by any
18 proposed development next door.

19 Regarding the shadow study, I would just ask you
20 to look at the Applicant's shadow study. But it doesn't
21 exist. We're the only ones who put one in. So, if you want
22 to go on light when deciding Tom or her case, I think you
23 need to go on what's in the case record, which is from us.
24 Thank you.

25 VICE CHAIRPERSON HART: Thank you. Any questions

1 for Mr. Horgan? And -- yes, go ahead.

2 MEMBER WHITE: My only question is, can you just
3 verify who did this shadow study?

4 MR. HORGAN: I did.

5 MEMBER WHITE: Okay. And can you kind of
6 elaborate on how it was done and just to make sure that I
7 know that it was --

8 MR. HORGAN: Sure.

9 MEMBER WHITE: -- it's accurate.

10 MR. HORGAN: By trade, I'm an engineer. I work
11 for the federal government, for that large agency that sends
12 things into space.

13 I use SketchUp frequently at my work. I am very
14 familiar with it. I created this shadow study. I did want
15 to have an independent person take a look at it. So I
16 actually did provide it and the actual 3D model file itself
17 to a D.C.-licensed architect who gave it a review and found
18 that it was, that it adequately expressed the lights. I
19 forget what exact exhibit, Exhibit 84. That was Running Dog
20 Architects.

21 So, you know, no one's perfect. I may have made
22 a mistake. So, because of that, I sent it to somebody else
23 to take a look at it. And they didn't find any issues with
24 it.

25 I agree I could probably add a model, a tree in

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1 the back of it. But the trees are so far to the rear of the
2 property they didn't really come into play when we're
3 discussing the shadows and the degradation of light that
4 would occur to my neighbor's backyard windows.

5 The one thing the architect did point out was
6 that, you know, my model did not show the windows on the side
7 of the building. And those windows actually are what create
8 the significant privacy concern that Tom has for people
9 looking into his daughter's window or Roberta shading all of
10 her light.

11 VICE CHAIRPERSON HART: Any other questions? And
12 I know that, Ms. Moldenhauer, you had some opposition to the,
13 to Mr., actually Mr. Witzke and Ms. Merchant-Stoutamire. And
14 I think both of those were because of they were untimely?

15 MS. MOLDENHAUER: No, I believe that it was
16 because they did not properly file or justify their
17 explanation for satisfying the standard. Ms. Stoutamire did
18 then subsequently supplement her filing in the record. And
19 obviously, though, and we did not oppose the abutting
20 property on her.

21 VICE CHAIRPERSON HART: Okay. Thank you. Is the
22 Board ready to decide on the party status? I can start.

23 I mean, I kind of -- first, regarding the -- I
24 think there was a few that were filed late from -- sorry,
25 there were several that were, that had come in at, for this.

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1 So we haven't really had to -- Mr. Witzke and Ms. Merchant-
2 Stoutamire, you have filed requests for accepting in an
3 untimely filing. I mean, I would accept them. I don't have
4 an issue with that.

5 I actually would also grant the -- I would be
6 supportive of granting the opposition party status because
7 I think two of these are next door neighbors. The third, it
8 seems like they would be also affected by this project
9 because of the possible sun impacts, understanding that the
10 Applicant has raised some issues about whether or not the
11 trees would or would not cast shadows that may make some of
12 this moot. I do understand that.

13 But I think that they've, that the party status
14 of opposition, that the folks requesting that have made a
15 compelling case that I would, I happen to agree with. And
16 I would be in support of their requests.

17 Yes, please.

18 MEMBER WHITE: I concur. I think, you know,
19 they're uniquely impacted here. Perhaps once there are some
20 revisions that are done to the project it won't be as
21 apparent. But I think, given what we have in front of us
22 right now and given that they're extremely close to the
23 project, I think that in this case they should be granted
24 party status.

25 And I guess we could kind of figure out the

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1 logistics of how they will present their cases. But I think
2 I'm comfortable with waiving some of the late filings as well
3 as granting all three of them party status.

4 VICE CHAIRPERSON HART: Commissioner Miller.

5 COMMISSIONER MILLER: Mr. Chairman, I generally
6 concur with both your comments and Ms. White.

7 But I think the 1505 Neal Street neighbors in
8 opposition should be consolidated as one party in opposition,
9 not three individual parties, and so, just for efficiency.

10 The interests are very similar. Obviously, the
11 next door neighbor is even more impacted. But I think we
12 should make clear at this point that it's, from my
13 perspective, that it should be consolidated as one party
14 status, one party in opposition.

15 VICE CHAIRPERSON HART: Yes, I think I understand
16 that. The only question I had was Mr. Horgan actually has
17 the solar on his house that the others do not. And that --
18 but I understand what your, what position you have. So,
19 Board Member John?

20 MEMBER JOHN: I concur with your recommendation
21 to allow party status for all three requesters. And I also
22 concur with Commissioner Miller, because I believe the
23 interests are fairly similar. And I am sure that we can
24 differentiate the solar panel issues from the others if we
25 need to and if we get to that point.

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1 So, in terms of efficiency, I would support that
2 recommendation.

3 VICE CHAIRPERSON HART: Okay. So the question is
4 who would you like to have speak for the three of you. What
5 this will do -- because we are, because you have the
6 Applicant that has their case that they are going to present,
7 it is helpful to have someone speak for all three of you.
8 And I don't know who that is.

9 So, if you could have that -- if you could make
10 that kind of decision yourselves, if you have a few minutes
11 to do that, and I'll give you a few minutes to do that.
12 That's okay.

13 COMMISSIONER MILLER: I agree that they need to
14 designate --

15 VICE CHAIRPERSON HART: Yes.

16 COMMISSIONER MILLER: -- a lead person who would
17 be asking the questions of the other parties.

18 VICE CHAIRPERSON HART: Yes.

19 COMMISSIONER MILLER: But --

20 VICE CHAIRPERSON HART: They'll need --

21 COMMISSIONER MILLER: -- as a party status, they
22 can call each other as witnesses as part of their case in
23 opposition. So each of them would have opportunity to speak
24 even if there's a one --

25 VICE CHAIRPERSON HART: Yes.

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1 COMMISSIONER MILLER: -- lead person who's doing
2 the cross examination.

3 VICE CHAIRPERSON HART: I appreciate that
4 clarification. And that is right.

5 It's not like you can't speak at all. It's just,
6 it's easier to have the kind of one person talking to them
7 because there's -- now that you've gotten party status, you
8 actually have an opportunity to cross examine the witnesses
9 that the Applicant brings forward. And it just makes it a
10 little bit cleaner when we're, you know, talking to the group
11 of you and then talking to them.

12 So you don't have to decide it right now. But it
13 would be helpful to, you know, have that conversation and
14 then figure that out for us.

15 But, Ms. Moldenhauer, I don't think we've actually
16 decided when we want to have -- I know when we're going to
17 have the meeting. But any documents that we're looking for,
18 they still have to provide documents to us in the -- is that
19 a week before or is that two weeks before?

20 MS. ROSE: For an October 3rd hearing, the
21 Applicant's filings will be due -- the record remains open?
22 Okay.

23 VICE CHAIRPERSON HART: Yes.

24 MS. ROSE: So it's not like a postponed or a
25 continued case --

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1 VICE CHAIRPERSON HART: No, I know. I just didn't
2 know if there was a particular -- Ms. Moldenhauer?

3 MS. MOLDENHAUER: We'll make sure to get -- we'll
4 obviously, you know, work with our architect, get everything
5 filed in the record. And then, you know, we would assume
6 that we would obviously not file anything after 21 days prior
7 to the final hearing.

8 VICE CHAIRPERSON HART: Okay. Thank you. Are we
9 clear? So the next, the actual public hearing will be
10 October 3rd. And that's when you all will come back, and
11 we'll actually have the hearing itself.

12 So thank you very much for coming down. I know
13 it was a little bit rocky trying to figure all of this out.
14 But I appreciate you for giving us the time to work through
15 that. And that's it. Yes.

16 MS. MOLDENHAUER: Is there -- sorry. Since we are
17 here and we have had some general conversation --

18 VICE CHAIRPERSON HART: Sure.

19 MS. MOLDENHAUER: -- are there any other comments
20 that obviously while, in order for us to I guess positively
21 utilize this time --

22 VICE CHAIRPERSON HART: Sure.

23 MS. MOLDENHAUER: -- you know, we obviously have
24 the special exception for seven units. But it seems like the
25 conversation has been focused mostly on the size of the rear

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1 structure.

2 And I just want to make sure I'm clear on that
3 from the Board since we obviously are having the benefit of
4 being here before you today. And we want to make sure that
5 we utilize the time between now and the October 3rd date.

6 I just want to see if there is any additional
7 comments that the Board would have for us as we move forward
8 through the process before the next hearing.

9 VICE CHAIRPERSON HART: Yes, it seems like we are
10 definitely looking for some -- you've heard the Board,
11 several of the Board members talk about the size of the
12 building in the rear. You've heard the next door neighbors
13 talk about that. So any reduction would be I think something
14 that is helpful to look forward to incorporate.

15 The sun study that incorporates the trees and, you
16 know, to understand what that is or photographs or something
17 that helps us to better understand what the rear of the
18 property kind of looks like so we do understand what those
19 impacts might be, currently we don't have that. So it's
20 helpful to do that.

21 I don't know if Board Member White had some
22 comments as well.

23 MEMBER WHITE: The ANC, did they weigh in on this
24 at all?

25 MS. MOLDENHAUER: They did. This is some more ANC

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1 that have weighed in previously on some three-unit
2 conversions that met the 900-square-foot rule, that they
3 opposed the three units. And so they are also opposed to
4 this as a compliant 900-square-foot requirement for the seven
5 units.

6 They had indicated they were happy to see
7 affordable units but that they just could not support the
8 conversion as I think has been the ANC's position, as I said,
9 on two other cases that this Board heard about a month or two
10 ago.

11 MEMBER WHITE: So they were --

12 MS. MOLDENHAUER: They were opposed --

13 MEMBER WHITE: -- opposed to the number of units.

14 MS. MOLDENHAUER: They were opposed to the
15 project, the number of units and the rear addition as well.

16 MEMBER WHITE: So adjustments to the project,
17 would that be something you would go back to them with to,
18 because they might --

19 MS. MOLDENHAUER: We can.

20 MEMBER WHITE: -- be more open to it? I'm just
21 asking. I'm not --

22 MS. MOLDENHAUER: I mean, we can. I don't -- as
23 I said, it's been very clear. This ANC has opposed even a
24 three-unit conversion that complies with the 900-square-foot
25 rule.

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1 Here we meet the 900 square feet for seven units.
2 And so, I mean, obviously we're always open to work with the
3 ANC. But I think that when ANC has made the position very
4 clear, you know, we have to figure out, you know, what's the
5 best, you know, path forward and is there opportunities for,
6 you know, a change in that position. And I'm not sure that
7 there is here. And --

8 MEMBER WHITE: So, obviously, you'll continue to
9 work with OP so that that will be a priority for you and the
10 neighbors, too, I think would probably be helpful since they
11 are going to be coming back on the 3rd.

12 VICE CHAIRPERSON HART: Board Member John, did you
13 have a -- okay. Mr. Horgan?

14 MR. HORGAN: I was just going to add, just like
15 two months ago our ANC voted to support BZA Case 19725 four
16 blocks away, 1169 Neal Street, same agent, same architect,
17 in fact, Touplas. So the ANC is actually supportive of
18 development when it's respectful of neighbors.

19 You have multiple opportunities. You know, we
20 sincerely hope you listen to the 29 letters in opposition
21 that have been filed into the case record, 29 letters in
22 opposition, and you listen to the feedback of the neighbors.
23 And you do more than shave off ten feet.

24 VICE CHAIRPERSON HART: And I think we'll get to
25 all of that when we get to the actual hearing. So --

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1 COMMISSIONER MILLER: Mr. Vice Chair?

2 VICE CHAIRPERSON HART: Yes, sir.

3 COMMISSIONER MILLER: I just wanted -- in response
4 to Ms. Moldenhauer's question about --

5 VICE CHAIRPERSON HART: Sure.

6 COMMISSIONER MILLER: -- what we're looking for,
7 I wanted to reiterate --

8 VICE CHAIRPERSON HART: Please.

9 COMMISSIONER MILLER: -- what some of you have
10 said is, are the -- it's a substantial reduction in the rear
11 yard addition and all of the information requested by the
12 Office of Planning in their June 15th report, including
13 context, photos, and renderings showing how this will look,
14 hopefully showing how a revised rear addition would look, and
15 the DDOT request for a tree preservation plan and the
16 information that you're going to provide regarding the
17 existing, with the shadow studies and the solar studies.

18 VICE CHAIRPERSON HART: Okay. Thank you. Thank
19 you all. Ms. Rose, whenever you're ready, we can get to our
20 next case, a preliminary matter case.

21 MS. ROSE: Yes, I know.

22 VICE CHAIRPERSON HART: We haven't even gotten to
23 --

24 MS. ROSE: To the case --

25 VICE CHAIRPERSON HART: -- to the hearing yet.

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1 MS. ROSE: Next is Application No. 19760, Rhode
2 Island Condos LLC, as amended, pursuant to 11 DCMR Subtitle
3 X, Chapter 9, for a special exception under the residential
4 development requirements of Subtitle U, Section 421, to
5 expand the existing three-unit apartment house to an eight-
6 unit apartment house in the RA-1 Zone at premises 4017 Davis
7 Place N.W., Square 1807, Lot 32. In this case, the Applicant
8 is requesting postponement of the application.

9 VICE CHAIRPERSON HART: I'm going to have to ask
10 you to introduce yourselves again.

11 MS. MOLDENHAUER: Good morning, Board members.
12 My name is Meridith Moldenhauer from the law firm of Cozen
13 O'Connor. I am here today actually on behalf of my
14 colleague, Samantha Mazo, able to answer any questions the
15 Board has regarding this case on behalf of the Applicant.

16 VICE CHAIRPERSON HART: And you have requested
17 this postponement. Could you give us a little --

18 MS. MOLDENHAUER: Yes.

19 VICE CHAIRPERSON HART: -- little background as
20 to why the postponement is necessary?

21 MS. MOLDENHAUER: Yes. As I said, I'm here on
22 behalf of Ms. Mazo, so I have general understanding.

23 We have received a recent email from the Zoning
24 Administrator modifying the information. This case was
25 actually originally filed based on information that was

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1 received by the Office of Zoning at DCRA and I believe was
2 needed.

3 And then subsequently, more recently, obviously,
4 based on our documentation on a June 22nd email, we received
5 modifications that this is no longer needed from the Zoning
6 Administrator.

7 What we would request is that we postpone this
8 case to maybe sometime the first week of November to simply
9 allow for an opportunity for the permits to be finalized,
10 hopefully as a matter of right, but also to make sure that,
11 you know, if there were any challenges to that determination,
12 that we do not then lose our hearing place, but obviously
13 request a postponement for enough time for this to be maybe
14 resolved and then withdrawn.

15 VICE CHAIRPERSON HART: I appreciate the
16 explanation. I understand what it is that you're looking
17 for. I would say that while I would be supportive of a
18 postponement, I am -- this is not a unlimited postponement.
19 It will have a time limit to it. And if we get to November
20 and we're still kind of here, we may be looking at some other
21 avenues to go down.

22 So I don't know what the other Board members are,
23 your thoughts are on this case. Yes.

24 MEMBER JOHN: Mr. Vice Chair, I have no objection
25 to postponing the case. It seems as if the project can

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1 proceed as a matter of right. But I would need to look at
2 that a little more because I'm not quite sure.

3 Even though there's the ZA letter in the file, I
4 think what the ZA is saying is that because the existing
5 building will remain, it is not new construction so not
6 subject to 421. So, in this case, I would support the
7 postponement to make sure that everybody's on board.

8 COMMISSIONER MILLER: I would concur. And if it
9 can proceed as a matter of right, it should proceed as a
10 matter of right.

11 VICE CHAIRPERSON HART: Board Member White?

12 MEMBER WHITE: I agree as well. So a November
13 postponement is fine with me.

14 VICE CHAIRPERSON HART: Okay. It sounds like we
15 are unanimous in our agreement to postpone this case.
16 November --

17 MS. ROSE: 7th.

18 VICE CHAIRPERSON HART: -- 7th?

19 MS. ROSE: Yes.

20 VICE CHAIRPERSON HART: Ms. Moldenhauer, is that
21 --

22 MS. MOLDENHAUER: Thank you.

23 VICE CHAIRPERSON HART: -- sufficient for you?

24 MS. MOLDENHAUER: Yes, that is --

25 VICE CHAIRPERSON HART: Please let Ms. Mazo know

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1 that we are, moved her case on.

2 MS. MOLDENHAUER: I will let her know. She may
3 even be watching. Thank you.

4 VICE CHAIRPERSON HART: Thank you very much.
5 We're going to take like a two-minute break, sorry, three-
6 minute break.

7 (Whereupon, the above-entitled matter briefly went
8 off the record.)

9 VICE CHAIRPERSON HART: Okay. Ms. Rose, if you
10 could call the next case, please, the first case on the
11 hearing agenda?

12 MS. ROSE: The first case, yes. This is
13 Application No. 19768 of CDDC 1735 through 1737 10th Street,
14 Northwest, LLC. Pursuant to 11 DCMR Subtitle X, Chapter 9,
15 for special exceptions under Subtitle C, Section 703.2, from
16 the minimum parking requirements of Subtitle C, Section
17 701.5, and pursuant to Subtitle X, Chapter 10, for variances
18 from the log occupancy requirements of Subtitle E, Section
19 304.1, the rear yard requirements of Subtitle E, Section
20 306.1, and the side yard requirements of Subtitle E, Section
21 307.1, to construct two new flats in the RF-1 zone at
22 premises 1735 and 1737 10th Street, Northwest, Square 363,
23 Lots 105 and 106.

24 In this case, there is a party status request and
25 a request to waive the filing deadline. And the Applicant

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1 has filed an opposition to the waiver.

2 VICE CHAIRPERSON HART: If we could have the party
3 status folks at the table as well? Okay. Seeing as they
4 have not shown up, if you could introduce yourselves at the
5 desk, I'll talk about the party status request in a minute.
6 But if you could introduce yourselves? Give me your name and
7 your address.

8 MR. WARREN: Sure. Good morning, Mr. Vice-Chair
9 Hart and Members of the Board. I'm Charles Warren, principal
10 of Teass-Warren Architects, here on behalf of the Applicant.

11 MR. LAURENT: Good morning. My name is Marc
12 Laurent. My address is 1220 Evarts Street, Northeast. And
13 I'm part of the development team on the project.

14 MR. SULLIVAN: Good morning, Mr. Chair and Members
15 of the Board. My name is Marty Sullivan with the law firm
16 of Sullivan & Barros, on behalf of the Applicant. And I was
17 brought in last week to address specifically the party status
18 request. So, if that doesn't materialize, then --

19 VICE CHAIRPERSON HART: You're leaving? Are you
20 leaving?

21 MR. SULLIVAN: -- you may not hear from me at all,
22 yes.

23 VICE CHAIRPERSON HART: So, Mr. Warren, have you
24 had any -- I just wanted to make sure that I understood this
25 -- have you had any information from the party status,

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1 whatever, the opposition party status request people? Have
2 they described why they were not -- did you think they were
3 going to be coming today?

4 MR. WARREN: I actually thought I saw them here
5 earlier today. So, I assumed he was going to be here today,
6 yes.

7 VICE CHAIRPERSON HART: Okay. You don't have to
8 -- I'm not asking you to tell where they are. I was just
9 kind of curious. Usually, when someone actually does that
10 and they actually have an attorney, they do show up to this.
11 And I'm a little bit perplexed as to why.

12 MR. WARREN: As are we.

13 VICE CHAIRPERSON HART: So, I'm looking down here
14 because I'm trying to figure out what to do now. I mean,
15 typically, what we've done is just said that it's been
16 withdrawn because -- that the party request has been, the
17 request has been withdrawn because they have not appeared
18 before us.

19 MS. MYERS: That's correct. Alison Myers with the
20 Office of Zoning. When an individual requesting party status
21 does not appear at the hearing in order to make the request,
22 then that request is deemed withdrawn. However, it is within
23 the Board's discretion with the hearing docket, if they
24 believe this may be a mistake and that that individual may
25 be here and planning to participate, but is not in the

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1 hearing room at the time, could move the case on the docket.
2 But the Board may deem the request withdrawn.

3 VICE CHAIRPERSON HART: And I'm sorry, I don't
4 actually know either the attorney or the person that
5 requested the party status to know if they actually were
6 here. I don't know if the other Board members know that they
7 recognized them in the room earlier.

8 MS. MYERS: If you would like, Office of Zoning
9 staff can reach out to that individual and his attorney to
10 get further information. However, it's the Board's
11 discretion.

12 VICE CHAIRPERSON HART: Yes, I know.

13 (Laughter.)

14 MS. MYERS: Always like to defer the decisions to
15 you.

16 VICE CHAIRPERSON HART: I think you just said
17 that.

18 Any other comments from my fellow Board members?

19 MEMBER WHITE: Well, I guess two things. One, if
20 the attorney, if there was a sighting of the attorney, I
21 would be inclined to maybe just take one more case and wait
22 to see whether or not they show up or, you know, defer the
23 decision. But, I mean, if they're here, and they went to the
24 trouble of hiring someone, I would maybe defer one other case
25 to see whether or not they pop up, and then, call the case

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1 after hearing the next case.

2 VICE CHAIRPERSON HART: Commissioner Miller, are
3 you of the same thing?

4 COMMISSIONER MILLER: I think Ms. White's
5 suggestion is a good one, just to defer one case. It is the
6 responsibility of the party to be here under our rules.

7 VICE CHAIRPERSON HART: Yes, I mean, I would
8 agree.

9 COMMISSIONER MILLER: I think the one case
10 deferral in this case, yes, is appropriate.

11 MEMBER WHITE: We've got a pretty short docket,
12 too.

13 VICE CHAIRPERSON HART: No, I agree. I agree.
14 I wanted to see where other folks were on it. I'm kind of
15 either way right now, because we do state that our meetings
16 start at 9:30. So, this is an hour and a half after that.
17 So, anyhow --

18 MR. SULLIVAN: Mr. Chair, we haven't seen the
19 attorney or heard from him at all here.

20 VICE CHAIRPERSON HART: You haven't seen him?

21 MR. SULLIVAN: No.

22 VICE CHAIRPERSON HART: You haven't seen him here
23 at all today?

24 MR. SULLIVAN: No. No.

25 VICE CHAIRPERSON HART: And I know that you had

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1 said you had thought you had seen him, which is fine. I'm
2 not --

3 MR. WARREN: I thought I saw the neighbor, not his
4 attorney --

5 VICE CHAIRPERSON HART: Oh.

6 MR. WARREN: -- just to clarify.

7 VICE CHAIRPERSON HART: Does that change anybody's
8 opinion? Well, why don't we put this on hold at least for
9 now, and then, we'll go through the other cases, and then,
10 come back.

11 COMMISSIONER MILLER: I think it was one case.

12 VICE CHAIRPERSON HART: One case? One case?

13 MEMBER WHITE: Yes.

14 VICE CHAIRPERSON HART: Okay. I mean, we only
15 have two more cases.

16 COMMISSIONER MILLER: Well, it's here.

17 VICE CHAIRPERSON HART: Yes.

18 COMMISSIONER MILLER: Mr. Sullivan can leave
19 earlier and they won't get charged as much.

20 (Laughter.)

21 VICE CHAIRPERSON HART: Okay. So, how about we
22 put this on hold for one case, and we hear the next case on
23 this other docket? And then, we will come back to this.

24 Thank you very much for your consideration and
25 your time.

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1 MS. ROSE: Then, we would call Application No.
2 19764 of 4926 Wisconsin Avenue, LLC, as amended, pursuant to
3 11 DCMR Subtitle X, Chapter 9, for special exceptions under
4 Subtitle C, Section 710.3, from the parking location
5 restrictions of Subtitle C, Section 710, and from the use
6 requirements of Subtitle U, Section 601.1(b), to permit the
7 continued use of the property as a parking lot, last approved
8 under BZA Order No. 18207, in the R-2 zone at premises 4926
9 Wisconsin Avenue, Northwest, rear, Square 1671, Lot 30.

10 VICE CHAIRPERSON HART: Okay. Thank you very
11 much, Ms. Rose.

12 Good morning. We still are in the morning. If
13 you could please introduce yourselves?

14 MR. GELFARB: Good morning. My name is Ken
15 Gelfarb. I'm the attorney for the Applicant.

16 MR. MAGAFAN: Good morning. My name is Angelo H.
17 Magafan, Deoudes-Magafan Realty. We're the property
18 management company located at 7910 Woodmont Avenue, Bethesda,
19 Maryland.

20 VICE CHAIRPERSON HART: Okay. Let's see, the
21 case, fairly straightforward. But there were some things
22 that we should talk about regarding the -- I guess it was
23 DDOT raised some concerns regarding meeting several of the
24 zoning regulations regarding -- what is it? -- 714-715. And
25 this is kind of the landscaping, the issues.

1 And also, I understand -- I don't know, maybe I
2 missed it -- is there a site plan with this? Was there a
3 site plan that was submitted with this application?

4 MR. GELFARB: There was the plan. I have an extra
5 copy of it, if you need to see it. I believe it should be
6 in the court file. It's a relatively simple plan, but I have
7 an extra copy, if you would wanted me to provide it to you.

8 VICE CHAIRPERSON HART: Is it the surveyor's plat?

9 MR. GELFARB: It is the surveyor's plat.

10 VICE CHAIRPERSON HART: Okay. So, that's Exhibit
11 No. 3. And there are no other plans that you have for --

12 MR. GELFARB: There are some photographs of the
13 site as well that were provided. But, as this has been an
14 existing lot for quite a long time, we thought it best just
15 to provide the required materials and not anything in
16 addition.

17 VICE CHAIRPERSON HART: Okay. If you could just
18 describe how you are -- you can present your case.

19 MR. GELFARB: Thank you very much.

20 This is actually my third appearance here over the
21 years. I was here in 2004 and --

22 VICE CHAIRPERSON HART: Welcome back.

23 MR. GELFARB: Thank you so much.

24 -- and in 2011. This is a small alley lot behind
25 a few buildings on Wisconsin Avenue at 4926 Wisconsin. And

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1 the lot provides accessory parking for some of the local
2 businesses that have a need for parking. And so, although
3 it is in a residential lot, it does provide parking for some
4 of the businesses and, therefore, it is permitted pursuant
5 to a special exception.

6 My client purchased the property in 2002 in their
7 individual names, and then, subsequently, retitled it as an
8 LLC. But, as I stated, in 2004, we asked that the existing
9 special exception, which apparently dates back around 30
10 years, allowing this parking lot to exist in the R-2 zone,
11 continue to be allowed. And there are a number of -- about
12 13-14 -- different conditions, some of which -- there is
13 screening and taking into account the concerns of the
14 neighbors, et cetera, that were imposed, both in 2004, and
15 when that special exception expired in 2011, we requested
16 another special exception in 2011. At that time, we asked
17 for perpetual special exception because of our history at the
18 site and there haven't been any problems, and the fine
19 management of the parking lot. But, at that time, the Board
20 granted a seven-year special exception. So, that brings us
21 back here in 2018.

22 We did file, again, and again are asking for a
23 perpetual special exception. We feel as if we have a very
24 proven track record, and the time and expense of coming and
25 requesting special exception is something that the owners

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1 would like to avoid. We did appear before the ANC, and the
2 ANC did vote in favor of granting a perpetual special
3 exception. And their recommendation I believe is in the file
4 now.

5 I know OP is here. OP was quite helpful in
6 directing us on this application. I see they have
7 recommended that the special exception be granted, but be
8 limited to a seven-year term again.

9 Speaking to the point raised by the Department of
10 Transportation, I just saw that, their filing, in just the
11 last day or two. So, I haven't had a lot of time to look at
12 it. Some of the things in 714-715 are being complied with.
13 There is a brick wall around the parking lot, for example.
14 There is some planters which have recently been refilled at
15 the lot. However, some of the requirements of 714-715, due
16 to the lot size and the configuration, would be very
17 difficult. As I had said previously, we have been granted
18 special exceptions. I know some of these requirements have
19 been increased in the current zoning ordinance. So, we would
20 request that we stick to the existing requirements, which,
21 as I said, include a brick wall and planters, and the like,
22 but at this time, the special exception be granted on a
23 perpetual basis.

24 I'm happy to answer any other questions, as is my
25 witness, Mr. Magafan.

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1 VICE CHAIRPERSON HART: Does the Board have any
2 questions for the Applicant?

3 I mean, the question that I had was really around
4 714 and 715. The existing approval that you had back in 2011
5 has already expired, correct?

6 MR. GELFARB: It has technically expired. Our
7 application was filed before it expired. But, due to some
8 delays in getting to the ANC and some scheduling problems,
9 we did run, we have run past the expiration date, that is
10 correct.

11 VICE CHAIRPERSON HART: And when did it actually
12 expire? What was the month?

13 MR. GELFARB: It was in May.

14 VICE CHAIRPERSON HART: And, yes, so when I look
15 at this, what this means to me is that the DDOT had requested
16 that the project be in conformance with 714 and 715 because
17 those are the applicable regulations for surface parking for
18 in the District. And I'm not exactly sure how -- I
19 understand that you have a constrained site. Maybe I'll talk
20 to the Office of Planning and get their viewpoint on that as
21 well. But you're saying that you meet some of these; you
22 just are not meeting all of the requirements? And some of
23 them you may not be able to meet just because of the
24 constrained site?

25 MR. GELFARB: I think that is true. I will point

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1 out that in 17.3E, the Board does have -- let's see, 714.3,
2 it does have the right to modify some of the screening
3 requirements, 714.3, Subtitle C. And similarly, under 715.9,
4 it does have the power to relax some of the landscaping
5 requirements. So, we would ask that the Board consider that.
6 As I mentioned before, this is the third time we have been
7 here. And under the existing requirements, up until 2016,
8 we did comply with all the requirements that the Board
9 requested. I believe what has happened is there have been
10 some enhanced requirements in this 2016 Zoning Code, and
11 because of that, we would request that the Board relax those
12 requirements and allow us to continue, subject to the
13 existing conditions.

14 VICE CHAIRPERSON HART: I mean, I think that,
15 while I appreciate you bringing up both 714.3 and -- or I
16 guess it's, was it Subtitle C, 17.7 -- sorry -- 714.3 and
17 715.9. In 715.9, they actually say that the Applicant, you,
18 need to provide us with information on how you would not be
19 able to comply with these standards based on a variety of
20 things, impractical because of lot size. Other conditions
21 relating to the lot or surrounding area would tend to make
22 the full compliance unduly restrictive, prohibitively costly,
23 or unreasonable. So, there is some information that we would
24 need to have from you to be able to understand how we could
25 waive some of the requirements under 715, but we can get

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1 there. We don't have to do that this very second, but I
2 think that's one thing that I would be looking for.

3 Does the Board have any other questions for the
4 Applicant?

5 MEMBER WHITE: My only question is whether or not
6 you are onboard with any of the conditions that maybe OP or
7 OZ has talked with you about already. Or maybe I should just
8 wait and here from OP before getting ahead of myself. But
9 you've only talked about landscaping and screening. But,
10 after looking through the record, it seems to be a number of
11 other recommendations such as, you know, hours of operation
12 and things of that nature.

13 MR. GELFARB: Yes. So, if you have a copy of the
14 existing order from 2011, and I think OP in their report did
15 include that, those items, we are fine with every one of
16 those items, including hours of operation. Basically, we
17 would like to stay within what was approved in 2011. And so,
18 we're fine with every single one of those requirements,
19 although we have asked, based on our good track record, to
20 be given a perpetual special exception rather than a seven-
21 year, but that's really the only change.

22 Every one of the other, I think it was 13 other
23 items, including hours, maintaining a contact person, and
24 cleaning any graffiti, and keeping the planters in good
25 shape, and fixing the potholes, those are all fine. In fact,

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1 Mr. Magafan can speak to it, but he recently just ordered
2 someone to come in and fix existing potholes. And that's
3 pending and will be done shortly. So, again, we're fine with
4 all the other conditions that were posed in 2011. The only
5 thing we would ask for would be to be given a perpetual
6 special exception this time. And we can go through those, and
7 I'm sure the representative from OP can speak to that as
8 well.

9 MEMBER JOHN: So, I have one big question. If you
10 take a look at the DDOT report, and the first condition that
11 they recommend is that the Applicant is required to provide
12 fencing or evergreen trees of at least 42-inches high around
13 the perimeter of the lot, exclusive of driveways. Now you're
14 saying that there's already a concrete fence. Is it about
15 42-inches high?

16 MR. GELFARB: I believe it is a 36-inch, according
17 to the plat, brick wall.

18 MEMBER JOHN: A brick wall. Sorry.

19 MR. GELFARB: No, that's okay. That has
20 historically, all the way back at least until 2002, when my
21 client bought the property, and I'm sure before that, has
22 served that function well. Again, it's a relatively small
23 lot, and it's kind of a tight situation. And quite frankly,
24 none of the neighbors ever complained about the size of the
25 wall. They've been fine with it historically.

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1 Part of the issue, too, is just, with the cost
2 constraints, you know, the lot is not full currently. And
3 so, to take on additional expense becomes difficult with such
4 a small lot because there's not that much revenue to sort of
5 amortize that cost.

6 MEMBER JOHN: So, Mr. Vice-Chair, I think these
7 two requirements have sort of distilled most of what's in 714
8 and 715. And I agree we would need much more information to
9 decide if those two requirements could be waived by the Board
10 on any of those provisions. And it might be a good idea to
11 go back and talk to DDOT to see if they could change their
12 opinion. I don't know. But those are two conditions they
13 impose.

14 VICE CHAIRPERSON HART: Okay. So, I think what
15 I'll move to is the Office of Planning, since it seems like
16 there's some questions that we have for DDOT or OP. And
17 we'll hear from DDOT -- I'm sorry -- from OP. Excuse me.

18 MR. KIRSCHENBAUM: Good morning, Commissioners.
19 Jonathan Kirschenbaum for the Office of Planning.

20 Just as a matter of background, this application
21 was submitted to the Office of Zoning on April 12th, 2018,
22 and their expiration for their Certificate of Occupancy
23 expired on the 10th. So, they did submit their application
24 before this use expired.

25 We recommend approval and we submit our

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1 recommendation. I will say that this report was written
2 prior to receiving the ANC resolution. So, we would tend to
3 agree, go along with the ANC, since they are comfortable
4 about the term can be used in perpetuity.

5 I'm here to answer any questions that you have.

6 VICE CHAIRPERSON HART: Mr. Kirschenbaum, welcome.

7 MR. KIRSCHENBAUM: Thank you.

8 VICE CHAIRPERSON HART: I know this has been a
9 very few cases, a very few meetings you've been with us. So,
10 welcome to the BZA.

11 So, you've heard some of the questions that the
12 Board has had regarding this, them being in compliance with
13 714 and 715, which are kind of landscape requirements around
14 parking areas. Can you speak a little bit about that,
15 because we're trying to just figure out where we are with
16 that, and how the Office of Planning looked at those
17 requirements as well?

18 MR. KIRSCHENBAUM: Sure. So, from the Office of
19 Planning perspective, it is an alley lot entirely bounded by
20 alleys. So, the parking lot does not allow any residential
21 uses, and we also are considerate of the fact that it's been
22 in use for at least 30 years and it's been in continuous
23 operation.

24 And I will just point out that they are requesting
25 relief from Section 710.25, and that reads that it's, "Within

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1 all R and RF zones, any surface parking lot for more than 10
2 parking spaces shall be located a minimum of 6 feet from any
3 property line with the space between the surface parking lot
4 and the property line providing landscaping." And screening
5 requirements are Subtitle C, 714 and 715. So, they are
6 requesting a special exception from that section which talks
7 about both the location of parking spaces and, also, an area
8 for landscaping.

9 So, we looked at this that they were applying for
10 a special exception for the location of parking spaces and,
11 also, the landscaping. The site plan does show it's very
12 tight. And if they were to locate those parking stalls 6
13 feet back from the property lines, and also install
14 landscaping within that area, you would lose a significant
15 number of parking spaces. So, we really are from sort of the
16 frame of mind that the parking lot should be sort of
17 resurfaced and improved as it's needed and landscaping that's
18 already there be kept in good order, but that the Applicant
19 doesn't necessarily have to comply with all of the new
20 requirements of the zoning regulations.

21 VICE CHAIRPERSON HART: Okay. And you stated two
22 things. One, that the property was not adjacent to
23 residential properties because it is surrounded by alley
24 lots.

25 MR. KIRSCHENBAUM: It doesn't abut per se. It

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1 doesn't directly about residential uses.

2 VICE CHAIRPERSON HART: Okay.

3 MR. KIRSCHENBAUM: There is an alley separating
4 the lot from residential uses.

5 VICE CHAIRPERSON HART: Okay. Any other questions
6 for the Office of Planning?

7 MEMBER WHITE: The one question, I just want to
8 make sure I'm clear that, have you addressed what Board
9 Member John had some concerns about in terms of the
10 recommendations for DDOT? If you had any opinions on the two
11 recommendations regarding Subtitle 714 and 715? In OP's
12 opinion, do you think there needs to be the screen
13 requirements for surface parking that are stated in DDOT's
14 report? I don't know if you had that in front of you in
15 Exhibit 40. And also, the landscaping requirements for
16 surface parking lots. And in your opinion, do they need to
17 comply with that?

18 MR. KIRSCHENBAUM: I would say, again, our relief
19 is that it's been in continuous use for the past 30 years,
20 and it's a small business operation. And that I think we are
21 from the idea that it's operating fine at the moment.

22 MEMBER WHITE: Okay. Thank you.

23 VICE CHAIRPERSON HART: Any other questions?

24 (No response.)

25 Okay. Does the Applicant have any questions for

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1 the Office of Planning?

2 MR. GELFARB: No, we do not.

3 VICE CHAIRPERSON HART: And I actually have a
4 question for the Applicant. Did you have a conversation with
5 DDOT?

6 MR. GELFARB: I have not had a conversation with
7 DDOT. I didn't see the report until fairly late in the
8 process. I have had extensive conversations with OP, but I
9 have not discussed this particular statement as of yet.

10 VICE CHAIRPERSON HART: Okay. Is the ANC here?

11 (No response.)

12 Is there anyone here in opposition to the
13 application wanting, wishing to speak in opposition?

14 (No response.)

15 Anyone here wishing to speak in support of the
16 application?

17 (No response.)

18 I guess where I am with this is that I would like
19 some additional information. And this is really a
20 conversation with DDOT to see whether there are aspects that
21 we should be able to waive or that they would be comfortable
22 with waiving for the process.

23 I'm not trying to make this really -- I think this
24 can be a fairly straightforward project. I understand that
25 OP is supportive of it. I understand that ANC is supportive

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1 of it. I am just a little bit concerned because we don't
2 have, I don't think, sufficient information to be able to
3 say, oh, sure, you don't have to -- you can waive whatever
4 the requirements are for 714 and 715. And it doesn't sound
5 like you've had a lot of just time to think about which
6 aspects you would like to actually waive from it. I don't
7 know the Board members' thoughts on it, but that's kind of
8 where I am with this right now.

9 MEMBER WHITE: Well, I guess the main concern is
10 that I didn't want to rule on something that contradicts
11 DDOT's jurisdiction in terms of them making recommendations
12 that certain things needed to be done. It doesn't sound like
13 a major thing, but if there are some concerns, maybe we
14 should have some feedback on that.

15 VICE CHAIRPERSON HART: I mean, I'm also
16 understanding, and I hear your request for not having a
17 timeframe, a term limit. I'm kind of on the fence with that.
18 I think in some ways it's helpful to have them, but I
19 understand the request that you're making, and I might be
20 able to support that as well. But I think that understanding
21 where you are with regard to DDOT would be helpful to me as
22 I make that determination.

23 MR. GELFARB: Yes, if I could speak to that? So,
24 I did review the relatively short memo. And DDOT does cite
25 in the memo that their review is to assess the potential

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1 safety and capacity impacts of the proposed action on the
2 District's transportation network and, as necessary, propose
3 mitigations that are commensurate with the action.

4 So, it would seem to me that the amount of
5 screening and landscaping of an alley lot would probably not
6 be really key to their mission. It might be key to the
7 neighbors, as represented by the ANC, and to OP. But it
8 would seem to me to be something that would not be crucial
9 to DDOT's mission.

10 As far as the specific requirements, again, they
11 reference fencing or an evergreen hedge at least 24-inches
12 high. We do have a brick wall that is 36-inches high. And
13 they mention providing five canopy trees and devote at least
14 10 percent of the total land area to landscaping. Because
15 of the tight nature of the lot, there really is no space to
16 comply with that.

17 You know, if you have a copy of the site plat, you
18 can see it's very tight. There really is no additional
19 space. We would lose a number of spaces if we were to, as
20 Mr. Kirschenbaum has mentioned, we would lose a number of
21 spaces, and it could well make the lot infeasible, you know,
22 to go down, 27 down to a substantially lesser number. And
23 that does have an impact on the neighbors because these
24 spaces free up spaces in front of their houses. These spaces
25 make it easier to rent out space in the commercial buildings.

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1 And if there is no parking to provide to the businesses, it
2 does impact the kind of businesses you're going to get, the
3 kind of restaurants you're going to get in the area.

4 Also, I should point out, in connection with the
5 request for the perpetual special exception, that does impact
6 the ability to attract businesses and tenants to the
7 commercial buildings because, you know, for a year or two
8 out, and a tenant says, "Well, I'm interested in renting
9 space, but I need parking. So, I'll sign a five-year lease,
10 but I need five years' parking." We can't afford them that
11 certainty because, technically, the special exception is up
12 in two years, and that does impact our ability to lease
13 space.

14 So, for all those reasons, we would request that
15 the fairly stringent standards that are already in place,
16 which are in place to provide the existing landscape and the
17 existing maintenance, pursuant to the 13 different conditions
18 that the Board previously imposed, as well as the fine
19 efforts of the property manager to keep the lot in good shape
20 and keep it cleaned and well-maintained, we would ask that
21 we not have to take on the burden of additional time and
22 expense by providing further landscaping or a taller wall.

23 Again, we haven't had anybody ask for it in terms
24 of the neighbors. They seem to be fine, as indicated by the
25 ANC vote in favor of the perpetual special exception.

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1 VICE CHAIRPERSON HART: And I understood that.
2 I guess what I was looking at was that DDOT conditioned their
3 approval on the fact that you meet these particular
4 requirements. And so, right now, you haven't had a
5 conversation with DDOT about what aspects that can or can't
6 be adhered to, and there are a number of them. And I don't
7 know if you're telling me that you can't address or you can't
8 meet any of the 714 and 715 or if there are 15 of them that
9 you can meet, but you can't meet three of them. I don't know
10 what that is. And DDOT, they're charged with overseeing
11 streets and alleys in D.C. And so, I think you've made a
12 comment about them not having kind of a purview here, but
13 they do. And so, we have to -- we're trying to understand
14 that and, also, work with you on this.

15 I'm requesting that you actually have a
16 conversation with them to be able to give to us, these are
17 the things that we can meet; these are the things we can't
18 meet. Right now, I don't think -- I mean, correct me if I'm
19 wrong -- I haven't heard that that's what that list is. It
20 seems like you've kind of heard this recently. You've read
21 through it, but actually haven't had that conversation with
22 DDOT to be able to kind of get to, these are the things that
23 we can or can't do, and kind of the rationale why you can't
24 get to those. And I think that's what I'm asking for. So,
25 I can hear from the rest of my Board members to see if they

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1 have other thoughts on that.

2 MR. GELFARB: Well, if I could just speak to it
3 real quickly, so I'm looking through 714 right now. And
4 there's really two screening requirements. There's other
5 verbiage, obviously, but, really, the crux of it is 714.2(c),
6 screening shall be either a wall or solid fence at least 42-
7 inches high or evergreen hedges or evergreen growing trees
8 that are thickly planted and maintained, and are at least 42-
9 inches in height when planted, and maintained in perpetuity."

10 Kind of for the reasons we talked about, we
11 already have a 3-foot wall in place. It's been there for a
12 very long time. To put trees in that area would take away
13 a number of the parking spaces. We are seeking relief, which
14 the Board does have the right to give --

15 VICE CHAIRPERSON HART: Mr. Gelfarb, what I'm
16 asking you is that you are giving me information about there
17 are 30 parking spaces, and you're saying that it may take
18 away some. How many is "some"? Four? Five? Three? One?
19 What I'm telling you is that we need additional information
20 about what it is the impacts are going to be to your client,
21 so that we can have justification for being able to grant
22 this. I'm trying to work with you in doing this. I'm trying
23 to ask you for getting further information, so that you can
24 do that. I'm not trying to be overly bureaucratic about it,
25 but it is helpful for us, as we go through these, to be able

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1 to kind of say, this is why we've granted this. And I'm just
2 saying that I just don't think you have sufficient
3 information to be able to do that. And it would be helpful
4 to be able to say that you are requesting relief from 714.2,
5 714.-whatever, .9. I don't know, but I just think that we
6 are looking for just that information.

7 And honestly, I'm not even sure we need to have
8 a further hearing on this. I think it may be just a decision
9 that we set it down for. But we just need to have that
10 information to, then, be able to make that determination.
11 So, I'm not trying to put it off and have your client come
12 down, and you come down, for another meeting. I'm just
13 trying to get the further information to make sure the record
14 is full, and so, that, then, we can make a determination.

15 MR. GELFARB: Okay. I mean, we're fine with maybe
16 a formal parking study or something that would show the
17 impact of meeting the full requirements. If that's what the
18 Board would like to see, we're fine in providing it. And if
19 we could do it in the form of a limited -- so as not to
20 inconvenience the parking lot, that would be wonderful.

21 VICE CHAIRPERSON HART: Yes, I don't know if Board
22 members -- Board Member White? Or, excuse me. John?

23 MEMBER JOHN: Mr. Vice-Chair, DDOT is only asking
24 for two things, the 42-inch-high wall and 10 percent of the
25 area devoted to landscaping. Now OP has made a good argument

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1 that this lot is not adjacent to any residential properties,
2 and that would mitigate your needing to have robust
3 landscaping. So, I think it would be helpful to go back to
4 DDOT and make those points, and then, let us know, if you
5 were to comply, what the hardship would be and how much
6 parking space would be lost on that small lot. So, I agree
7 with what the Chairman has said, and we're not opposed, I'm
8 not opposed to granting the relief, but there really isn't
9 enough in the record to do that.

10 That would be my two cents.

11 VICE CHAIRPERSON HART: Yes?

12 COMMISSIONER MILLER: Thank you, Mr. Vice-Chair.

13 The only thing I would add, since we are putting
14 off a decision and encouraging a conversation with DDOT, then
15 maybe Mr. Kirschenbaum from OP can facilitate that
16 conversation and explain the mitigation that already occurs
17 due to the alley lots and the 30-year history of no
18 complaints, and the ANC's unanimous support for having a
19 perpetual special exception. And as long as you're putting
20 it off, maybe Mr. Kirschenbaum can just submit a very one-
21 line supplemental report memorializes what you said here.
22 It is that you, OP, now supports it being in perpetuity
23 because the ANC does. So, that's all I would add to that.

24 VICE CHAIRPERSON HART: Thank you.

25 COMMISSIONER MILLER: And that all will be in the

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1 form of a written submission --

2 VICE CHAIRPERSON HART: Yes.

3 COMMISSIONER MILLER: -- and we can get to a quick
4 deliberation when it comes up.

5 VICE CHAIRPERSON HART: Yes. I would agree. I
6 mean, I would agree with all of that. I think I would be in
7 support of this if we could get the further information.
8 Again, I think I would be in support of even having this no
9 time limit. But, again, I think that it's just understanding
10 that we've kind of met, that we've dealt with some of the
11 concerns that have been raised by -- well, I shouldn't say
12 "concerns" -- some of the conditions that the DDOT has
13 raised.

14 I think I will close the hearing. With the
15 exception of the documents that we've asked for, and it's
16 really just further justification regarding the DDOT report
17 and the 714 and 715, and I guess the issue is kind of when.
18 So, I think it would be a meeting, a decision case.

19 MS. ROSE: Yes. How soon do you want it, July
20 11th?

21 VICE CHAIRPERSON HART: Actually, here's the
22 question: how soon do you think you can get this information
23 to us?

24 MR. GELFARB: I'll probably need to talk with a
25 parking consultant that can review. So, July 11th might be

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1 a little tight.

2 VICE CHAIRPERSON HART: Okay.

3 MR. GELFARB: What would be the next date after
4 that?

5 MS. ROSE: The 18th is the next date, but Mr.
6 Miller will be here on the 25th.

7 VICE CHAIRPERSON HART: Yes, the 25th seems like
8 we've got a lot of stuff going on as it is. We could always
9 do it absentee.

10 COMMISSIONER MILLER: I was just going to say
11 that.

12 VICE CHAIRPERSON HART: Yes. So, how about we set
13 it for the 18th?

14 MS. ROSE: The 18th, yes.

15 VICE CHAIRPERSON HART: For a decision. That
16 would give you several weeks to be able to get the
17 information to us, have a conversation with DDOT, and then,
18 OP. I think that should be sufficient.

19 Now the question is when we should be getting
20 information from the Applicant.

21 MS. ROSE: Are we doing the Applicant and, then,
22 responses, or just one submission from everyone?

23 VICE CHAIRPERSON HART: I think it's one response
24 and one submission for everybody.

25 MS. ROSE: Then, that would be July 12th,

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1 Thursday, July 12th.

2 VICE CHAIRPERSON HART: Do we have to do it seven
3 days? Because we are requesting this information.

4 MS. MYERS: The Board in the regulations would
5 need to allow seven days for the ANC to respond as a party.

6 VICE CHAIRPERSON HART: Yes.

7 MS. MYERS: However, that's a time limit that can
8 be modified or waived by the Board.

9 VICE CHAIRPERSON HART: Mr. Gelfarb, do you think
10 the 12th would be -- we would be able to get something from
11 you by the 12th?

12 MR. GELFARB: Yes, I think I could probably pull
13 that off.

14 VICE CHAIRPERSON HART: Okay. Okay. Well, let's
15 -- I'm sorry, I'm just looking at a calendar.

16 MS. MYERS: Mr. Vice-Chair, could I interject
17 quickly?

18 VICE CHAIRPERSON HART: Sure.

19 MS. MYERS: I wanted to get a little more clarity
20 on the documents requested. Because it sounded as though
21 there was potential for the Applicant to be amending the
22 application to request a modification or waiver as to those
23 screening and landscaping requirements. I know in the
24 testimony the Applicant mentioned, if he is not able to
25 comply, then the Board may grant a waiver of those

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1 requirements, but that has to be specifically requested by
2 the Applicant. At present, that has not been requested. So,
3 I wanted some clarity for the Board as to whether a revised
4 self-certification or a revised burden of proof would be on
5 that list of requested documents for after the record is
6 closed.

7 VICE CHAIRPERSON HART: Well, that's interesting.

8 MS. MYERS: Sorry to throw a wrench in the end of
9 the proceedings.

10 VICE CHAIRPERSON HART: Yes. I think that is what
11 we're -- because I think you've raised that, Mr. Gelfarb,
12 with the waiver issue. Let me think. You provided a revised
13 burden of proof, Exhibit 37. I think it's the last thing
14 that we've received. I guess it's a revised self-
15 certification. Yes. Yes.

16 MR. GELFARB: It was sort of incorporated in the
17 request for relief under Subtitle C, 710.3(a)(4). But, if
18 the Board requests that we specifically call out those other
19 two sections, we can. I think it's incorporated in the
20 request under 710.3(a)(4). And perhaps he can speak to that
21 as well.

22 VICE CHAIRPERSON HART: Yes. Well, I'm just
23 looking at. And I think it would be helpful to have that,
24 so that it is clear that that is what is being -- so, it
25 would be a revised self-certification form. Because this

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1 really is also about the burden-of-proof statement that
2 you've provided. All of this kind of is wrapped up in it.
3 But I think that the revised self-certification would be
4 helpful.

5 Does that make sense? Yes?

6 MS. MYERS: Yes. Thank you.

7 VICE CHAIRPERSON HART: But I think the same date
8 we're still looking at is the 12th. So, that doesn't change.
9 I think that that's, yes, July 12th is what we're looking
10 for, for the information.

11 MR. GELFARB: That will be fine. Thank you.

12 VICE CHAIRPERSON HART: Okay. Thank you. Okay.
13 Thank you very much.

14 So, Ms. Rose, if we could go back to the case that
15 we took a break from?

16 MS. ROSE: Yes.

17 VICE CHAIRPERSON HART: 19768.

18 MS. ROSE: Yes. Do you want me to call the entire
19 case again or do you want me to just --

20 VICE CHAIRPERSON HART: Yes, please.

21 MS. ROSE: All right. 19768 of CDDC 1735 to 1737
22 10th Street, Northwest, LLC, pursuant to 11 DCMR, Subtitle
23 X, Chapter 9, for special exceptions under Subtitle C,
24 Section 703.2, from the minimum parking requirements of
25 Subtitle C, Section 701.5, and pursuant to Subtitle X,

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1 Chapter 10, for variances from the lot occupancy requirements
2 of Subtitle E, Section 304.1, the rear yard requirements of
3 Subtitle E, Section 306.1, and the side yard requirements of
4 Subtitle E, Section 307.1, to construct two new flats in the
5 RF-1 zone at premises 1735 and 1737 10th Street, Northwest,
6 Square 363, Lots 105 and 106.

7 VICE CHAIRPERSON HART: Okay. Thank you very much
8 for calling that.

9 If we could have everybody, all the parties, all
10 the folks that are requesting party status to the table as
11 well?

12 And if you have not been sworn in earlier, Ms.
13 Rose, if we could -- I'll wait until they get settled.

14 Welcome.

15 Okay. So, we started the case, and we stopped,
16 and now we're back.

17 If you could introduce yourself? And I would just
18 go down the table. So, you can start with yourself.

19 MR. STATES: My name is Timothy States. I'm a
20 resident in the neighborhood.

21 If I may ask, when you say you started the case --

22 VICE CHAIRPERSON HART: Yes?

23 MR. STATES: -- was that earlier today?

24 VICE CHAIRPERSON HART: That would be correct.

25 MR. STATES: Okay.

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1 VICE CHAIRPERSON HART: We started the case
2 because it was on the docket and we just got to it, and there
3 was no one in opposition. And so, we were a little curious
4 about that. So, we stopped it and we waited, and you've now
5 shown up, and now we are proceeding.

6 MR. STATES: Okay. I apologize for that.

7 VICE CHAIRPERSON HART: Since you were not here
8 earlier, if you could stand, so we could give you, administer
9 the oath?

10 Anybody else in the audience that has not been
11 sworn in, if you could stand at this time?

12 Ms. Rose?

13 (Whereupon, Mr. States was sworn.)

14 VICE CHAIRPERSON HART: Thank you.

15 If we could, everybody at the table, if they could
16 introduce yourselves, that would be great.

17 MR. WARREN: Sure. Good afternoon, Mr. Vice-Chair
18 and Members of the Board. Charles Warren, Teass-Warren
19 Architects, here on behalf the Applicant.

20 MR. LAURENT: Good afternoon. My name is Marc
21 Laurent. I'm part of the development team for this project.

22 MR. SULLIVAN: Good afternoon, Mr. Chair and
23 Members of the Board. Marty Sullivan, on behalf of the
24 Applicant.

25 VICE CHAIRPERSON HART: Good afternoon, everybody.

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1 So, we have a request for party status, Mr.
2 States?

3 MR. STATES: Yes, it is.

4 VICE CHAIRPERSON HART: If you could provide your
5 rationale for request, why we should be granting your request
6 for party status?

7 MR. STATES: Okay. I participated in the Office
8 of Planning hearing, and there were significant changes being
9 made to the drawings. And I had been waiting and
10 anticipating the changes that were being delayed, so I could
11 decide if I would need counsel, who else would be involved.
12 And I spent over a month requesting the updated drawings, and
13 because they were significantly changed, I was under the
14 impression there would also be, not only on the outside
15 drawings, but things done there. Actually, if you look at
16 the original drawings and the current drawings now, it's two
17 totally different buildings. And so, I was under the
18 impression that I would be notified in a timely manner when
19 those drawings were made, and then, I can decide what kind
20 of counsel that I could seek as far as going forward.

21 And so, there wasn't a direct notice as far as
22 trying to get party status. I read what was in the mail.
23 It told me, it informed you of the date, and I looked over
24 the information, but it didn't say what I needed to do to be
25 of party status. Whereas, in the other information it was

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1 clear.

2 So, I took that information. I looked at it. And
3 as I went through later on, it stated, well, to participate
4 as a party, you need to do certain things. And then, when
5 I filled that information out, at the bottom of the page is
6 where the notice for the 14 days were there. And that's when
7 I realized it was day eight outside of here there.

8 And because I'm affected or impacted directly by
9 the building or the proposed construction, this is why I am
10 requesting party status, to have representation by counsel.

11 VICE CHAIRPERSON HART: And could you provide us
12 with the information as to the timing of this? You've kind
13 of given us some meetings, but there were no kind of a
14 dateline that we're talking about.

15 MR. STATES: Yes.

16 VICE CHAIRPERSON HART: When were you first aware
17 of this project? We'll start there.

18 MR. STATES: I was made aware of this project the
19 day before it was presented to the ANC Board, April 3rd, I
20 believe. And I was told that -- and I went to the ANC
21 meeting -- and then, I was told about the process, the
22 planning, and I went before the Historic Board, or I received
23 a letter, and I went before the Board. This was in April.
24 The historic preservation actually was in May.

25 VICE CHAIRPERSON HART: This was the Review Board?

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1 MR. STATES: The Review Board. In their letter,
2 it gave me information and told me what I needed to do. So,
3 I went before them, and at the meeting their plans, the
4 original drawings, again, were changed. They made notice.
5 So, instantly, within the first week following the meeting
6 -- and I can show you -- I started not only emailing the
7 Planning Office requesting the information, I even went over
8 there twice requesting updated drawings, to where Emania
9 Price, their representative, became annoyed with me
10 constantly. And her response was, "I don't have them. I
11 don't have them. I don't have them." So, we went into June,
12 and she was still telling me, "I don't have the updated
13 drawings there."

14 And I had to leave town for business. When I got
15 back, basically, I was given an updated drawing there. In
16 between time, I had received --

17 VICE CHAIRPERSON HART: When? When did you get
18 the updated drawings?

19 MR. STATES: I got the updated drawings sometime
20 mid-June possibly. Yes, mid-June, sometime in that area, the
21 second week of June or so. And as I stated, I had gone out
22 of town on business. So, that was why.

23 VICE CHAIRPERSON HART: And can you speak about
24 the impacts, how this project will impact you more so than
25 someone else that's --

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1 MR. STATES: Sure. Now do you want me to speak
2 as far as under the request for party status or do you want
3 me to go in detail?

4 VICE CHAIRPERSON HART: No. Just the request for
5 party status.

6 MR. STATES: Oh, okay. Well, one, I'm affected
7 directly from a safety hazard; two, from an economic
8 standpoint; three, from my light, air, and space; four, from
9 an economic aspect, and, also, just accessibility to moving
10 and taking my trash out. I'm uniquely impacted because of
11 the location of my property. Okay? I am right in the middle
12 of this proposed property. They're asking to come up to my
13 property line, right up to my property line, blocking out my
14 air, space, and there. And my property is, again, 948. It's
15 contiguous to the proposed construction.

16 VICE CHAIRPERSON HART: Are there any questions
17 for the -- thank you very much.

18 MR. STATES: Uh-hum.

19 VICE CHAIRPERSON HART: Are there any questions
20 for Mr. States?

21 MEMBER WHITE: Give me a little bit more
22 information about the light and air impacts. Because, for
23 party status, you obviously have to show that you're uniquely
24 impacted. So, I just want to have a little bit more meat in
25 terms of what --

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1 MR. STATES: Okay.

2 MEMBER WHITE: -- you're talking about, as well
3 as the accessibility issue. The economic issue, I'm not as
4 interested with that particular issue. But accessibility and
5 light and air --

6 MR. STATES: Okay. We'll start with the light and
7 air. The building will come up to my property line, and it
8 will tower over my house. It's a full story over my home.
9 I live in a rowhouse, and the direct sunlight to my rowhouse
10 comes from the south side, which is where this building will
11 be located. So, it will block out the complete light in my
12 house, the sunlight. And so, basically, I will be living in
13 the shadows, okay, all day every day. And how that affects
14 me from an energy standpoint, my energy bills will be
15 significantly higher because I won't have direct sunlight.
16 So, on those days where it's not really cold, but kind of
17 cool, and where most people will have sunlight heating their
18 home, I'll be forced to turn on my energy or my gas, and
19 that's year around. Basically, I will not have sun there.

20 So, it towers over my house. My yard, the
21 property line is approximately 12 to 15 feet from the end of
22 my house. So, I have a very small space there. Okay. And
23 this building just towers over it. There's no sun at all.

24 MEMBER WHITE: And the accessibility on that?

25 MR. STATES: The accessibility, right now, to get

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1 to the alley from my home, I leave my house -- and this is
2 to set out my trash or different things -- I have to leave
3 my home going south, then go east, and then, go south again.
4 Now that's what they're calling an alley when I go east, and
5 even that spot, according to their plans, which is just 4
6 feet, will be reduced there. So, basically, getting to that
7 alley will become more of a challenge there.

8 MEMBER WHITE: Thank you.

9 VICE CHAIRPERSON HART: Commissioner Miller, do
10 you have any questions?

11 COMMISSIONER MILLER: Good afternoon.

12 MR. STATES: Good afternoon.

13 COMMISSIONER MILLER: You said you became aware
14 of this -- when did you become aware of the development?

15 MR. STATES: I was made aware of the development
16 on, I believe it was April 3rd, April 3rd or April 4th.

17 COMMISSIONER MILLER: Around the time of the ANC
18 --

19 MR. STATES: The day before. What happened is,
20 the night before the ANC meeting, it was presented at the
21 French Street Neighborhood Association meeting, was the first
22 I was made aware of it. And I protested then.

23 COMMISSIONER MILLER: You were at the French --

24 MR. STATES: I was at that meeting. Then, I went
25 the next night to the ANC meeting, and this is all recorded.

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1 I protested then, and I was told, well, these are just the
2 planning stages, as if it was dismissed or not something very
3 important.

4 And then, I received letters that it would go to
5 the Historic Board. And I found that I wasn't quite sure how
6 it could make it because it didn't fit in with any of the
7 buildings in our neighborhood, and the neighborhood was never
8 asked to vote on this. And I was told this was initiated
9 from the ANC. When I asked why wasn't there a vote, I was
10 told it was initiated out of the ANC.

11 COMMISSIONER MILLER: You're aware now that we do
12 have an ANC letter of support?

13 MR. STATES: Oh, I am aware. My point is, it
14 never came -- generally, what happens is the neighborhood
15 takes a vote, and then, the ANC will listen or talk to the
16 neighborhood on their decision. There was never a call from
17 the neighborhood to take a vote on these plans. And when I
18 asked, I was told this was all ANC initiated. Alex Padro,
19 actually, I was told. This was all Alex's idea. Okay? And
20 I thought, that's interesting. Alex never spoke to me or
21 told me or asked how would I be harmed, how would I be
22 affected, how would I be impacted. The developers never
23 spoke to me and asked how would I be harmed or impacted. I
24 went to the meeting, and when I raised questions there, never
25 answered at the Neighborhood Association meeting. And then,

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1 when I went to the ANC meeting, it was basically I was just
2 told, "Oh, no, these are just the planning stage. We are
3 just getting together to see" -- and again, that's on the
4 recording there.

5 Then, and as you state, am I aware of the ANC
6 voting for it, even going through the planning stage, if you
7 go back to the film and at the thing, Alex never allowed
8 these gentlemen to stand up and present their plans. Alex
9 blessed the plans. They told stood up. They never unrolled
10 -- this is at the first meeting -- and said, "Here's the
11 building. This is what we're presenting." Mr. Padro,
12 because he stated he didn't think it would get through at our
13 Neighborhood Association meeting, so they stood up and, as
14 they were about to open their plans, their drawings -- and
15 this is all on film -- Alex just talked over and said, dah-
16 dah-dah-dah, and his Commissioners signed off on it without
17 this being looked at. This was before it went to the
18 Historic Board.

19 Now, before it was to come to Zoning --

20 COMMISSIONER MILLER: Okay. You answered my
21 question --

22 MR. STATES: Okay.

23 COMMISSIONER MILLER: -- were you aware, did you
24 attend the ANC meeting, and you did. You did.

25 MR. STATES: I have attended. I have attended the

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1 ANC meetings.

2 COMMISSIONER MILLER: And were you aware that the
3 ANC has --

4 MR. STATES: Yes.

5 COMMISSIONER MILLER: -- subsequently voted --

6 MR. STATES: In support of it.

7 COMMISSIONER MILLER: -- in support of it? So,
8 I appreciate --

9 MR. STATES: Okay. I'm sorry if that was a long-
10 winded answer.

11 COMMISSIONER MILLER: It is a long answer.

12 MR. STATES: Yes.

13 VICE CHAIRPERSON HART: So, Mr. Sullivan, you all
14 have submitted some information in opposite to the party
15 status request?

16 MR. SULLIVAN: Yes. And our principal objection
17 was to the 14-day deadline, but now that we've heard some
18 substantive discussion, I would have something to add about
19 that as well.

20 I just have some general points to make, and then,
21 the Applicant and his architect have some more details in
22 response to some of the things that were said.

23 This, as the Board may know, is one of the Vacant
24 to Vibrant projects of DHCD. And so, it includes two
25 workforce housing units, and that makes the economics rather

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1 critical and important. As you know, one of the principal
2 impacts of having party status opposition is that you lose
3 a year. That's the reality these days. You lose a year
4 waiting for a full order, and that can be very impactful on
5 an Applicant.

6 And therefore, we would ask the Boards to strictly
7 follow the 14-day deadline. The Board does have a right to
8 waive it for good cause, and we don't think good cause has
9 been shown. We don't think it's enough to just show up and
10 say either that they don't agree with what the ANC
11 presentation was or that there were changes.

12 Speaking of changes, we'll have the architect talk
13 about that. The drawings are not significantly different.
14 None of the relief requested has been changed. The massing
15 hasn't changed. No aspect of this that could allegedly
16 impact the neighbor has changed.

17 The HPRB approved it in May. Mr. States was sent
18 the latest updated drawings with not material changes on June
19 8th.

20 I would note that, when Mr. States purchased his
21 property in 1999, and up until September of 2016, it was a
22 matter of right to build to the property line at a 40-foot
23 height. So, when he purchased the property, he knew there
24 was a record lot there that could be developed to the lot
25 line at a 40-foot height, and that approved in September.

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1 And as you also may know, the Zoning Commission is
2 considering a text amendment that would correct what we think
3 has been a mistake in requiring a 5-foot side yard here at
4 all, anyway.

5 Also, regarding the lot occupancy, that doesn't
6 affect him because where his property is is around the middle
7 of the house. So, the additional length doesn't have any
8 impact on him.

9 And so, I'll turn it over to the architect for
10 some details about changes in the plans, if that's material.

11 I would just like to make a quick comment about
12 there's a letter filed yesterday in the record. It doesn't
13 have an address or a name on it. So, I'd like the Board to
14 discount that. It does come in on the agenda after an empty
15 email from Mr. States. So, maybe it's from him; I'm not
16 sure. But I would just like to point that out.

17 MR. STATES: May I ask, is it appropriate for me
18 to seek counsel now, from my counsel?

19 VICE CHAIRPERSON HART: Is it appropriate for you
20 to?

21 MR. STATES: I know you were trying to decide if
22 I --

23 VICE CHAIRPERSON HART: Your counsel can be here.
24 Your counsel has always been -- that's up to you to have your
25 counsel there or not.

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1 MR. TEMPLE: May I inquire --

2 VICE CHAIRPERSON HART: You have to actually get
3 on the mic before you --

4 MR. TEMPLE: Sure.

5 VICE CHAIRPERSON HART: We're taking this. The
6 court reporter has this. So, you need to push the button,
7 too. And please introduce yourself.

8 MR. TEMPLE: I am.

9 VICE CHAIRPERSON HART: Thank you. And you can
10 sit down, too.

11 MR. TEMPLE: Thank you.

12 VICE CHAIRPERSON HART: Thank you.

13 MR. TEMPLE: Good afternoon.

14 The question is a point of order, actually. I'm
15 Donald Temple, and I do represent Mr. States. The question
16 is whether it would be appropriate, prior to him being
17 recognized as a party, to represent him pertinent to his
18 request for party status. I didn't want to speak
19 prematurely, so I wanted to get your authority in that
20 respect to make a point in support of his application.

21 VICE CHAIRPERSON HART: I mean, you're being
22 represented -- you're representing Mr. States. You can
23 represent him during the party status or you can represent
24 him during the actual case or --

25 MR. TEMPLE: Sure.

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1 VICE CHAIRPERSON HART: That's up to you to do
2 that. And correct me if I'm wrong, I don't think that
3 there's any issue with that. But, yes, that's not something
4 that you necessarily need to have from me. That's you're
5 representing that person in these proceedings.

6 MR. TEMPLE: I just don't like to speak if I am
7 not authorized to. So, I wanted to make sure. That
8 clarified it with you.

9 And to that extent, when the gentleman, the
10 architect, completes his statement, I would like to make a
11 statement on Mr. States' behalf pertinent to his application.

12 VICE CHAIRPERSON HART: Okay. So, what I had
13 asked, and the reason that I had asked Mr. States to go first
14 was so that I understood what the actual -- what his issues
15 were. This isn't kind of a rebuttal and all that. That
16 doesn't happen right now. So, I'm asking, I asked him to
17 present what it was that his -- why he thought that he should
18 be receiving party status. If you have something else that
19 you would like to present right now, that would be great.

20 MR. TEMPLE: Okay.

21 VICE CHAIRPERSON HART: So, you can do that now.

22 And I asked the Applicant if they could tell me
23 why they thought that you all should not get party status.
24 So, I'm trying to proceed through this in a particular way.
25 So, you are more than welcome to present any information that

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1 you would like to at this moment.

2 MR. TEMPLE: I appreciate the opportunity.

3 First and foremost, Mr. States is not a lawyer.
4 The premise of his request is really not only inconvenience,
5 but the correspondence that you issued to the neighbors does
6 not definitively state, and directly state, there is a
7 hearing on a particular date. That is a problem by way of
8 due process. This issue and this process is critical for
9 affected individuals. The notice that this agency sends to
10 affected individuals should expressly state, not indirectly
11 on a separate document, that there is a hearing on this date
12 and your rights are affected.

13 Notwithstanding that, Mr. States is directly
14 affected. The issue of whether or not he received drawings
15 at a certain point, et cetera, is limitedly significant, or
16 whether the ANC has supported this or not is limitedly
17 significant. What's more significant is that the government
18 and this agency wants a full record and wants to give the
19 affected citizens, one who has been there since 1999, and not
20 seeking to move there now, to have the right to participate
21 in the process and to discuss issues that may involve the
22 very process by which we are here, including the ANC's
23 decision and other decisions that affect his rights of 20
24 years.

25 There are four different variances sought here.

1 In addition to that, contrary to what counsel has stated for
2 the Applicant, there's a potential easement issue over which
3 you have no jurisdiction, which may have to be discussed or
4 litigated in another forum.

5 But, for the most part, Mr. States has been
6 consistent. He is the most active affected neighbor in that
7 community. He has been at every event except being able to
8 timely submit something here. The flip side of that is that,
9 if it is a mistake on his part, we think it still presents
10 good cause for you to consider favorably his application to
11 become a party.

12 And finally, the benefit of Mr. States'
13 participation, supposedly that there is a meaningful
14 development, is best in the public interest versus the
15 developer speaking absent any opposition, particularly from
16 a neighbor or a resident who is directed affected.

17 Thank you.

18 VICE CHAIRPERSON HART: Thank you. And, Mr.
19 Temple, did you say that the original notification from the
20 Office of Zoning was in error?

21 MR. TEMPLE: I said part -- no, I didn't say "in
22 error."

23 VICE CHAIRPERSON HART: I wasn't sure if I
24 understood that.

25 MR. TEMPLE: No.

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1 VICE CHAIRPERSON HART: That's why I was trying
2 to understand what you were --

3 MR. TEMPLE: Yes, I didn't say it was in error.
4 I said it was -- essentially, it can be viewed to be
5 defective.

6 VICE CHAIRPERSON HART: Okay.

7 MR. TEMPLE: And the reason why is that,
8 generally, for purposes of due process, when there are
9 communications that affect people's rights, including
10 property rights, the notices from the courts and other
11 agencies in this government, in which I have extensive
12 experience, generally, very expressly specify that there is
13 a hearing on a date and time and your rights are affected.
14 That's not the case with your correspondence.

15 And Mr. States submitted a document, which we
16 would ask it be included in the record, which spells out the
17 basis for his concern. Because it was an indirect notice and
18 he didn't see it, and others would probably not see it unless
19 they were more careful, or that they were retained by counsel
20 who would probably more than a non-lawyer observe that
21 particular notice.

22 VICE CHAIRPERSON HART: I'm a little confused
23 because the notice that I see actually has today's date on
24 it and the time for the project. And it says, you know, how
25 to participate in the case. It gives you the information.

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1 And if you are interested in that, then you find that further
2 information.

3 Commissioner Miller?

4 COMMISSIONER MILLER: No, that's the point I was
5 going to make. I was looking at the exhibit, the exhibits,
6 the notice that actually specifically calls for the hearing
7 and how you can find out more information about this
8 particular property and development. I saw the notice of who
9 it was sent to, and Mr. States is listed in that list.
10 There's also a posting of the notice of the public hearing
11 in the neighborhood on a big sign. So, I don't appreciate
12 all the comments that there wasn't notice given by this
13 office and by the Applicant of the hearing.

14 MR. TEMPLE: I didn't say that. I didn't say
15 that.

16 COMMISSIONER MILLER: That there was proper
17 notice.

18 VICE CHAIRPERSON HART: And we're actually not
19 going to have a back-and-forth about what it is.

20 COMMISSIONER MILLER: That there wasn't proper
21 notice.

22 VICE CHAIRPERSON HART: I understand that.

23 MR. TEMPLE: May I comment to --

24 VICE CHAIRPERSON HART: No, you may not.

25 MR. TEMPLE: To you --

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1 VICE CHAIRPERSON HART: No, you may not.

2 MR. TEMPLE: Very well.

3 VICE CHAIRPERSON HART: No, you may not. Thank
4 you.

5 So, right now, we have the statement that the
6 person that is seeking party status has made and through
7 their lawyer.

8 Mr. Sullivan, do you have -- I know that I stopped
9 you during your discussion. If you have any other points
10 that you would like to make?

11 MR. WARREN: I can speak just briefly about the
12 design changes. I think that was one of the points. So,
13 this is an HPRB overlay. We initially presented a fairly
14 modern scheme at the ZPD hearing with the ANC. It didn't go
15 over awesome, but we went back and worked with --

16 VICE CHAIRPERSON HART: What does "modern" mean?

17 MR. WARREN: It was a little bit more modern
18 aesthetically. But, from a zoning envelope, it was the exact
19 same zoning envelope, the same massing, the same height, the
20 same areas of relief. And we made that clear in the HPRB
21 submission, that we would need to ask for relief for those
22 things. So, in that sense, it's in total alignment with our
23 application here.

24 We did present a little bit more traditional
25 scheme with the HPRB hearing, and out of that, I think that's

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1 what Mr. States is reacting to, is some of the design changes
2 that had happened in the process on the elevations.

3 But we were working very closely with HPO staff.
4 We presented to French Street Neighborhood Association. So,
5 those design changes were really part of that public process
6 and community process. And we did actually solicit HPRB
7 approval on delegation of staff.

8 VICE CHAIRPERSON HART: Are there any questions
9 for, I guess the Applicant, regarding their statements?

10 MEMBER WHITE: Yes. I guess, obviously, he's, Mr.
11 States is going to have impact from the project because of
12 the proximity of where he's located. So, in my mind, I'm
13 just trying to look at the criteria for granting party
14 status. Obviously, in some instances we can waive requests
15 that are somewhat late.

16 But one of the things that he did say -- and I
17 just want to get some clarification on this -- he said that
18 he may be delayed responding in the form of a party status
19 because he was waiting to get revised drawings. But did the
20 project change over a period of time? Or was there a delay
21 in actually getting him access to what the actual project is
22 going to look like in terms of how it's going to directly
23 impact him from a matter-of-right perspective or, you know,
24 whether or not you're exceeding height limits, and that kind
25 of thing?

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1 So, I'm just trying to put the pieces all together
2 in terms of whether or not the party status should be
3 granted. At this point, I'm not really getting into all the
4 substantive aspects of the case right now.

5 MR. SULLIVAN: My understanding is that Mr. States
6 has been involved in this from the beginning. Nothing
7 regarding anything related to zoning relief has changed. And
8 we're not asking for height relief. And so, no aspect, no
9 material aspect of the massing of the building or anything
10 else that he's saying will impact him has changed in the
11 slightest since he first saw the plans and heard this in
12 early April, a couple of months ago.

13 And I would also add that, regarding the due
14 process claims that his attorney raises, notwithstanding the
15 threat of the easement litigation against what is still
16 District-owned property, any insufficiency that he claims is
17 in the process would relate to everybody and not just to his
18 client.

19 And to waive the 14-day requirement on that basis
20 would be to get rid of the requirement because that reality
21 exists for everybody out there, at least every non-lawyer.
22 And he has the right to express concerns. He can be a person
23 in opposition, and the Board could give him extra time, and
24 often do when somebody has significant issues. So, I don't
25 think he's stopped from presenting issues that the Board

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1 would want to consider.

2 MR. LAURENT: Excuse me. One point about response
3 time. The only that Mr. States reached out to us directly
4 was on June 8th by email, requesting the updated drawings
5 from our architect, and we responded that same day and gave
6 him the plans and requested a meeting with him. And he did
7 not want to meet with us.

8 MR. STATES: May I respond to that?

9 MEMBER WHITE: Yes.

10 VICE CHAIRPERSON HART: Yes.

11 MR. STATES: Well, actually, I had been going
12 through Historic Planning Office, speaking with Emania Price,
13 and she was forwarding me all of their plans. And actually,
14 I have a copy of their original plans, and they're totally
15 different from their current plans. It looks like two
16 separate buildings. And I kept asking her, well, when will
17 the -- she sent me a preliminary update and she said, "I do
18 not have the final drawings." And I have an email trail that
19 would show that I was consistently sending out requesting for
20 her their final drawings. And on June the 8th was when she
21 told me to contact the architect because she didn't -- she
22 said, "I don't have them. Check with the architect."

23 And at that point, he had given me their final
24 drawings, given to her, she said, and then, he requested a
25 meeting after he turned it in. I wasn't quite sure what we

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1 could discuss at that point after he had turned in the final
2 drawings.

3 But they are significantly different, and I
4 assumed that, with the difference in the building, there
5 would be additional changes in other places there. And
6 again, if you look at -- I don't know if you have copies of
7 their original drawings versus their current drawings.

8 MR. TEMPLE: Mr. Chairman?

9 VICE CHAIRPERSON HART: Yes?

10 MR. TEMPLE: May I make a record just because of
11 what was said, so that the record is clear as to the what the
12 point I was making legally?

13 VICE CHAIRPERSON HART: Sure.

14 MR. TEMPLE: Thank you very much.

15 We were not making the point that there was per
16 se no notice of the hearing. We were making the point that
17 there was no notice of the 14-day period of time for party
18 status and the actual written communication. And that
19 particular notice comes when you refer to the website that's
20 listed on page 2 of 3 on how to participate in the case. And
21 that's the point that we were making regarding the indirect
22 notice. So, if a person didn't know there was 14 days, they
23 might not know that they had to go to that website within a
24 14-day period. And that's the prejudice that accrues to the
25 persons who don't go to the website, because there's no

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1 direct notice of the 14-day period in the correspondence
2 that's sent to the affected residents.

3 So, I just wanted to be clear on that. Thank you
4 for that opportunity.

5 VICE CHAIRPERSON HART: Thank you.

6 Okay. So, this is kind of back before us. This
7 issue about the opposition party status request, we've heard
8 from the adjacent neighbor who has submitted the opposition
9 request. We've heard from the Applicant regarding their
10 opposition to that request. And I'm kind of in two minds
11 right now, and I'm trying to wade through that.

12 So, I understand that the Applicant is an adjacent
13 property owner -- excuse me -- that the party status request
14 person is an adjacent property owner. They would be affected
15 by the development that is being proposed. They've made some
16 concerns -- they've made their concerns known about the light
17 and air aspect. They've brought up a safety aspect, an
18 economic aspect, the just inability to access or at least
19 more difficult access to it, to their property. So, I do
20 understand that.

21 I also understand that the Applicant -- that the
22 party status person that's requesting party status was aware
23 of the project for several months. I mean, this is April
24 that we're looking at. That if they have issues that -- I
25 mean, for me, if I have issues with something and I'm really

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1 concerned about something, I will find out every right that
2 I have when I found out that that is an issue. And so,
3 that's the dilemma that I have here right now, and you're
4 hearing that because that's what we have, is an open
5 discussion and open meeting process. So, right now, that's
6 where I am. I'm not sure if I have a definitive response
7 right now, and I'd like to hear from the other Board members
8 to see if they have a -- I don't know -- to see where they
9 are.

10 MEMBER WHITE: Yes. I guess one question I had
11 before I start sharing my views is, how many days past the
12 14 days were they late in filing for party status?

13 VICE CHAIRPERSON HART: It was on the 19th, and
14 they should have filed on the 13th. So, it was maybe six,
15 six days.

16 MEMBER WHITE: Okay. Okay. So, these are my
17 thoughts right now. My thought is that the time limit is not
18 a substantial delay, the 14 days. We've waived in some
19 limited cases the filing of party status. I am concerned
20 about granting a party status in terms of how it will
21 ultimately impact the case, but I also know that the parties,
22 the Applicant as well as Mr. States has the ability to
23 testify and submit information, even if party status is not
24 granted.

25 However, I am still struggling with the fact of

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1 the close proximity, that his property is really smack-dab
2 right in the middle of this development, and it's obviously,
3 he's obviously uniquely impacted by the development. And
4 that's not to say that this project won't move forward or be
5 modified, but I'm still struggling with the fact that it is
6 going to have some impact.

7 But I'm also looking at the whole matter of right
8 thing. You know, that is a lot where the Applicant has the
9 ability to develop, I imagine, up to the property line.

10 But, right now, just looking at the criteria for
11 party status, I'm still kind of leaning towards granting the
12 party status.

13 VICE CHAIRPERSON HART: Commissioner Miller?

14 COMMISSIONER MILLER: Well, the application for
15 party status clearly was untimely, and it's a question of
16 whether we waive it, if we think there's good cause shown.
17 I don't think the citations to the deficiency of the notice
18 that the Office of Zoning and the Applicant has given in this
19 case, and directs people to go to the website and learn how
20 to exercise their rights in terms of party status and
21 everything else, is a sufficient reason for giving good
22 cause. Because I think Mr. Sullivan makes a point, then,
23 what is the point? What is the point of the 14-day
24 requirement for anybody?

25 So, I think he, Mr. States, and anybody else who's

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1 here, can present testimony in opposition, and we do often
2 give more time than normal, the three minutes that's called
3 for in our rules for persons in opposition, and we certainly
4 would do that here, and take into account all of the public
5 comments that are provided to us, both in writing, that have
6 been provided us in writing by Mr. States and others, and by
7 the ANC and the French Street Neighborhood Association
8 President, and everybody else. So, I am not in favor of
9 waiving the 14-day requirement because I don't think that a
10 good cause has been shown to waive it.

11 VICE CHAIRPERSON HART: So, where are we? And I
12 understand that, and I would agree with that as well,
13 Commissioner Miller, regarding the whole notice issue. I
14 mean, these cases are noticed. This is the first time ever
15 I've had somebody actually state that there was insufficient
16 information kind of in the notice itself or that you had to
17 go to a website. It wasn't kind of directly said that there
18 were 14 days that you need, and I think that, again, as I go
19 through, when I have to go through looking at information,
20 and if something is impacting something that I'm interested
21 in, I'm really looking at what the rules allow me and don't
22 allow me to do. And at that point, I get to I need to do
23 something about this, and I do that fairly -- I don't know
24 -- fairly quickly.

25 But it seems as though that the Applicant did

1 receive the notification. Sorry, I keep saying "the
2 Applicant". The party status requester, I guess, has
3 received the information regarding the hearing. There was
4 information that was included in that, and I understand that
5 they may be impacted by that, by the development.

6 Mr. Sullivan did provide some information that is
7 actually kind of true. The relief that they are receiving,
8 that they're requesting, that the Applicant is requesting is,
9 will be -- while the building will impact the Applicant, the
10 relief is going to be -- the building would impact it
11 regardless of what the relief was. In this case, the relief
12 is not connected to that, I don't think. And I think that
13 that's somewhat of an issue as well.

14 As I said, I think I was on the fence with it.
15 And I understand that Mr. States has a right to provide
16 testimony as part of the project. I can support denying the
17 party status request as well. And that's it.

18 MR. TEMPLE: May I just say --

19 VICE CHAIRPERSON HART: No.

20 MR. TEMPLE: -- make a record?

21 VICE CHAIRPERSON HART: We're actually having a
22 conversation.

23 MR. TEMPLE: Okay.

24 VICE CHAIRPERSON HART: There is no opportunities
25 to do that.

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1 MR. TEMPLE: Okay.

2 VICE CHAIRPERSON HART: Yes, Ms. White?

3 MEMBER WHITE: No, I can see your train of thought
4 as well. I just had a different one. But, certainly, I
5 would encourage the neighbor, Mr. States, either directly or
6 through his attorney, to submit information as the case moves
7 forward.

8 MR. TEMPLE: Are we able to get a transcript of
9 this proceeding?

10 VICE CHAIRPERSON HART: We have a court reporter,
11 yes.

12 MR. TEMPLE: Okay. Very well. I --

13 VICE CHAIRPERSON HART: You would have to talk to
14 the Office of Zoning to be able to do that.

15 MR. TEMPLE: Thank you.

16 VICE CHAIRPERSON HART: Thank you.

17 Let's see, so with that, I think that we are
18 denying the request for party status.

19 MS. ROSE: Did you deal with the waiver first?
20 Because if you --

21 VICE CHAIRPERSON HART: Oh, sorry, we're denying
22 the waiver, I guess that would be.

23 MS. ROSE: You're denying the waiver?

24 VICE CHAIRPERSON HART: Yes.

25 MS. ROSE: Then, the party status application

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1 would be moot or --

2 VICE CHAIRPERSON HART: Okay. That would be --
3 so, thank you very much, Ms. Rose, for correcting me.

4 MS. ROSE: Okay.

5 VICE CHAIRPERSON HART: So, denying the waiver for
6 waiving the notice, the late submittal.

7 MS. ROSE: And this is by consensus?

8 VICE CHAIRPERSON HART: That would be correct,
9 unanimous.

10 MS. ROSE: All right.

11 VICE CHAIRPERSON HART: Okay. Thank you.

12 MS. ROSE: Thank you.

13 VICE CHAIRPERSON HART: So, the case. Now that
14 we've actually almost heard the case, how much time would you
15 need, Mr. Warren?

16 MR. WARREN: Ten minutes at the most. I can shave
17 it down.

18 (Laughter.)

19 VICE CHAIRPERSON HART: No, no, I'm just thinking
20 that the party status discussion lasted longer than the
21 actual case is going to.

22 But go ahead.

23 So, Ms. Rose, if you would put 10 minutes on
24 the --

25 Is it working? Are you ready? Okay. And you can

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1 begin at any --

2 MR. WARREN: Great. Thank you. Thank you, Mr.
3 Vice-Chair and Members of the Board.

4 I'll do a quick project overview of this project.
5 So, as stated earlier, these are two vacant lots near the
6 intersection of 10th and S Streets, Northwest, located in the
7 Shaw neighborhood and part of the RF-1 zone. They are very
8 small lots, a little over 1,000 square foot each. And again,
9 as noted, these are part of the Mayor's Vacant to Vibrant
10 Program, where D.C.-owned vacant lots were auctioned off to
11 the development community.

12 The proposed is two unit flats, a total of two
13 units. Two of those dwelling units will be devoted to what
14 they are calling workforce housing, 120-percent median,
15 available to families making 120 percent of the MFI. And as
16 I understand it, those units would be administered pretty
17 similarly to the IZ units by DHCD. So, they are subject to
18 a lot of the same constraints as an IZ unit in terms of
19 bedroom size, overall unit size.

20 VICE CHAIRPERSON HART: And are you required to
21 provide two units, two IZ units?

22 MR. WARREN: Correct, 50 percent of the
23 development.

24 VICE CHAIRPERSON HART: You're required to provide
25 50 percent of the -- that's different than two units?

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1 MR. WARREN: Two units. There's four units in the
2 total development. So, 50 percent.

3 VICE CHAIRPERSON HART: Four units is what you're
4 proposing. I'm just saying that it's, when you're saying --

5 MR. WARREN: Correct.

6 VICE CHAIRPERSON HART: Fifty percent is what?
7 If you were proposing two units, then one unit would be what
8 you would be required to provide?

9 MR. WARREN: Okay, I think I'm following you.

10 VICE CHAIRPERSON HART: Okay.

11 MR. WARREN: There's two unit flats --

12 VICE CHAIRPERSON HART: Yes.

13 MR. WARREN: -- each, 50 percent of all the units
14 in the development are workforce housing, and they're not
15 strictly Inclusionary Zones.

16 VICE CHAIRPERSON HART: Yes. And the reason I was
17 trying to find that, the differentiation, was whether or not
18 you had to provide two units or you had to provide 50 percent
19 of the units as IZs.

20 MR. WARREN: I think it amounts to the same thing.
21 There's four units in the development. Two of them have to
22 be workforce --

23 VICE CHAIRPERSON HART: It would amount to the
24 same thing --

25 MR. WARREN: Fifty percent.

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1 VICE CHAIRPERSON HART: -- if you were looking for
2 four units.

3 MR. WARREN: Fifty percent.

4 VICE CHAIRPERSON HART: And one of the questions
5 that I had, and I'll ask it now --

6 MR. WARREN: Sure.

7 VICE CHAIRPERSON HART: -- is with regard to, you
8 have two lots that are adjacent to one another?

9 MR. WARREN: Correct.

10 VICE CHAIRPERSON HART: And typically, when you're
11 looking for variances, there is -- and I've had this
12 question, made this question myself -- is, well, if you have
13 one lot, why don't you add onto the second lot, add on the
14 second lot? Therefore, you would have an ability to develop
15 on one contiguous lot that was actually meeting the
16 regulations in terms of being a lot, a regulation lot size
17 and be able to develop on that one lot. So, I understand
18 that you're not meeting the regulations for the lot
19 requirements.

20 MR. WARREN: Right.

21 VICE CHAIRPERSON HART: But the question is, does
22 this have to be four units? Could it be two units on one
23 combined lot? Could it be a flat on one lot? That's what
24 I was trying to get to. So, that's why I was asking you
25 about 50 percent. If it is two units that you need to

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1 provide or you need to provide 50 percent? That's what --

2 MR. WARREN: Right. I can defer to the Applicant,
3 but I think it's 50 percent. I think that was specific to
4 this offering and the Vacant to Vibrant Program, that there
5 would be, basically, two flats.

6 MR. LAURENT: That is correct. It was offered as
7 two separate lots, and the discussion of combining them into
8 one never came up.

9 MR. WARREN: Back to it, the project, as noted
10 earlier, is in the Greater U Street Historic District. And
11 so, there are DHPRB approvals. And we have received that
12 concept approval and delegation to staff for final approval.
13 And just noting for the record that DHPRB's submission was
14 reflective of the relief that we're seeking here today.

15 Just a quick aerial photo to get your oriented.
16 So, the lots are these two. It's a relatively common
17 condition in the city where the squares turn the corner, and
18 the corner lots are smaller and narrower. And this is just
19 sitting north of a great little neighborhood park and street
20 park. It's across the alley from this site.

21 Just some conditions, current conditions, of the
22 lot. It is fully fenced-in. So, I'm speaking to the access.
23 I'm not sure exactly how you would get, Mr. States gets
24 access to these properties. They're fully fenced-in.

25 And just if you look at the photo on the right

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1 there, very small lots. That stake is basically the midpoint
2 between the two properties.

3 Just quickly, a summary of the relief that we're
4 seeking. As you are aware, Subtitle E, Section 307.1
5 requires a side yard on each freestanding side when you're
6 constructing a new attached building. We've met with the
7 Zoning Administrator's Office, and they have determined that
8 that would be applicable to both the alley side and to the
9 northern lot lines that abut the rear yards of the S Street
10 properties. And I think from a practical standpoint, a 12-
11 foot-wide building doesn't really work.

12 Lot occupancy, I'll unpack this a little bit more,
13 but we're requesting to go to 70-percent lot occupancy, just
14 10 percent over the maximum of 60 percent. I'd like to note
15 that we, basically, took it to the level of what would
16 generally be a special exception if it was an addition. But,
17 as these are new construction, it's a variance request.

18 Rear yard, we're looking to go to 18.3, which is
19 a pretty minor deviation from the 20-foot required. Again,
20 that's really to get to that 70-percent lot occupancy and to
21 make these units a little bit more livable.

22 And I just wanted to note that there is, actually,
23 a public alley of 4 feet that separates the rear of this
24 property and the alley to the rear. That's a public alley.
25 That's just part of the D.C. public alley system. And part

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1 of this will -- we've had some comments about that alley not
2 being maintained and fenced-off properly, and we'll correct
3 that as part of the project.

4 Parking. As the lots are only 17-foot wide, we
5 can't really accommodate a full-sized space on that 9x18
6 spot. Only the southern lot would be required to park, as
7 it has access to an alley of at least 10-foot wide. It's 15-
8 feet wide. So, we're requesting to meet that single parking
9 space requirement with a compact space and remove the
10 standard-sized space.

11 Just to pull up some information on the lot size,
12 I thought it would be good to sort of zoom-in on the areas
13 here. So, you can see that all these corner lots that are
14 immediately touching our properties are also significantly
15 substandard lots, 1,037 for the corner lot, which matches our
16 size; 976 and 912 for those lots. And then, the more typical
17 lot size of 1900 square feet, which is pretty common in the
18 square, in that most of the lots along the square are that
19 1900 square feet.

20 And just taking a look at the relative lot
21 occupancies of those properties, 86 percent at the corner,
22 68 percent, 72 percent, and even the larger lot with the
23 carriage house is over 70. So, we're requesting 70, which
24 I think is reasonable when you look at the configuration of
25 these lots and what's historically been there.

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1 This is from the Office of Planning report, which
2 we didn't notice initially, but I think it's an interesting
3 comparison to look at the mirrored condition on the opposite
4 end of the square, where you have very similar, almost the
5 same issues that we have, particularly when you look at light
6 and air and access. They also have a 4-foot alley
7 surrounding those lots, and those lots are even a little bit
8 smaller than these lots at 976 square feet. And the lot
9 occupancy certainly of the northern lot on that is closer to
10 90 percent.

11 So, just briefly going over our relief that we're
12 seeking, are the lots affected by exceptional size? I think,
13 yes, they are exceptionally small at 1,037 square feet each.
14 That represents just a couple of metrics here. That
15 represents about 57.6 of the lot minimum for the RF-1 zone
16 of 1800, and it's only about 69 percent of an IZ opt-in
17 scenario for the RF-1, which would require a lot minimum of
18 1500 square feet. So, we're seeking being below what an IZ
19 opt-in scenario would be. And I think that's just relevant
20 because there are some parallels. While this isn't your
21 typically IZ development, they are pretty significant
22 affordable component. It's putting a lot of pressure on the
23 market-rate units to help offset those costs.

24 Just to look at that, the opt-in IZ scenario, for
25 example, would allow for 900-square-foot footprint. At 60

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1 percent, our lots would only allow for 622 square feet, and
2 we're requesting to go to 725.9 square feet. And what that
3 100-square-feet-plus-or-minus really buys you is another
4 bedroom and circulation around it.

5 I would also like to say that that allows for
6 three-bedroom workforce housing, which I think is more in the
7 spirit of the Vacant to Vibrant Program, and, generally,
8 workforce housing in general is to try to get families that
9 can occupy these units for longer term and expand in it. And
10 the other side of that is a three-bedroom unit has a higher
11 maximum purchase price as part of the IZ schedule.

12 I'll speak real briefly to community outreach and
13 OP. We met several times with the ANC, both with the ZPT
14 committees and, also, the full ANC. And we received
15 unanimous support from the ANC. And we also had several
16 meetings with the French Street Neighborhood Association,
17 presented twice, made ourselves available. We dropped off
18 cards. And certainly, we're present. And we also have
19 received letters of support from both the current and the
20 previous Chairs. One of the previous Chairs is actually the
21 property that's to the rear of ours. And as you know, the
22 Office of Planning recommends approval.

23 And that concludes my presentation. Thank you.

24 VICE CHAIRPERSON HART: Do we have any questions
25 for the Applicant?

1 MEMBER WHITE: Just out of curiosity, there's an
2 alley that goes to the rear there. Were there ever any
3 concerns about fire access or for emergency vehicles? Was
4 that something that DDOT signed off on or the other entity
5 within the government that's responsible for emergency
6 services? I'm just curious.

7 MR. WARREN: Sure. Actually, that did come up in
8 one of the ANC hearings, and they're notoriously hard to get
9 a hold of, but we did get an email from the fire protection
10 manager at DCRA, Mr. Sidney Lester, and his statement was
11 only one line, but it said, if you have established record
12 lots, then access is not an issue.

13 VICE CHAIRPERSON HART: You're requesting side
14 yard relief for both of the units?

15 MR. WARREN: That is correct. Our understanding
16 was that you needed it both for the -- at least the Zoning
17 Administrator's Office had indicated that you would need it
18 both for the properties that abut the northern rear property
19 lines, as well as the alley side.

20 VICE CHAIRPERSON HART: And how much side yard
21 relief, how much side yard would you have to provide?

22 MR. WARREN: Five feet.

23 VICE CHAIRPERSON HART: So, that would bring you
24 to, basically, a 12-foot building is what you're saying?

25 MR. WARREN: Correct.

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1 VICE CHAIRPERSON HART: Anything less than that?
2 I guess you would always, you would require, you would need
3 relief regardless of anything less than 5 feet?

4 MR. WARREN: Correct.

5 VICE CHAIRPERSON HART: So, if you did 3 feet,
6 then you still would need the same --

7 MR. WARREN: Correct. I think that's the way it's
8 currently written and being administered.

9 VICE CHAIRPERSON HART: And you kind of alluded
10 to some of the kind of by-right development.

11 MR. WARREN: Uh-hum.

12 VICE CHAIRPERSON HART: Did you do any massing to
13 see what a by-right development would be? And I'm not even
14 sure what that by-right development would be because you have
15 a non-standard lot. So, I just am trying to figure out how
16 that might change the actual massing on the site.

17 MR. WARREN: We did look at it. I think, without
18 the 5 -- when you say "by right," we sort of assumed that the
19 5-foot side yard was sort of by right. I mean, we looked at
20 a full-width property and 60-percent lot occupancy, and there
21 was very -- I mean, it's a very tight building. But we still
22 went to the 35-foot height limit.

23 VICE CHAIRPERSON HART: So, you're saying that you
24 looked at -- you never looked at anything that was not going
25 from one property line, width-wise, not going from one

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1 property line to the other?

2 MR. WARREN: No. It didn't really work from the
3 get-go at 12-feet-1.

4 VICE CHAIRPERSON HART: And I don't know if this
5 is you, Mr. Warren, or Mr. Laurent, regarding when you bought
6 the properties -- I guess it would be Mr. Laurent. When you
7 bought the properties, talk about the agreement itself in
8 terms of what it is that you were required to do to produce
9 or to develop per the --

10 MR. LAURENT: Vacant to Vibrant?

11 VICE CHAIRPERSON HART: Yes. Thank you. So, that
12 everybody else knows.

13 MR. LAURENT: Yes. So, as part of the Vacant to
14 Vibrant Project, there was the affordability component, which
15 was the workforce housing at 120 percent of AMI. And with
16 this particular property, whatever we ended up putting there,
17 we would need to provide 50 percent of the units at workforce
18 pricing.

19 So, when we went to everything and the financial
20 side, we did look at the by-right restrictions, and we saw
21 35 feet, and by right you're allowed to do two units per lot.
22 With that information, that's kind of how we backed into the
23 purchase price that we were able to pay for the units.

24 Like Charles said, we wanted to be able to provide
25 three bedrooms to the workforce housing, just because we

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1 understand that a lot of the people that are purchasing those
2 units need the bedrooms for family and things like that.

3 VICE CHAIRPERSON HART: And so, you said you never
4 looked at the -- are you not allowed to combine the lots or
5 you never looked at the -- or that wasn't something that was
6 in your -- that you were considering?

7 MR. LAURENT: Yes, it really was just never a
8 consideration. We figured that they were two record lots,
9 and if we didn't need to change that, then we didn't think
10 that it would have been a good idea to do it.

11 VICE CHAIRPERSON HART: But you may not have had
12 to have come here.

13 MR. SULLIVAN: If I could add, I think that they
14 were offered as two separate record lots. So, the auction
15 price would have reflected that reality. And I don't think
16 anybody could do anything different than that if they had
17 considered it based on that price. So, I don't think it was
18 ever contemplated by DHCD that they offer two separate lots
19 on which you could have two units, and then, expect the
20 purchaser to reduce that number of available units. So, the
21 reality, because they were separate record lots, that was
22 baked into the auction price. So, the auction price offered
23 by anybody would have been considering it as four units. And
24 then, to take it from four units to two units just kills the
25 feasibility of what DHCD was offering. DHCD didn't offer it

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1 as one lot.

2 MEMBER WHITE: Do you have a rendering of what
3 it's going to look like?

4 MR. SULLIVAN: We do.

5 Charles, could you pull that up?

6 MEMBER WHITE: I didn't see that in any of the --
7 I'm just very curious. Was it in the record? I didn't see.

8 MR. WARREN: I don't believe there's anything in
9 the record.

10 MR. SULLIVAN: I could pull it up on my phone and
11 show it to you, if that --

12 MEMBER WHITE: I'm just always curious to see what
13 the actual end product is going to look like. I see
14 drawings.

15 MR. WARREN: Right.

16 MEMBER WHITE: But what it actually will look like
17 in relationship to the neighborhood is something that's of
18 interest. I don't know if that is something you are
19 interested in as well.

20 VICE CHAIRPERSON HART: Yes, I mean, you've
21 provided elevations of it, of what the building would --
22 elevations for around the building. But, I mean, it would
23 be nice to have them. I'm assuming that you've already
24 created them. So, maybe that's something that we can ask
25 for, for them to submit to us.

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1 COMMISSIONER MILLER: I would be interested in
2 seeing those.

3 VICE CHAIRPERSON HART: So, evidently, that is
4 something that we're interested in having.

5 COMMISSIONER MILLER: Something that shows the
6 context.

7 I have the mic.

8 Then, following up on an earlier comment by Ms.
9 White or a question, maybe you could provide that email from
10 the fire -- the one line that said that you don't have a
11 problem with access if you have a record lot.

12 VICE CHAIRPERSON HART: Okay. So, hearing no
13 other questions, let's move to the Office of Planning, Mr.
14 Jesick.

15 MR. JESICK: Thank you, Mr. Chairman and Members
16 of the Board.

17 The Office of Planning concluded that the
18 application meets the three-part variance test for relief
19 from lot occupancy, rear yard and side yard. We felt that
20 the lot was exceptionally small. It's in the bottom 10
21 percent of developable lots in the square at 1,037 square
22 feet. And the subject lots are also unusually shallow at 61-
23 feet deep; whereas, most of the lots in the square are
24 between 90- or 95-feet deep.

25 So, we felt that those created a practical

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1 difficulty for the Applicant in order to achieve a usable
2 building footprint for family-sized units. But we felt that,
3 given that scale of building, it would not result in a
4 detriment to the public good.

5 The proposed depth of the building at a little
6 under 43 feet in depth is less than all but four buildings
7 in the square. So, although they are exceeding their lot
8 occupancy in terms of the scale of the neighborhood, the
9 buildings are actually on the smaller end, in terms of the
10 delta between matter of right and what they are proposing,
11 they are proposing a 1.7-foot rear yard relief, which is a
12 little bit shallower than the 20-foot requirement. And I
13 estimated that, in terms of lot occupancy, a matter of right
14 lot occupancy would equate to about 6 feet less than the
15 length of the building. So, that might result in a noticeable
16 impact to shadow, but we determined that it would not likely
17 be an undue impact. And that changed from what would be
18 possible as a matter of right to what was being proposed.

19 OP did ask the Applicant to consider the privacy
20 concerns that might be generated along the north wall.
21 Typically, on a lot-line building we would not see windows
22 on the north wall. It is permitted per the Building Code,
23 is my understanding, but we wanted to be sure that they did
24 not impact the privacy of the neighbors. And I believe the
25 design has been revised, so that those windows are now at

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1 clear story height. I believe that's, according to the
2 architect, 6 feet 4 inches above the floor. So, it would
3 allow light into those rooms on the north side of the
4 building, but should minimize any privacy concerns for
5 adjacent homeowners.

6 So, overall, we felt that the application met the
7 requirements for relief for the variances. And then, also,
8 for the special exception for parking, we felt that, given
9 the width of the building -- or excuse me -- the width of the
10 southern lot, and the fact that the Applicant is still
11 providing a compact-sized space, that that special exception
12 also met the criteria for relief.

13 I'd be happy to take any questions. Thank you.

14 VICE CHAIRPERSON HART: Thank you, Mr. Jesick.

15 I actually had a question regarding the matter-of-
16 right building. You said that you thought that it wouldn't
17 be different than -- it wouldn't be more impactful than the
18 matter-of-right building. Do you have images that help us
19 to understand that?

20 MR. JESICK: We don't have images. Given the
21 estimated change in the volume from the size of the matter-
22 of-right building to what is being proposed, we felt that the
23 change in impact would not be undue. It's not that there
24 would be no impact, but that the relief granted would not
25 result in an undue impact.

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1 VICE CHAIRPERSON HART: And I'm assuming that you
2 looked at this as two lots, not if they could make this into
3 one lot as well? That you were looking at this as two
4 separate buildable lots?

5 MR. JESICK: Yes. We typically just evaluate
6 cases as they come to us rather than, I guess, suggest
7 different scenarios that could -- that may or may not be
8 possible. We typically just evaluate the case that's before
9 us in the record.

10 VICE CHAIRPERSON HART: Any questions for the
11 Office of Planning?

12 COMMISSIONER MILLER: Just one, Mr. Vice-Chair.

13 Mr. Jesick, in terms of what's going on on the
14 roof of these homes, does that require any relief? Did you
15 look at that?

16 MR. JESICK: We did look at that. And I think
17 with the latest iteration of the design, I believe that has
18 eliminated any relief requirements.

19 COMMISSIONER MILLER: And that's reflected in
20 what, the revised architectural design exhibit? Do I have
21 the right exhibit?

22 MR. JESICK: I believe it's Exhibit 31, although
23 I'm not positive about it.

24 COMMISSIONER MILLER: Okay. Thank you.

25 VICE CHAIRPERSON HART: Board Member White, do you

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1 have any questions?

2 MEMBER WHITE: No.

3 VICE CHAIRPERSON HART: Mr. Warren, do you have
4 any questions of the Office of Planning?

5 MR. WARREN: Not at this time. Thank you.

6 VICE CHAIRPERSON HART: Okay. So, is anyone here
7 from the --

8 COMMISSIONER MILLER: I had some questions of the
9 Applicant --

10 VICE CHAIRPERSON HART: Okay.

11 COMMISSIONER MILLER: -- I'm sorry -- that I
12 neglected to ask for.

13 Are you able to share with us what -- not that I
14 want to really get into the economics of this at all, the
15 economics of this and whether it's relevant to our decision
16 on the relief being requested. But I would be curious to
17 know what the auction price was and -- well, that's my first
18 question.

19 MR. WARREN: The purchase price was \$860,000 with
20 a 5-percent fee going to the auctioneer. So, that brought
21 it up --

22 COMMISSIONER MILLER: For both? That's the
23 combined for the --

24 MR. WARREN: So, it brought it up to a little over
25 \$900,000, yes.

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1 COMMISSIONER MILLER: Okay. I'm just trying to
2 understand a little bit, since you brought it up, the DHCD
3 Vacant to Vibrant Program. The 120 percent of median family
4 income which qualifies as workforce housing under DHCD rules,
5 I suppose, that's obviously considerably higher than what our
6 Inclusionary Zoning income levels are, which are at 60-
7 percent MFI and 80-percent AMI. And at the Zoning Commission
8 we get a lot of criticism about the 80-percent MFI, and we've
9 lowered the rental for ground buildings to 60 percent
10 recently, or in the last year or so.

11 I'm just curious, in this neighborhood, wouldn't
12 market rate be about 120-percent MFI? Or would it be higher
13 than that? MFI, as we all know, includes the entire
14 metropolitan area, including the richest counties in America.
15 So, I'm curious. Would market rate in this neighborhood be
16 higher than 120-percent MFI?

17 MR. LAURENT: I guess the only way I can answer
18 that question, because I don't know the income levels of the
19 Shaw neighborhood -- I do know 120 percent of AMI for a
20 family of four is roughly \$130,000, I believe is what I saw.

21 And did you have a question about the final
22 purchase price for both of these or --

23 COMMISSIONER MILLER: That was going to be the
24 next place I was going to go.

25 MR. LAURENT: Okay. Yes. So, with a three-

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1 bedroom workforce housing unit, the maximum sales price that
2 we can have is \$458,000, and we have seen --

3 COMMISSIONER MILLER: That's under DHCD's rules?

4 MR. LAURENT: Yes.

5 COMMISSIONER MILLER: Four hundred and --

6 MR. LAURENT: Four hundred and fifty-eight
7 thousand.

8 COMMISSIONER MILLER: For the three-bedroom?

9 MR. LAURENT: For the three bedrooms. So, it's
10 significantly less than a market-rate unit would get right
11 there.

12 COMMISSIONER MILLER: Right.

13 MR. LAURENT: Because the comps for condos in that
14 area are about \$600 to \$650 per square foot. So, that would
15 put us right in the \$900,000 range for the market-rate units.

16 COMMISSIONER MILLER: Okay. Thank you for that
17 information. It helps me understand --

18 MR. LAURENT: You're welcome.

19 COMMISSIONER MILLER: -- the program a little
20 better.

21 MR. LAURENT: You're welcome.

22 VICE CHAIRPERSON HART: Okay. So, I asked if the
23 ANC was here. No? Okay.

24 I know we have a party status -- we have someone
25 that is in opposition. Is there anybody wishing to speak in

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1 support of it?

2 (No response.)

3 Okay. Mr. States, you're here speaking in
4 opposition to the case. So, I'm calling the folks that are
5 now speaking in opposition to the case. You have three
6 minutes.

7 MR. STATES: Yes.

8 VICE CHAIRPERSON HART: And you can go at your
9 convenience.

10 MR. STATES: Well, first, I want to state again
11 my light, my air and space is blocked off. In addition to
12 the variances that are being requested on parking, I did a
13 petition by folks who live in the neighborhood, and they've
14 been against the variance. They signed, they've dated it,
15 and these are people who are surrounding the property. I'll
16 present that to you.

17 The project does harm and have an adverse impact
18 on me. And just a couple of things. One, according to the
19 Vacant to Vibrant, yes, you could build one unit. It would
20 have to be affordable. And two units or more have to be 50
21 percent. You were asking for clarification of that. They
22 would be allowed to build one or two units if they so choose.

23 So, basically, as I said, I have my neighbors'
24 opposition to the variances. What existed on the property
25 before were two individual units, one per lot. They were

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1 torn down in the seventies. They were two-bedroom units or
2 two-story units. They blended in with the neighborhood. All
3 of the homes on 10th Street are two-stories high. All of the
4 homes on French Street are two-story high, and all of the
5 homes on S Street, which this will back up to, are two-
6 stories high on the south side of S Street for down, halfway
7 down the block. So, this will definitely be out of place.
8 I do have copies -- I guess they didn't have the drawing you
9 requested to see.

10 So, the variances, again, they're asking to bring
11 in new building to encroach on my rights. Somehow that
12 doesn't make sense.

13 And then, finally, I will say, just as you stated,
14 Mr. Hart, when you get information, you get right into it.
15 And I did in April, but I had to follow the process. It was
16 initially planning. So, I stayed on top of the planning.
17 And then, when we got to the Board of Zoning, I read the
18 letter and the information. And then, on your application,
19 it isn't until you get to the very end that it states you
20 have 14 days. I mean, after you finish it, it says only the
21 ANC or this person could apply within the 14-day period.

22 So, that's all I have to say.

23 VICE CHAIRPERSON HART: Thank you, Mr. States.

24 One of the things that I actually had a question
25 for you, were you aware of the potential for construction of

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1 a building that was kind of, that would be behind you, I
2 guess? Were you aware that there could be a building that
3 was --

4 MR. STATES: I knew that there was the potential
5 to build within certain rights, I thought. Again, I never
6 assumed that my sunlight would be blocked out. I never
7 thought that. But I did know, based on where the District
8 was going, and based on the auction, that they would have a
9 right to build there. Yes, I was aware of that. And then,
10 I understood there were buildings there previously, too, that
11 were torn down. But, again, they blended in and they didn't
12 block out anyone's sunlight forever.

13 VICE CHAIRPERSON HART: Yes. Were you aware of
14 the height of the building that they would be allowed to do?

15 MR. STATES: Well, I was aware that --

16 VICE CHAIRPERSON HART: And I'm not trying to pick
17 on you at all. I'm just trying to make sure that you were
18 -- because some of this is, the relief that they're
19 requesting is not height. And the issue that you're raising
20 is one of a height issue.

21 MR. STATES: Well, let me answer your question.

22 VICE CHAIRPERSON HART: Good. Go right ahead.
23 I'm sorry.

24 MR. STATES: Okay. I know there is height and,
25 then, there is architectural height. So, there's 35 feet,

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1 but once the architects start to play around with that, it
2 gives them the ability to go higher than the surrounding
3 buildings. So, no, I didn't have an architecture's
4 perspective on that. I thought any of the building would
5 have to stay and blend with the character and the heights of
6 the surrounding buildings.

7 VICE CHAIRPERSON HART: Are there any other
8 questions for Mr. States?

9 (No response.)

10 And I appreciate it. The zoning envelope can be
11 a difficult thing to kind of wade through because you have
12 to understand what it is that is actually permissible in any
13 particular zone. And, of course, the different zones have
14 their own requirements and regulations and allowances for
15 height and lot occupancy, and all the setback requirements
16 for where you are and the side yard, and all of that. But
17 I just was curious as to if you were aware of that stuff.
18 And it does impact your property, and I'm not doubting that
19 any project there would --

20 MR. STATES: Well, basically, that's why I sought
21 legal counsel, once I realized that I did not understand.
22 It wasn't because I didn't, as you not only implied, but
23 stated, didn't stay on top of it. It was just that I
24 realized at a certain point there were things that applied
25 to certain neighborhoods that differed.

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1 VICE CHAIRPERSON HART: Thank you.

2 Any questions for Mr. States?

3 MEMBER WHITE: You were saying a couple of things.
4 You said, one, it didn't blend in with the neighborhood. And
5 you also mentioned that you've received some feedback from
6 neighbors --

7 MR. STATES: Uh-hum.

8 MEMBER WHITE: -- that had some opposition to it
9 as well. And I just wanted to see if you could share some
10 of the details --

11 MR. STATES: Actually, I had a petition that I had
12 neighbors signed who live around the building.

13 MEMBER WHITE: On that block?

14 MR. STATES: On that block and on French Street,
15 on S Street, and on 10th Street. Because, generally, what
16 happened was there was an attempt to sneak this through, and
17 there was never a call for a vote in the neighborhood. So,
18 they never were aware that --

19 VICE CHAIRPERSON HART: I think that that may be
20 your impression of it. I don't know what they did or didn't,
21 but I understand what you're saying about the --

22 MR. STATES: No. No, that's factual. There
23 wasn't a call for a vote on the project.

24 VICE CHAIRPERSON HART: No, I'm saying -- you say
25 there was an attempt to "sneak it through". I'm was just

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1 saying that's what your opinion is of it, that it seemed like
2 it was that.

3 MEMBER WHITE: A little bit of a loaded word,
4 yes --

5 VICE CHAIRPERSON HART: But you can get to know
6 that, yes, that's all --

7 MEMBER WHITE: -- but I understand your --

8 MR. STATES: Yes, you're correct. You're correct.
9 So, what I did is, once I made the neighbors aware of the
10 actual building, it was a consensus that this does not belong
11 in our neighborhood. It was not even -- and I had one person
12 who refused to sign and that was for a different reason, but
13 everyone else that I went to -- and this was over the last
14 week -- they just thought this is crazy. No one had ever
15 actually seen the drawing. Well, there were five people on
16 average who came to the meetings. Generally, what happens
17 at the meetings, when there's a call to vote, you get the
18 neighbors out. So, there was never a call to vote.

19 And so, what I did is I distributed copies of the
20 drawings to the neighbors. And once they saw it, the
21 consensus was this building does not belong here. And the
22 size and everything; it wasn't just the variances and, then,
23 the parking. It's very challenging in the neighborhood to
24 park now. And so, there's one thing you can't debate, is no
25 one wants the developer to be allowed the waiver on the

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1 parking requirements because, even now -- and I have
2 pictures, but it appears this is all moot -- it is that the
3 parking, if you come to the neighborhood any time after 6:00
4 or 7:00, it's very challenging to find a parking spot. If
5 I'm not home by 7:00, I will have to park two to three blocks
6 away because we just don't have the space there.

7 And so, for a building that doesn't blend in from
8 a size standpoint or mass, even though they're combining it,
9 for a building that the materials don't fit in, the
10 individuals, again, they signed. I've got this all around.
11 And I'll distribute this to you. Not only did they sign and
12 put their address and date, but, then, at the back of it, as
13 I've pointed out, where they actually live, I've marked it
14 based on the map there just showing their actual opposition
15 to this there.

16 VICE CHAIRPERSON HART: Yes, and you can submit
17 that. I think you'd have to give it to the -- do you have
18 copies?

19 MR. STATES: I do have copies.

20 VICE CHAIRPERSON HART: You can distribute it.
21 You can actually give it to the secretary, Ms. Rose.

22 MR. STATES: Oh, okay. Okay.

23 VICE CHAIRPERSON HART: And if you have a copy for
24 the Applicant, that would be helpful as well.

25 Commissioner Miller, do you have a question?

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1 COMMISSIONER MILLER: No, my question was going
2 to be to get a copy of the petition.

3 VICE CHAIRPERSON HART: So, Mr. Warren, I'm trying
4 to think of where we are in the process. That's why I keep
5 on like, where are we? Do you have any final thoughts?

6 Or do we have any questions for the Applicant
7 before they --

8 COMMISSIONER MILLER: I just had one question.

9 VICE CHAIRPERSON HART: And just to let you know
10 kind of where I am --

11 MR. STATES: Excuse me. There was someone else
12 speaking in opposition.

13 VICE CHAIRPERSON HART: Oh, I'm sorry. Did you
14 raise your hand?

15 DR. MALOO: No, I didn't. I thought you would ask
16 first.

17 VICE CHAIRPERSON HART: Actually, I'm sorry.

18 DR. MALOO: Sorry, I didn't know the new process.

19 VICE CHAIRPERSON HART: That's fine. What I was
20 doing was asking anybody that wishes to speak in opposition,
21 they could raise their hand and come to the --

22 DR. MALOO: Oh, that's --

23 VICE CHAIRPERSON HART: That's fine. You don't
24 have to apologize for it.

25 If you could -- did you get sworn in earlier?

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1 DR. MALOO: Yes.

2 VICE CHAIRPERSON HART: Okay. Can you state your
3 name and your address?

4 DR. MALOO: Sure. Okay. I don't live in that
5 neighborhood.

6 My name is Nea Maloo, and I'm an architect. I
7 teach at Howard University.

8 And Mr. States came to me, because he did not
9 understand architectural plans, for help. So, Howard has a
10 way of helping people around. So, I volunteered my services
11 to him just so that he can understand the vocabulary which
12 a common man finds it hard to understand.

13 So, I helped him a little bit with the historic
14 preservation, basic. He went on his own. I kind of educated
15 him how a development -- I mean, I am an architect; I want
16 to build, but he is just a person who doesn't know it. So,
17 I was trying to just help him out.

18 He invited me to this meeting because I just
19 raised a few things which I didn't understand, and I thought
20 I could raise it here. And maybe the Planning Board can shed
21 some light or the architects on the other side can shed some
22 light on it.

23 May I ask?

24 VICE CHAIRPERSON HART: Typically, you're giving
25 a statement.

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1 DR. MALOO: Okay.

2 VICE CHAIRPERSON HART: And so, you provide what
3 it is that you --

4 DR. MALOO: Okay. So, my statement is this: like
5 I said, I'm not a lawyer. I just teach and I practice in
6 Maryland and D.C. I'm a licensed architect in all three
7 states.

8 My question to the Planning Board is about the
9 rear setback. And I'm confused because I just did a property
10 in D.C., and they told me any projection from the building
11 height, which is about 30 inches, is calculated within the
12 setback. And when I looked at the plan -- maybe it's not
13 clear to me -- they have a 4-foot porch in the back and steps
14 which are about 4 feet from the ground. So, if I calculate
15 that, they're actually asking for a waiver, not 18 feet, not
16 like 1 and 2 and a half feet, but the encroachment is 5 feet
17 into the rear setback. And how is that -- am I correct on
18 that interpretation? I don't know in this particular zone.

19 VICE CHAIRPERSON HART: Is that the only question
20 that you have?

21 DR. MALOO: Oh, I could ask all my questions?

22 VICE CHAIRPERSON HART: Yes.

23 DR. MALOO: Okay. Like I said, I've done this.
24 I don't do this for a living.

25 The other question I had was in terms of the

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1 perception of height, that is, building height, and there's
2 perception of height. They have 4-feet, 3-and-a-half-feet-
3 tall parapet, and people like Tim, there's a perception that
4 building height is demonstrative of how big it is. And I
5 know parapets are not included, but the perception that the
6 building is actually going to be 37-and-a-half feet. And I
7 know the Planning Department said there are some drawings.
8 Maybe I don't have the beta drawings which reflect it. Which
9 is basically 2-and-a-half-feet more of shadow which Mr.
10 States will have.

11 And the third question-- and it's all zoning, and
12 that's why I said, okay, I'll come for this meeting to help
13 him out a little bit -- is the lot coverage. I understand
14 we want to, you know, get this vacant lot exuberant. But,
15 to me, the precedent of people living there, wouldn't that
16 supersede of people who are coming in for giving the lot
17 coverage? So, yes, it's hard to build, but they could still
18 build on that. Is that lot -- because you're going 10-
19 percent more, which means 10-percent less light for the
20 three-four neighbors who are right back of it.

21 And the last one would be the side yard in terms
22 of fire. If you notice how these buildings are in a corner
23 -- and I understand the architecture, the other middle
24 object, and how they could have built four years ago to the
25 right, but, to my thing, today there's a new zoning rule.

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1 And I work with the Codes also at the IZC Board. Everything
2 they find something wrong, they fix it. We move on. So,
3 that's why things are not grandfathered in, and that's why
4 we follow Code.

5 So, today's Code says that you need to have 5-foot
6 setback, which is because of some reason. And I think we
7 need to write it out. And I think one of the reasons is I
8 think the neighborhood, including the new development, will
9 be better having at least a 5-foot setback on one side rather
10 than on two sides, because there's already a 4-foot
11 established public alleyway, and I think having 5 feet on the
12 side where the neighbors are would help them out for fire.

13 Those are my questions.

14 VICE CHAIRPERSON HART: Okay.

15 DR. MALOO: Thank you.

16 VICE CHAIRPERSON HART: Thank you.

17 So, I guess we have some questions that I could
18 pose to OP. You heard the questions.

19 Basically, it is, does the porch or the back deck
20 get included in where the building is, so that that may make
21 the back, the rear setback less or more? I mean, how does
22 that factor in? How does the rear deck factor in?

23 MR. JESICK: Stairs that lead to a landing and the
24 landing are not included in any calculation towards rear yard
25 or lot occupancy, or anything like that.

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1 VICE CHAIRPERSON HART: Regarding the height, how
2 is height calculated?

3 And so, what the Office of Planning just stated,
4 just so that we're kind of clear, is that the Office of
5 Planning is considering that a landing and that the stairs
6 would not be -- the stairs and the rear landing would not be
7 included in terms of where the building, the measurement is
8 taken for that.

9 DR. MALOO: Can I ask a question? Clarification?

10 VICE CHAIRPERSON HART: I wanted them to go
11 through the rest.

12 DR. MALOO: Okay.

13 VICE CHAIRPERSON HART: But go ahead.

14 DR. MALOO: Only on this one.

15 VICE CHAIRPERSON HART: Go ahead.

16 DR. MALOO: My understanding, it is only if it is
17 written, if it's about -- it's only up to 30 inches in
18 height, but this is 4-feet tall. It's still considered not
19 inclusive?

20 MR. JESICK: That's correct.

21 DR. MALOO: Okay.

22 VICE CHAIRPERSON HART: So, the next question is
23 regarding the perception of height, I guess. This is, what
24 is included in the -- how is a building height determined?
25 I guess that's the best way to think about it.

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1 MR. JESICK: The zoning height of the building in
2 this zone is measured to the highest point of a roof, not
3 including parapets less than, I think it's 3-and-a-half feet
4 above the level of the roof.

5 VICE CHAIRPERSON HART: And so, this would be --
6 the 35 feet would be from wherever the measuring point is on
7 the ground to the top of the roof?

8 MR. JESICK: That's correct.

9 VICE CHAIRPERSON HART: And then, the parapet
10 would be not inclusive of that, of that measurement?

11 MR. JESICK: Correct.

12 VICE CHAIRPERSON HART: Does that make sense?

13 And so, the lot occupancy issue, and I'm not
14 exactly sure what that issue was. Could you state that issue
15 again, Ms. Maloo?

16 DR. MALOO: Yes. I was just trying to say, yes,
17 they could still build in 60 percent, and that's the Zoning
18 Code. And I think they should stick to it. And I know they
19 come here for a hardship, for economic reasons. And my
20 client, Mr. States, who also came to me, is saying the same;
21 his economic thing is also going to be affected if they build
22 a big building. So, which comes first, is what I'm trying
23 to ask. He's been here for 20 years. And to me, as an
24 architect, I'm looking at him and I'm saying, why should you
25 have 70 percent behind when the current rules are 60 percent?

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1 VICE CHAIRPERSON HART: I kind of understand that,
2 but I've got to push back a little bit on that.

3 DR. MALOO: Uh-hum.

4 VICE CHAIRPERSON HART: And the only pushback is,
5 even if they got to the 60 percent, it still wouldn't affect
6 where it landed in the back of your -- in the back of Mr.
7 States' building, because they wouldn't, even if they reduced
8 the amount of -- if they cut the back of the building off,
9 so they got to 60 percent --

10 DR. MALOO: Uh-hum.

11 VICE CHAIRPERSON HART: -- the building would
12 still cover the entire portion of the back of -- and I'm not
13 asking for a back-and-forth. I'm just saying that that's the
14 issue. I don't think that the -- yes, it would be at the
15 property line, and, I mean, I just don't think that that
16 would be -- it would be no less impact to Mr. States, his
17 property, if the project was at -- at least that's what it
18 looks like from the drawings that I'm looking at.

19 But, with regard to the side yard, if you could,
20 Mr. Jesick, why is the side yard necessary or not necessary
21 in this case? And particularly looking at the fire and
22 emergency medical services kind of access to it.

23 MR. JESICK: My understanding -- and I don't
24 believe FEMS has entered anything into the record of this
25 case -- but my understanding on previous cases is that they

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1 have stated that they generally do not go down alleys at all
2 unless there's no other access to a building. They perhaps
3 have an alley lot where that's the only access to that
4 property.

5 In this case, you have two buildings fronting on
6 a public street. And that's where they would approach the
7 building from. They wouldn't typically, is my understanding,
8 go down narrow alleys as a way of fighting the fire.

9 VICE CHAIRPERSON HART: So, the side yard would
10 not necessarily be a kind of public safety thing? It is more
11 about light and air?

12 MR. JESICK: I don't want to speak to the origin
13 of the regulation. That goes back many, many years. It's
14 a carryover from the '58 regs. And as Mr. Sullivan mentioned
15 earlier, the Zoning Commission is considering a proposal to
16 eliminate that requirement.

17 VICE CHAIRPERSON HART: Okay. Thank you.

18 MR. STATES: May I make one comment regarding
19 that? Because I had spoke with the Fire Marshal, just a
20 comment, what he said.

21 VICE CHAIRPERSON HART: Well, actually, we can't,
22 because the Fire Marshal is not here, we are --

23 MR. STATES: No, but he said they don't go down
24 alleys, and it would be from the street.

25 VICE CHAIRPERSON HART: But the street is actually

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1 -- but there is access on the street.

2 MR. STATES: But that's where the problem -- they
3 would have to go around the building and circle back. They
4 would have to go around to reach the rear of my home.

5 VICE CHAIRPERSON HART: Okay.

6 MR. STATES: They would have to go around through
7 the back alley, come up the other small alley, and then, come
8 up another alley; whereas, if --

9 VICE CHAIRPERSON HART: I know, but -- okay, I'm
10 not going to have a back-and-forth on it.

11 MR. STATES: Okay, okay. That's fine. That's
12 fine.

13 VICE CHAIRPERSON HART: But I appreciate the
14 information that you've provided.

15 Okay. So, we've gone through opposition and
16 support and the ANC.

17 I was looking for a closing from you all. I'm not
18 exactly sure we are going to get to a decision because I
19 think we need to have some other information from you all.
20 But, if you would like to provide a short closing, that would
21 be --

22 MR. SULLIVAN: If we could have 30 seconds to
23 discuss?

24 VICE CHAIRPERSON HART: Sure.

25 MR. SULLIVAN: Thank you.

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1 (Pause.)

2 VICE CHAIRPERSON HART: Yes, sir?

3 MR. WARREN: Chair, I'd just make a quick rebuttal
4 of some of the points.

5 We've attended several meetings, and they were
6 pretty well-attended for the French Street Neighborhood
7 Association. The first one, there was probably 20-plus
8 people there.

9 The one regarding the parking, in particular --
10 I think that was a note -- they actually voted to not
11 restrict the parking for these units. They didn't vote on
12 the property, on the project itself, but they voted on that
13 specifically.

14 And just the three-story building is pretty common
15 in the neighborhood.

16 And specifically about the parapet, we have very
17 minimal parapets. That was something that really came out
18 of the HPRB is trying to keep the height down as much as we
19 can, which is part of why the drawings have been revised to
20 some degree. And we really only have like really minimal
21 parapets on the back. So, a 35-foot height plus maybe a 1-
22 foot parapet around the perimeter.

23 And I think that's about all I had, in particular.

24 MR. SULLIVAN: I think, just to clarify, it was
25 the RPP restriction that the Board sometimes levies in a

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1 parking case that is what the community didn't want to
2 happen.

3 And regarding the side yard, the side yard in the
4 rowhouse districts was not required up until September 2016.
5 The language that we're asking for relief from was in the
6 regulations. However, there was a counterbalancing
7 definition of row dwelling which this Board, about 15 years
8 ago in an appeal, determined effectively made that language
9 not really relevant or not mean what it looks like it means.
10 But the definition of row dwelling was deleted, and some
11 other language was deleted, too, that made it clear that you
12 didn't have to have a side yard in a row district.

13 And so, that presented this problem which we've
14 had, which we're hopeful that the Zoning Commission is going
15 to correct. There's been some discussion on that at the
16 Zoning Commission. The one thing they have talked about is
17 that, for wider lots, they might have some other sort of
18 process or special exception or requirement. But, certainly,
19 I think the intention was, for lots that are 20 feet or more
20 narrow, that there would definitely not be a side yard
21 requirement in the future.

22 Of course, I can't comment on what they'll
23 eventually decide. That's just what we know about the
24 history of how this side yard requirement has gone over the
25 last few years.

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1 Thank you.

2 VICE CHAIRPERSON HART: And no further -- you've
3 concluded your presentation?

4 MR. SULLIVAN: That's correct.

5 MR. WARREN: We're good.

6 VICE CHAIRPERSON HART: Please ask questions.

7 MEMBER WHITE: Were there any conditions at all
8 that were discussed with the ANC or HPRB regarding cosmetic
9 issues that needed to be addressed from the rear at all, so
10 to limit the impact it would have on the neighbors?

11 MR. LAURENT: Sure.

12 MEMBER WHITE: That you've agreed to or are in the
13 middle of or still discussing?

14 MR. WARREN: Well, coming out of the ZPT meeting,
15 they had proposed putting this RPP restriction on these
16 properties. At the following French Street Neighborhood
17 Association meeting, they took a vote on that, and then, the
18 ANC withdrew that as a condition. So, that was one sort of
19 condition that I did.

20 But to answer your question about aesthetics, I
21 think coming out of the HPRB hearing, on the conceptual side,
22 they asked that we provide nicer materials on that north
23 elevation, which is the brick that you're seeing in the
24 application. So, that was one sort of concession, I guess,
25 to the HRPB, although they asked for it, and then, they

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1 delegated that approval to the staff. But we're happy to
2 include that.

3 VICE CHAIRPERSON HART: And how the mansard group
4 come about?

5 MR. WARREN: Again, that sort of came out of the
6 HPRB commentary and working with HPO staff. They wanted to
7 see if we could bring the virtual height down a little bit
8 and get more of a two-story read to the project, which is
9 sort of where that mansard piece came from.

10 VICE CHAIRPERSON HART: Commissioner Miller?

11 COMMISSIONER MILLER: Thank you, Mr. Vice-Chair.

12 I just had a question on the parking. I may have
13 missed it. Is no parking being provided? Or is one parking
14 space being provided?

15 MR. LAURENT: One parking space is being provided.

16 COMMISSIONER MILLER: Which is what the DDOT
17 report says. It's just that's it's not up, it's smaller
18 than --

19 MR. WARREN: It's compact, yes.

20 COMMISSIONER MILLER: It's a compact though.
21 Okay.

22 So, I'm sure you'll do this, Mr. Vice-Chair, but
23 the information that I would like, just to reiterate because
24 we've already stated it, but I'd like to have in the record,
25 where I can feel comfortable deliberating, are the neighbors'

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1 petitions. We need a copy of that. I would like to see the
2 HPRB report. I don't think it's in the record. Or the
3 Historic Preservation Office staff report, if that's what it
4 is, whatever that report is from Historic Preservation. The
5 renderings showing what it looks like in relationship/context
6 of the surrounding neighborhood and the surrounding
7 buildings, and that one-line email from the Fire EMS saying
8 that, if you have a record lot, they're okay with access
9 issues, or whatever it said. That was what I would like to
10 have.

11 VICE CHAIRPERSON HART: The only thing that I
12 would add to that -- I would concur with that -- the only
13 thing I would add to that is a matter-of-right development.
14 I think you already have done it. Just provide it as part
15 of the packet that you're --

16 MR. WARREN: A drawing or?

17 VICE CHAIRPERSON HART: Just a drawing to see; I
18 am just curious as to what that is. I just don't know. I
19 don't have a good sense of what that is. I know that the
20 side yard issue is kind of -- I'm just looking at, if you had
21 60-percent lot occupancy, if you had everything else except
22 for the side yard, because the side yard I'm not sure how you
23 get kind of around that, but I'm just trying to understand
24 what that is. And I thought you had said you had already
25 done something, or at least done something internally about

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1 it. That's why I'm -- you're giving me a quizzical look --
2 that's why I'm asking.

3 MR. WARREN: Yes, I guess I'm just trying to
4 figure out what exactly that deliverable looks like for you.
5 We did some preliminary sort of concept plans. I wouldn't
6 say there was much like zoning envelope other than, you know,
7 we tried to fit the program into 60-percent lot occupancy.
8 Is that kind of what you're looking for?

9 VICE CHAIRPERSON HART: Yes. I just don't have
10 anything right now, and it's like I don't know what that --
11 I mean, I could kind of guess what 10 percent -- if you went
12 to 60-percent lot occupancy, what it would be. But I don't
13 really know what that is.

14 MR. WARREN: Okay. We'll do what we can.

15 VICE CHAIRPERSON HART: Yes. Yes.

16 So, the question, I guess, would be for you all.
17 When could we get some of this info? We're trying to figure
18 out -- I'm guessing that we're going to just have a decision
19 meeting. So, we're just trying to figure out when to
20 schedule that.

21 MR. WARREN: I mean, I can get it within a week
22 and a half or so.

23 VICE CHAIRPERSON HART: So, we're back on July
24 18th? Is that what we're looking at?

25 MS. ROSE: Yes.

1 VICE CHAIRPERSON HART: Because I think the first
2 meeting in -- July 12th I think is, or whatever, the 11th? --

3 MS. ROSE: Yes.

4 VICE CHAIRPERSON HART: -- is just a problem.
5 Just we have other things on the agenda, and it's going to
6 be difficult. I think the 18th may be the date to do that.

7 MS. ROSE: Then, the documents would be due July
8 12th? They will be due July 12th.

9 (Laughter.)

10 VICE CHAIRPERSON HART: Thank you for telling me
11 that, because I don't even have a -- I'm looking at a
12 calendar now.

13 MR. WARREN: We have most of that stuff already.

14 VICE CHAIRPERSON HART: Good.

15 MR. WARREN: If we can move faster, we can move
16 faster.

17 VICE CHAIRPERSON HART: It's just we don't have
18 a 4th. We don't have a meeting on the 4th, which is next
19 week.

20 (Laughter.)

21 MR. WARREN: I was planning on hanging out here.

22 (Laughter.)

23 VICE CHAIRPERSON HART: No, a lot of fireworks
24 going on in here.

25 (Laughter.)

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1 And the 11th is already a pretty heavy docket, and
2 we're trying not to put stuff on there. So, that's why I'm
3 kind of like really the earliest that we can get to it is the
4 18th. So, that would mean that we would get stuff by the
5 12th, you said?

6 MS. ROSE: Yes.

7 VICE CHAIRPERSON HART: Okay.

8 MS. ROSE: So, this is a decision meeting?

9 VICE CHAIRPERSON HART: Yes.

10 MS. ROSE: Yes, July the 18th at 9:30 a.m.

11 VICE CHAIRPERSON HART: That's correct.

12 MS. ROSE: Thank you.

13 VICE CHAIRPERSON HART: Thank you all. Thank you
14 all for coming, and appreciate it. Thank you.

15 How about a two-minute, three-minute break? And
16 we'll be back and discuss our last case.

17 (Whereupon, the foregoing matter went off the
18 record at 1:38 p.m. and went back on the record at 1:50 p.m.)

19 VICE CHAIRPERSON HART: Okay. Ms. Rose, if you
20 could call the last case, please.

21 MS. ROSE: The last case is Application No. 19780
22 of 79-81 U Street LLC, pursuant to 11 DCMR Subtitle X,
23 Chapter 10, for a variance from the side yard requirements
24 of Subtitle E, Section 307.3, to construct two new flats in
25 the RF-1 Zone at premises 79 through 81 U Street Northwest,

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1 Square 3117, Lots 69 and 68.

2 VICE CHAIRPERSON HART: Thank you very much. If
3 we could introduce ourselves from my right to left.

4 MS. MOLDENHAUER: Meridith Moldenhauer. I'm here
5 asking for a preliminary motion for abutting property owner
6 2003 1st Street LLC from the law firm of Cozen O'Connor in
7 opposition.

8 MR. SULLIVAN: Good afternoon, Mr. Chair and
9 members of the Board. Marty Sullivan on behalf of the
10 applicant.

11 MS. WILSON: Alex Wilson from Sullivan and Barros
12 on behalf of the applicant.

13 MR. PALKA: Good afternoon. Kevin Palka, property
14 owner of 79-81 U Street. I reside at 802 Cottage Street
15 Southwest in Vienna, Virginia.

16 VICE CHAIRPERSON HART: Can you pronounce your
17 last name again?

18 MR. PALKA: Yes, it's Palka, P-A-L-K-A.

19 VICE CHAIRPERSON HART: Okay.

20 (Simultaneous speaking.)

21 MR. PALKA: Like Sue Palka, the weather lady.

22 VICE CHAIRPERSON HART: Wait, what did you say?

23 MR. PALKA: Like Sue Palka, the weather lady.

24 VICE CHAIRPERSON HART: No relation, right? Okay.

25 So it seems like today is the day for opposition and

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1 postponements and everything else. So -- sorry, I need to
2 open up my computer. So, you are in opposition to this case?
3 All the -- it's just the different sides everybody is on.
4 It's -- okay.

5 MS. MOLDENHAUER: Yes, so --

6 VICE CHAIRPERSON HART: So go right ahead.

7 MS. MOLDENHAUER: -- I am here. I have not filed
8 anything in the record. I will be -- I was informed as I was
9 literally exiting the room by my client who owns a property
10 that abuts this. It's, as I said, at 2003 1st Street around
11 the corner that they had been in conversations with Mr. Palka
12 and had discussed it with him but were intending to obviously
13 file opposition.

14 But that the property was -- we see in the record
15 that there is a posting. But for good cause, we believe that
16 there's reason to either postpone the case or allow us to
17 submit a request for party status because, one, on Exhibit
18 7, the property owner for the property is shown as John
19 Duran, and that was filed on April 27, 2018.

20 My clients purchased the property on June 2017.
21 And it's our understanding that the applicant knew our
22 clients were the owner of the property, but they were not
23 properly served notice because, as I indicated, the
24 information on the 2000 photo was incorrect.

25 In addition to that, we have images -- and I have

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1 them on the computer and I can show them to the Board --
2 taken this morning -- or rather, maybe this afternoon, maybe
3 around 10:30 this morning -- that the property is currently
4 not posted.

5 My client is a developer and they are aware of the
6 process. They were waiting to see the big orange sign in
7 front of the property. They had not seen it. Thus, they --
8 typically, that's posted on the 15th. It then stays there
9 and they would've then been able to file the next day, the
10 14th, for their party status. They took a picture this
11 morning showing that it's not currently at the property.

12 And so we would question, you know, how long it
13 was there given the fact that it's currently not at the
14 property today. And again, our request would be for party
15 status or to postpone the case in order for us to -- since
16 I've just been retained literally this morning or early this
17 morning, to be able to review the record and express concerns
18 in regards to the first and the third prong.

19 Thank you.

20 VICE CHAIRPERSON HART: It's a lot to process.
21 So are there any questions for Ms. Moldenhauer? I'm still
22 a little confused as to the time line that we're talking
23 about here.

24 So you're saying that even though the affidavit
25 of posting states that there was something there on the 12th,

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1 if I have that correctly -- oh, I can't -- okay, that there
2 was something there on the 12th, it wasn't there this
3 morning. And there's been some other -- some -- and it's not
4 clear when that was posted and that you weren't -- and that
5 your -- and that the client wasn't in the 200-foot list to
6 be able to have received any notification of this -- of the
7 project. Am I getting that correctly?

8 MS. MOLDENHAUER: I believe so.

9 VICE CHAIRPERSON HART: Okay. And you said that
10 your client was here, or your client was just -- they just
11 contacted you this morning?

12 MS. MOLDENHAUER: It's a small world.

13 VICE CHAIRPERSON HART: No, no.

14 MS. MOLDENHAUER: No, no, the -- my --

15 VICE CHAIRPERSON HART: The reason I was asking
16 was because I'm, like, but why were they here if it -- were
17 they -- they were here for something else and then they just
18 kind of raised this because they --

19 MS. MOLDENHAUER: Your --

20 VICE CHAIRPERSON HART: -- just kind of came up?

21 MS. MOLDENHAUER: Again, it's a small world. The
22 decision case you had this morning is the father-in-law of
23 the principal of the development company who owns 2003 1st
24 Street.

25 So one of his -- one of the employees of the

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1 entity was here. And Mr. Palka went up to him and said, are
2 you here to oppose? And they said, we didn't even know your
3 -- the case was today. We didn't -- hadn't seen the poster.
4 I don't know if that exactly -- that was more they told me
5 that at a later stage. And so they called me and asked if
6 I would stay and express their concern based on everything
7 I've just expressed.

8 VICE CHAIRPERSON HART: Okay.

9 COMMISSIONER MILLER: Who's the owner of the 2003
10 1st Street?

11 MS. MOLDENHAUER: It's 2003 1st Street LLC.

12 COMMISSIONER MILLER: And who's the principal?

13 MS. MOLDENHAUER: The -- it is a subsidy of
14 Madison Investment.

15 COMMISSIONER MILLER: Okay, thank you.

16 VICE CHAIRPERSON HART: Any other questions for
17 Ms. Moldenhauer?

18 MEMBER WHITE: So basically, your client is within
19 the 200 feet and they never -- and you're arguing that they
20 never received any type of notice regarding this application?

21 MS. MOLDENHAUER: I was reading that they were
22 told by Mr. Palka that it was moving forward, that he
23 initially -- they had conversations. The question is then
24 they did not receive the notice of the hearing date and they
25 were not aware of the posting of the property to then put

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1 them on notice that they had to file their 14-day or at least
2 hire me to attend and file something more substantively in
3 the record, even if they had decided not to file party
4 status.

5 So at this point, we would obviously ask the Board
6 to either postpone the case so we can formally file something
7 in the record or to grant us party status to participate
8 today.

9 MEMBER WHITE: And how close is the client to the
10 --

11 MS. MOLDENHAUER: It is --

12 MEMBER WHITE: -- property in the motion?

13 MS. MOLDENHAUER: So if you look at the images on
14 the screen right now -- what's on the screen, everybody --
15 it's the property -- I think the cursor is on it. So it's
16 the second property on U Street that is then obviously
17 touches the side of the property. So the hand right now --
18 the cursor hand is on my client's property. So we abut.

19 VICE CHAIRPERSON HART: And you're not making a --
20 are you making a -- are you asserting that there are light
21 and air impacts? Are you asserting --

22 MS. MOLDENHAUER: Yes, so I am asserting that
23 there would be adverse impacts to light and air. The request
24 is being requested as side yard relief. And since this abuts
25 the rear of the property owner, that there would be, based

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1 on not providing the full eight-foot side yard along that
2 side, that would be creating adverse impacts to light and air
3 as well as -- looking at the case record very briefly, we
4 would question whether or not they meet the high burden of
5 a variance test.

6 But I'm not asking the Board to assess this now.
7 I would request a postponement. I think that that would be
8 the best in order for us to put some of this in the record.

9 VICE CHAIRPERSON HART: So Mr. Sullivan, you're
10 evidently hearing this for the first time or maybe not. I
11 don't know. Do you have any response to this?

12 MR. SULLIVAN: Sure, I do. And Mr. Palka has some
13 things to say about it as well. What she --- you know --

14 VICE CHAIRPERSON HART: She --

15 MR. SULLIVAN: -- eloquently tailored her language
16 --

17 VICE CHAIRPERSON HART: Ms. Moldenhauer?

18 MR. SULLIVAN: -- to say is that -- yes, was that
19 notice went to Mr. John Duran because her client, a
20 developer, purchased the property in the meantime somewhere
21 and didn't match up with OTR's records. It's not terribly
22 unusual. Regarding notice itself, the posting of the notice,
23 it was -- it's -- we have affidavits in the file. It was
24 posted. It was maintained. I don't know why it wasn't there
25 this morning.

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1 But if he saw the posting there two weeks ago and
2 it's not there that day and that's why he's here, the bottom
3 line is he knows about this because he has spoken to the
4 developer, and he knew about the application. And he's a
5 developer, and he's commonly represented by Ms. Moldenhauer.
6 So I would say this is far and away in contrast to the case
7 that we just saw where this is somebody that should have
8 known that they should get involved before the morning of the
9 hearing. And to show up and still hasn't even filed a party
10 status application, I'm not sure what she's asking for as a
11 non-party, as a person here, but has not filed a party status
12 application.

13 Postponement or the introduction of a party status
14 opponent is devastating to this particular client at this
15 point because he received assurances a year ago that he could
16 build without a side yard. He received a permit for
17 foundation to grade which is in process that he didn't need
18 a side yard. And now, after he reached out to all his
19 neighbors, secured ANC support, secured Office of Planning
20 support, and spoke to this particular neighbor who has a
21 building that I'd say is about 90 percent lot occupancy with
22 no side yards himself, now is subject to this.

23 And the good cause is what? I'm not sure. The
24 good cause is that technically she's raising the question
25 about some issues when she would admit that he had notice.

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1 And then so that the posting of notice and the notice that
2 went out of the 200-foot rule is meaningless at this point
3 because he had notice. And I'd like Mr. Palka to speak about
4 some of the specific interactions that he's had with this
5 person.

6 MR. PALKA: Yes, thank you. Thank you. We've
7 also met with the developer. I've met with Madison
8 Investments at their office back in April. I've shared all
9 of our plans with them. Barry, the owner of Madison
10 Investments, I had the email of correspondence on 5/16/18 to
11 Barry that -- because we have an active foundation to grade
12 permit from DCRA that specifically has the approved PDRM
13 letter that we received from Matt LeGrant in zoning which
14 allows what we are able to build with this set of drawings
15 here, lot line to lot line with no side yard requirement,
16 which was approved in our PDRM by right.

17 And that was -- that correspondence was sent to
18 Madison Investments with a DCRA permit stamp on it and the
19 PDRM letter that is attached to our permit set was sent to
20 them that allows us to build lot line to lot line without a
21 side yard. So there has been a constant correspondence and
22 willingness on my end to work with this developer who's also
23 not going to be the end user of their property that they're
24 building.

25 So if it was an individual owner neighbor concern,

1 I would see the difference. But all of our neighbors,
2 besides the investor, we have full support, including the
3 other houses you see on that drawing that back up to our
4 property.

5 There is an egress easement along the side of
6 those properties that provides all of the safety issues and
7 egress that they need for life safety. And this has all been
8 considered. So for the last year, we've had DDOT permits for
9 projections, public space permits. I have WASA permits. I
10 have foundation to grade permits for this project, and we are
11 under construction. So for this to come up now would be
12 devastating to our project.

13 We have Office of Planning support, I believe, and
14 we've met with all the neighbors. ANC has been fully
15 involved. Commissioner Horatio and the BZA has been actively
16 involved in supporting this project. This developer I know
17 has had a magnitude of stop work orders on their project
18 because there's no -- in my opinion, there hasn't been --

19 VICE CHAIRPERSON HART: We're not --

20 MS. MOLDENHAUER: Objection.

21 VICE CHAIRPERSON HART: We're not -- actually,
22 we're not going to talk about what they --

23 MR. PALKA: Okay. I withdraw that.

24 VICE CHAIRPERSON HART: I mean, you're talking
25 about your particular project and that's it.

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1 MR. PALKA: Okay. I withdraw that, and that's all
2 I have to say as far as our correspondence with the
3 developer. So he's been well aware. And at that meeting,
4 we told him we were applying for the variance through the
5 BZA.

6 Thank you.

7 MR. SULLIVAN: I'm sorry, and I would just like
8 to ask the Board to focus on the good cause objection, if
9 there is even -- I mean, I guess that first instance, I would
10 say there is no party status request here. But if there was
11 one, it definitely doesn't meet the deadline, and there's no
12 good cause showing for a waiver of that or for a
13 postponement.

14 Thank you.

15 VICE CHAIRPERSON HART: And I just had one kind
16 of follow-up question. Ms. Moldenhauer, do you have a letter
17 of authorization for this? And it's -- I assume that you're
18 pulling it down from somewhere. Yes, the mic.

19 MS. MOLDENHAUER: Sorry. You can see on the
20 screen, which we will file in the record, an email that I
21 received at 12:07 p.m. today authorizing me to represent 2003
22 1st Street LLC at the BZA.

23 Then I will also show you an image that was taken
24 this morning. You can see here, this is the green wall of
25 the construction site which is the property. There's no

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1 large orange placard on the site, and my client has informed
2 me that they have not seen it there on that. So there's a
3 question as to when it was and how long it was.

4 VICE CHAIRPERSON HART: What we have is just that
5 it wasn't. It's not there -- well, what we have is an image
6 showing that there isn't something that's -- there's --

7 MS. MOLDENHAUER: Just speaks for itself.

8 VICE CHAIRPERSON HART: -- no --

9 MS. MOLDENHAUER: Exactly.

10 VICE CHAIRPERSON HART: But we don't know what
11 date that is. We don't know what -- again, I'm just saying
12 that that's what we have for this.

13 MS. MOLDENHAUER: And that's all I know, exactly.
14 I cannot assert anything else.

15 VICE CHAIRPERSON HART: Okay. Thank you for
16 bringing this up at the -- so what's before us is whether or
17 not to -- well, actually, what is before us is whether or not
18 to waive the late filing of a party status request, I guess.
19 Actually, do we have that too? Do we have a request to waive
20 --

21 MS. MYERS: Mr. Chair -- or Mr. Vice-Chair, I
22 think obviously an unusual situation. But to distill it --
23 and the representative of the person requesting party status
24 in opposition can correct me. But it seems like what is
25 before the Board are two sort of preliminary matters, the

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1 first being it was raised an alleged defect in notice.

2 And when that is raised, the Board can consider
3 whether to -- based on -- and if the Board would like to look
4 in Subtitle Y 402.11, the Board can decide whether to
5 continue with the hearing, whether to postpone the hearing
6 based on the factors in that section as to whether the
7 alleged defect in notice should affect the proceedings today.

8 And then the other procedural matter would be --
9 I guess because we don't have a written party status request
10 at this time, it would be a verbal request to waive the
11 filing deadline in order to file that party status request.

12 VICE CHAIRPERSON HART: So do we have to get that
13 in writing?

14 MS. MYERS: I may need to consult with OAG on this
15 one because some procedural issues have arisen.

16 VICE CHAIRPERSON HART: Yes, I'm just trying to
17 kind of weed through -- wade my way through this.

18 So regarding the defect in notice, does there
19 have to be a -- we already have an affidavit of posting that
20 says that this has been posted. Subsequent to that, if there
21 is an image that we see that shows that this is not posted,
22 then -- I'm trying to figure out, well, then what do we do?
23 It's -- was it down for a day? Was it down for two weeks?
24 Was it just up for an hour and then -- I mean, I have
25 absolutely no idea.

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1 So I'm just trying to kind of gauge, how do we
2 ascertain whether or not the -- yes, that it's been there for
3 -- or wasn't. Or do we just look at it, like, okay, there
4 was a deficiency in the notice, and we say that they have to
5 have it posted and provide us with, I don't know, two weeks
6 of photographs showing that it's there every day? I'm just
7 trying to figure out what's the avenue that we're going down.
8 And if anybody else has some ideas on the Board, that would
9 be -- now would be the time to raise that.

10 MEMBER JOHN: If I might, Mr. Vice-Chair.

11 VICE CHAIRPERSON HART: Please.

12 MEMBER JOHN: So the issue is, number one, is
13 there an alleged defective notice? And whether that alleged
14 defect caused the requestor to not request party status
15 within the required time. So -- and whether the proper party
16 was served, I think. I'm not sure about that one.

17 But it seems to me from the testimony of -- not
18 the testimony -- from the representation of the applicant's
19 attorney and the applicant that the opposition -- the party
20 in opposition had actual notice that this matter was going
21 to be heard. And so I'm not sure -- and that is un-rebutted.
22 And I assume that the applicant would provide the Board with
23 those emails showing that there was a conversation about the
24 project.

25 So I am not sure where this Board goes in these

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1 matters, but I don't see any harm where there's been actual
2 notice. And that's sort of where I would be, but I'd love
3 to hear from the applicant's counsel.

4 VICE CHAIRPERSON HART: Commissioner Miller?

5 COMMISSIONER MILLER: I would concur with Ms.
6 John. And I don't think there's -- just based on the
7 information that we've been presented verbally today and in
8 our record, I don't think there's good cause to either
9 postpone or grant a waiver so that a late -- a very late
10 party status request could be made. And I agree with Ms.
11 John that the actual notice and being that the developer
12 knows that there's construction, that there's already
13 preparation of construction going on adjacent to their
14 property.

15 So I think we should proceed with the applicant's
16 case today. And if we want to leave the hearing record open
17 for the owner of 2003 1st Street to submit something in the
18 record, we can decide that at the end -- during presentation
19 at the end of today. But I'm ready to move forward, I think.

20 MEMBER WHITE: Mr. Vice-Chair, I'm ready to move
21 forward as well, and you know what my comments were at the
22 previous case. But yes, this one, I don't think it meets the
23 criteria for postponement.

24 VICE CHAIRPERSON HART: You don't think it meets
25 the criteria for postponement, but regarding the waiver,

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1 you're -- because they're looking for a waiver for the party
2 status request.

3 MEMBER WHITE: Right. And yes, at this point, I
4 don't think a waiver for the party status request should be
5 granted --

6 VICE CHAIRPERSON HART: Okay.

7 MEMBER WHITE: -- today.

8 VICE CHAIRPERSON HART: Yes. No, that's fine.
9 I understood that. So from what I understand, from what I
10 hear, I think that we are not going to -- that we are going
11 to deny the waiver -- do I have that correct -- and for late
12 filing for the party status request. And therefore, the
13 party status request would be moot. Sorry. I'm looking at
14 trying to make sure I have that correct.

15 MS. MYERS: I think that would be correct.

16 VICE CHAIRPERSON HART: Okay. And so then we can
17 proceed with the case now. And Ms. Moldenhauer, you can
18 provide testimony later, as you are very aware -- well aware.

19 So Mr. Sullivan, you may proceed with your case.

20 MR. SULLIVAN: Thank you, Mr. Chair and members
21 of the Board.

22 VICE CHAIRPERSON HART: How much time do you need?

23 MR. SULLIVAN: Ten.

24 VICE CHAIRPERSON HART: Okay.

25 MR. SULLIVAN: So the property is 79 and 81 U

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1 Street. It's two lots. They are 17-foot-wide lots adjacent
2 to an alley and then backing up to these houses here.
3 They're very similar to a previous case as well. In this
4 case, we're just asking for the side yard relief -- a
5 variance for side yard relief.

6 The -- in addition to the exceptional conditions
7 and practical difficulties related to the size of these
8 properties and the narrow lot size and the practical
9 difficulty of providing 12-foot-wide townhouses, we have the
10 additional information that the applicant did receive a
11 determination letter saying that no side yard was required
12 for this project. And they did receive actually a foundation
13 to grade permit under the same decision, that no side yard
14 was required. And then while that was under construction,
15 they received the contrary zoning comment that said that a
16 side yard now was required.

17 So in addition to the exceptional conditions and
18 practical difficulties relating to the size of the property,
19 we have a reliance estoppel rationale as well for why relief
20 is justified in this case. The property is uniquely --
21 they're undeveloped narrow lots. The lots were created prior
22 to the current regulations and prior to 1958, actually.

23 The practical difficulty as stated relates to the
24 inability to provide 12-foot-wide townhouse lots and the
25 problems caused by the previous approvals granted by the city

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1 that were acted upon in reliance thereon. And the requested
2 relief can be granted without substantial detriment to the
3 public good and without substantially impairing the intent
4 purpose and integrity of the zone plan. This is a unique
5 situation. And as OP stated -- it's in their reports -- does
6 not impair the intent purpose and integrity of the zone plan.
7 It's two very narrow lots.

8 Regarding the properties that it backs up to, most
9 of the adjacent owners are actually in support of this, and
10 the ANC is in support of it. And this developer that's
11 backing up to it would have known that these were record lots
12 -- developable record lots and was not a backyard to that
13 property. And that the amount of the relief, we're not
14 asking for a relief from height. We're talking about a five-
15 foot side yard. So the actual relief requested would be the
16 difference of a 30-foot building, just five foot further back
17 or five foot onto this property line.

18 This is also supported by the Bloomingdale Civic
19 Association, and there are three letters of support in the
20 record as well. And the Office of Planning has recommended
21 an approval, and the applicant is here if the Board has any
22 questions.

23 Thank you.

24 VICE CHAIRPERSON HART: Okay. And I was also
25 wondering -- I was wondering if -- and again, this is kind

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1 of the two flats that are being -- that are kind of side by
2 side. You're looking for a variance. Is it not possible to
3 build on -- I guess this is already under construction, if
4 I understood that correctly?

5 MR. PALKA: That is correct. And before we
6 proceeded to purchase this property, we had our PDRM meeting
7 with Matt LeGrant with this set of drawings and reviewed lot
8 occupancy setbacks. Were there any side yard requirements,
9 and our PDRM letter that's approved said no. So we relied
10 on that basically to proceed with the project.

11 VICE CHAIRPERSON HART: Okay. Any questions of
12 the applicant? I'm hearing none. Oh, there's one question.

13 MEMBER JOHN: One question. When did you say you
14 met with the zoning administrator? Was that before you
15 purchased? I know you said it, but I was writing.

16 MR. PALKA: That's correct, before we purchased.

17 MEMBER JOHN: Okay. Thank you.

18 VICE CHAIRPERSON HART: Go ahead.

19 COMMISSIONER MILLER: So do we have in our record
20 the conflicting communications that you got from the ZA? If
21 we -- well, I guess we don't have that in our record
22 regarding the conflicting -- so that's one question, do we
23 have it in the record. And I see Mr. Sullivan looking in the
24 record.

25 And the second question, so has the zoning

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1 administrator or the DCRA pulled the permit? Or what's
2 happened?

3 MR. PALKA: In July of last year, we were issued
4 our foundation to grade permits by DCRA with approval to
5 proceed with construction for the foundation of lot line to
6 lot line. We were also then approved by WASA for all of our
7 utilities. We've also been approved by DDOT for all of our
8 public space permits, projections, everything on both lots.

9 So we -- and the only remaining comment in zoning
10 for the full building permit was the side yard relief
11 requirement. And Matt LeGrant and the crew have agreed,
12 obviously based on this meeting. But they support us upon
13 your decision.

14 This has been delayed long enough. We've had our
15 foundation permit for a year, and we're at a financial
16 breaking point on this project, to be really honest with you.
17 We're -- this is our only development project in the
18 district. The opposition is a large developer, not the end
19 user. I would like to stress that and --

20 VICE CHAIRPERSON HART: Yes, we don't need --

21 MR. PALKA: -- you guys know that. So we are at
22 the point that if this project is going to be delayed any
23 further, it's a very fine -- it's just devastating to me and
24 my family. We're a small, small group. And this has just
25 gone on so long that it's time to make a decision, basically,

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1 in our opinion. We believe we've met the requirements
2 required by our PDRM. We have reliance issues with -- we've
3 issued our permits and we're under construction. And we have
4 a lot of money committed to this.

5 COMMISSIONER MILLER: Thank you. I appreciate
6 that answer, and I'm sorry that you've had to go through all
7 that.

8 MR. SULLIVAN: And it's Exhibit 14, page 4, which
9 is up on the screen now. It has the PDRM zoning
10 determination letter.

11 VICE CHAIRPERSON HART: And I don't know if it's
12 Mr. Palka or Mr. Sullivan. Regarding the timing again, you
13 received a foundation to grade permit with the no side yard
14 required was July of last year?

15 MR. PALKA: That's correct.

16 VICE CHAIRPERSON HART: And you received the
17 letter -- you met with the ZA when again?

18 MR. PALKA: This was -- we received the approved
19 letter, I believe it was in May of last year or prior to
20 those permits being issued.

21 MR. SULLIVAN: In June is when --

22 VICE CHAIRPERSON HART: What I'm trying to get to
23 is that's a year. So I'm trying to figure out what's
24 happened in that year again. I know missed it. I just can't
25 figure out what that --

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1 MR. PALKA: So in the last year since we were
2 issued those permits, we were -- this is up for the Board of
3 Zoning to vote on this and the Zoning --

4 VICE CHAIRPERSON HART: The Zoning Commission?

5 MR. PALKA: -- Commission. Yes, so we were --
6 instead of going through the BZA, we were going to see the
7 outcome of that. So we were a little patient with it.

8 VICE CHAIRPERSON HART: So you were waiting for
9 that to kind of -- to --

10 MR. PALKA: To see --

11 VICE CHAIRPERSON HART: -- progress to see if that
12 would be --

13 MR. PALKA: To progress and it just --

14 VICE CHAIRPERSON HART: Okay.

15 MR. PALKA: -- hasn't progressed.

16 VICE CHAIRPERSON HART: Okay.

17 MR. PALKA: So we're just at a breaking point.

18 VICE CHAIRPERSON HART: No, that's fine. I just
19 was trying to kind of get to, kind of, how do we get from a
20 year. Why would you wait a year? You wouldn't want it if
21 you have --

22 MR. PALKA: That's correct.

23 VICE CHAIRPERSON HART: -- if you have a strain,
24 then there's --

25 MR. PALKA: Right.

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1 VICE CHAIRPERSON HART: -- you address it then.
2 Okay. So let's turn it to the Office of Planning.

3 MS. BROWN-ROBERTS: Good afternoon, Mr. Chairman
4 and members of the Board. The applicant has requested a
5 variance from the side yard requirement. And they have to
6 provide an exceptional situation resulting in a practical
7 difficulty.

8 The lots were -- if you look at -- I mean, the
9 small picture that we have in our report, this square was
10 subdivided together prior to the current regulations. And
11 from looking at it, you can see that all the lots were
12 envisioned to be row houses with no side yards.

13 From taking a visit in the neighborhood, I saw
14 that there were a number of smaller lots like these and
15 they're all attached. Those units, some -- those at the end
16 units also are along the property line. So I think that that
17 was what was envisioned for the development of the square.

18 Providing the required five-foot side yard would
19 result in a narrow 12-foot-wide house on the exterior. When
20 you go to -- go into the interior, it would be further
21 reduced by stairs and the thickness of the walls. So that
22 would inhibit the living space of -- within each of these
23 buildings.

24 Granting the relief would allow the construction
25 of two new flats and vacant lots within a community that is

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1 fully developed. The development of the properties would
2 cast shadows on the adjacent buildings. However, we do not
3 think that it would be substantially more than, say, if a
4 conforming building would be built and that it would not
5 cause undo shadow on the adjacent properties.

6 The building across the alley from Lot 69 that has
7 windows on that side, because the proposed building on Lot
8 68 would have windows on that side similar to the building
9 across the alley. However, the windows are staggered. And
10 so there's no direct view from one window into the other on
11 both buildings. And therefore, we think that the privacy
12 would not be substantially harmed.

13 The vehicular and pedestrian movements along the
14 alley would continue. It's 15 feet wide, and therefore,
15 there would be no impact from the proposed development.

16 We do not think that there'd be any substantial
17 harm to the zoning regulations, as the flats are allowed
18 within that RF-1 zone. And the regulations are intended to
19 protect nearby properties, and we think that will continue.
20 And therefore, we recommend approval.

21 Thank you, Mr. Chairman.

22 VICE CHAIRPERSON HART: Are there any questions
23 for the Office of Planning?

24 MEMBER JOHN: Just one quick question. So the
25 lots that comprise the site, am I correct in believing that

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1 those two lots are probably the smallest in the square? I
2 don't know if you have that.

3 MS. BROWN-ROBERTS: There are eight lots that are
4 -- there are approximately eight of the lots that are that
5 size within the square.

6 MEMBER JOHN: Okay. And they're all row houses?

7 MS. BROWN-ROBERTS: And they're all developed with
8 row houses that go from lot line to lot line.

9 MEMBER JOHN: Thank you.

10 MS. BROWN-ROBERTS: Okay.

11 VICE CHAIRPERSON HART: Any other questions for
12 the Office of Planning? Does the applicant have any
13 questions for the Office of Planning?

14 MR. SULLIVAN: No, thank you.

15 VICE CHAIRPERSON HART: Is the ANC here? Is there
16 anyone here in support of the application? Is there anyone
17 here wishing to speak in opposition? Please state your name
18 and your address.

19 MS. MOLDENHAUER: Good afternoon. Meridith
20 Moldenhauer, counsel for 2003 1st Street LLC, the property
21 owner of 2003 1st Street Northwest. And I am zoning counsel
22 from the law firm of Cozen O'Connor.

23 So I would just like to indicate that this
24 property is directly next to the proposed site. Not
25 complying with the side yard would adversely impact the light

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1 and air to the property. There are no shadow studies that
2 would show the specific impact as opposed to a matter of
3 right project. So it is hard to believe that the Office of
4 Planning or the Board can truly evaluate whether or not a
5 five-foot side yard or no side yard really does have
6 substantial impact or not in this case.

7 In addition to that, we also have questions as to
8 whether or not the applicant has fully satisfied the high
9 level of a variance test. As OP indicated, this is one of
10 eight other lots that share the same size or smaller than
11 this property. There have been other cases in which this
12 Board, even in the last couple of weeks, where they've
13 evaluated a variance test. And when a property is the same
14 size, when you're looking at the picture right now that's on
15 the image, it looks exactly in the -- or it's the same width
16 as a lot of the other properties and a lot of the other
17 corner lots that are created commonly throughout the city in
18 regards to where two of the corners meet.

19 So we also -- there's statements that there are
20 detriment of reliance or estoppel creating a practical
21 difficulty from a financial hardship perspective. However,
22 we also question whether there's substantial evidence in the
23 record to really support that and to compare as to whether
24 or not -- to whether they could subdivide the lot into one
25 lot and provide compliant side yards as a matter of right

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1 would create the same practical difficulty.

2 The property owner did admit that they were
3 waiting for the Zoning Commission to resolve the definition.
4 That issue has been long outstanding and is something that
5 the development community has been very much aware of. And
6 if the property owner decided to wait, that obviously may be
7 a known impact that should be evaluated by this Board as to
8 whether or not they can satisfy the financial hardship and
9 whether the Board evaluates financial hardship to satisfy the
10 practical difficulty here.

11 In addition to that, we would indicate that
12 there's nothing in the record that shows the image. The
13 rendering that we see on the front page shows the property
14 from the alley. The alley obviously provides a lot of open
15 space between this property and the other property on the
16 other side of the alley. But there's no image coming from
17 the corner at the intersection of U and 1st Street showing
18 really kind of how close this will be to those properties
19 that front on 1st Street. And so we question whether or not
20 the record is sufficient to prove that there is no adverse
21 impact or no impact on the public good given the lack of some
22 of those documents or images.

23 Thank you.

24 VICE CHAIRPERSON HART: Any questions for Ms.
25 Moldenhauer?

1 MEMBER WHITE: Yes, I just want to make sure I'm
2 clear. Can you point out where your client's property is on
3 that map? And have you been able to quantify the impacts
4 that the project would have for light and air on the subject
5 property?

6 VICE CHAIRPERSON HART: You need the mic.

7 MS. MOLDENHAUER: Okay. So my client's property
8 is right here. I'm hovering over it. Can you see that?

9 MEMBER WHITE: Mm-hmm.

10 MS. MOLDENHAUER: And then you can enter this in
11 too. So this is the subject property here. This is my
12 client's property right here. So there's a back door,
13 windows, another door here and additional windows and then
14 the dogleg with windows here as well.

15 VICE CHAIRPERSON HART: And any development would
16 impact the back of the project -- of your client's project?

17 MS. MOLDENHAUER: There's not -- the applicant has
18 the burden. And so the question is, what would a matter of
19 right, fully compliant side yard -- or maybe even a smaller
20 side yard. What would that be in regards to an adverse
21 impact?

22 We don't know because there's no sun studies in
23 the record to compare the two. Again, we would be more than
24 happy to supplement the record after the fact. But
25 obviously, there's the proximity and the fact that the

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1 property is not on a corner does have -- obviously, it's not
2 as large as some of these other properties that are abutting
3 the site.

4 VICE CHAIRPERSON HART: I guess I was also saying
5 that the applicant is not looking for rear yard setback.
6 It's not looking for -- it's looking for side yard setback.
7 So it would move farther away from the property, but it would
8 still be as tall and as deep.

9 MS. MOLDENHAUER: Mm-hmm.

10 VICE CHAIRPERSON HART: So those things are kind
11 of set. So there would be a building in front of their --

12 MS. MOLDENHAUER: Behind there.

13 VICE CHAIRPERSON HART: There is -- yes, behind
14 your client's property regardless. It's just what's the
15 distance if it is the distance of the remainder of the
16 property that's not built out on your client's property or
17 if there was another five feet away from it.

18 MS. MOLDENHAUER: And I --

19 VICE CHAIRPERSON HART: That's what --

20 MS. MOLDENHAUER: -- fully understand that, yes.

21 VICE CHAIRPERSON HART: Okay.

22 MS. MOLDENHAUER: And so the question is whether
23 the property --

24 VICE CHAIRPERSON HART: And I understood your --

25 MS. MOLDENHAUER: -- the applicant subdivides it

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1 and creates a compliant five-foot side yard or whether they
2 pull it back more from what they're currently proposing and
3 being able to understand that. And a lot of times, an
4 applicant, to satisfy their burden, will show varying options
5 and maybe --

6 VICE CHAIRPERSON HART: Understood.

7 MS. MOLDENHAUER: -- how a sun study does not
8 create additions. We don't have that in the record.

9 VICE CHAIRPERSON HART: Understood. Any other
10 questions for Ms. Moldenhauer?

11 MEMBER JOHN: Just one quick question.

12 VICE CHAIRPERSON HART: Sure.

13 MEMBER JOHN: So your client's property is the one
14 with the orange paint at the top and the dogleg to my left.
15 Is that your client's dogleg?

16 MS. MOLDENHAUER: Yes, so it's --

17 MEMBER JOHN: No, to -- okay. So to my left?

18 MS. MOLDENHAUER: I had the arrow on it. I think
19 that's --

20 MEMBER JOHN: Okay. So --

21 MS. MOLDENHAUER: This is their --

22 MEMBER JOHN: Well, let's just -- is that your
23 client's or --

24 MS. MOLDENHAUER: That's my client's.

25 MEMBER JOHN: Okay. And to the other side where

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1 there appears to be a small walkway --

2 VICE CHAIRPERSON HART: That's actually not --
3 that's not correct, though. Is it the second building in?

4 MS. MOLDENHAUER: It's the second building in.

5 VICE CHAIRPERSON HART: So the second building in.
6 And if you go to the left -- the reason I'm looking at it,
7 I'm looking at the --

8 MS. MOLDENHAUER: The aerial?

9 VICE CHAIRPERSON HART: -- plan. No, I'm just
10 looking at a plan. And the plan shows the property line to
11 the north of the --

12 MS. MOLDENHAUER: So our dogleg is --

13 VICE CHAIRPERSON HART: -- edge.

14 MS. MOLDENHAUER: Our dogleg --

15 VICE CHAIRPERSON HART: Yes.

16 MS. MOLDENHAUER: -- is here. Sorry.

17 VICE CHAIRPERSON HART: Yes.

18 MEMBER JOHN: Right, okay.

19 VICE CHAIRPERSON HART: Again --

20 MS. MOLDENHAUER: I apologize --

21 VICE CHAIRPERSON HART: -- I'm just looking at --

22 MS. MOLDENHAUER: -- Commissioner Hart --

23 VICE CHAIRPERSON HART: -- images to show you.

24 MS. MOLDENHAUER: -- or Vice-Chair Hart. Thank
25 you.

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1 MS. MOLDENHAUER: I think I fully disclosed the
2 amount of time I've been able to focus on this case.

3 MEMBER JOHN: That's fine. So --

4 VICE CHAIRPERSON HART: No, that's fine.

5 MS. MOLDENHAUER: I don't want to be
6 misrepresenting anything.

7 MEMBER JOHN: -- I'm trying to get to the light
8 and air question. So there are windows on that side. And
9 it looks as if there would be windows, but I know there are
10 windows on the back. There is a walkway between the -- I'm
11 sorry -- between the second building and the one to the far
12 left, the dogleg, okay.

13 It's difficult to read what this all means because
14 I am thinking, based on this photograph, that there would be
15 windows on the other side of the building that opens into the
16 walkway and to the right side -- my right side. And we don't
17 know that. We would need photographs to know where the
18 windows are.

19 MS. MOLDENHAUER: And as I stated, I think that
20 light and air would be coming in from you. And so the
21 question is then, obviously, this is an open patio where
22 light and air can travel, if the property were pulled away
23 from this rear line here, more light would be able to get in
24 to the property.

25 And I think the question is that there's not

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1 sufficient evidence in the record currently to prove that
2 this would not have a substantial adverse impact given the
3 fact that there's no comparison between what could be done
4 as a matter of right and what's being proposed.

5 VICE CHAIRPERSON HART: Are there -- this is for
6 Mr. Sullivan or Mr. Palka. Are there windows on the west
7 side of the west elevation? It'd be good to turn the mic on.

8 MR. PALKA: On?

9 VICE CHAIRPERSON HART: Yes, on your property.

10 MR. PALKA: There's no windows.

11 VICE CHAIRPERSON HART: I didn't think so. I just
12 wanted to double check.

13 MR. PALKA: And their property that they're doing
14 is a replacement in like kind from what I know, because they
15 have a nonconforming one.

16 VICE CHAIRPERSON HART: Okay. So Mr. Sullivan,
17 you have a presentation -- a conclusion?

18 MR. SULLIVAN: Yes, I do. Briefly, thank you.
19 Just in response to some of the comments.

20 Regarding a shadow study, I typically wouldn't
21 think one is required in this case because the difference
22 between the matter of right and what we're asking relief for
23 is it's not height, of course. It would be five foot closer.

24 Their building is a couple feet away from the
25 property line. So we can do a shadow study and we can have

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1 it in -- in a few days. But it's going to show no
2 difference. The property is going to have shadow, as he
3 would have expected from the development that goes behind
4 there. And he would have known if there's a record lot --
5 developable record lot, and it's going to be 35 feet in
6 height.

7 So that was known, and the difference between a
8 35-foot high building here and a 35-foot building five foot
9 closer would have no difference on the shade on that
10 building. There's going to be shade on that building
11 regardless. And I would point out to say that the shadow is
12 going to go deep into that dogleg and hit the window way at
13 the back of the dogleg is a stretch as well.

14 Regarding comments on the nature of the variance
15 test, it's not a high level of the variance test. It's a
16 variance test, and the word high level is not used in the
17 regulations. And we meet it. Actually, we have two separate
18 rationales, both of which I think would satisfy the Board.
19 So it's actually an exceptionally strong variance argument
20 and on the reliance argument as well, it's not a financial
21 hardship. It's a financial practical difficulty, and we can
22 certainly submit information on that.

23 But that information is obvious as well when you
24 purchase two lots and with the expectation based on approvals
25 from the city that you can do 17-foot-wide townhouses and

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1 have four units. And then it's turned into either just two
2 units on one lot or 12-foot-wide townhouses. You can imagine
3 what the difference in the financial expectations would be
4 at that point.

5 So we can supplement that argument, if the Board
6 so desires, and same with the shadow study as well. That's
7 all we have. Thank you.

8 VICE CHAIRPERSON HART: Thank you. And if I could
9 have one kind of follow-up question. The five yard setback
10 would be for both lots. You'd have to have five yards on
11 either --

12 MR. SULLIVAN: Yes.

13 VICE CHAIRPERSON HART: -- on either side?

14 MR. SULLIVAN: That's correct, yes. There's an
15 exception for corners, but corner does not include alleys.

16 VICE CHAIRPERSON HART: Are there any other
17 questions for the applicant?

18 MEMBER WHITE: Just one question. Did you ever
19 discuss a shadow study with OP, or did they suggest that it
20 would be helpful or they had any feedback on that at all?

21 MR. SULLIVAN: To my recollection, no, it wasn't
22 requested.

23 MS. BROWN-ROBERTS: No, there was no request for
24 that. I looked at it. And just from experience, you can
25 look and see, you know, what a five foot against a zero is

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1 going to be in a situation like this.

2 There have been -- if it was a 20-foot difference,
3 then I think I would make the judgment that, yes, we do need
4 a shadow study. But I think in this case -- and just from
5 looking at -- and I walked around the community. And just
6 looking at how the other similar lots that abut up against
7 the property line, what sort of shadows and that sort of
8 thing. And yes, there are going to be shadows there. But
9 I didn't think -- it seems to be functioning quite -- the
10 building seemed to be functioning quite well.

11 MEMBER WHITE: Thank you.

12 VICE CHAIRPERSON HART: Any other questions?
13 Okay. So does the Board want any other further information?

14 MEMBER WHITE: No, Mr. Chairman, I think the
15 record is quite full.

16 VICE CHAIRPERSON HART: Okay. Is the Board ready
17 to deliberate? Oh, actually, I should say I'll close the
18 record and close the hearing. Is the Board ready to
19 deliberate? Anybody can start because I'm still mulling
20 right now. Go right ahead.

21 COMMISSIONER MILLER: I'll just be brief. I agree
22 with the Office of Planning's analysis that the variance
23 criteria had been met and with the applicant's analysis as
24 well as presented here today in their PowerPoint and as OP
25 has presented in its report. And the ANC unanimously

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1 approved this project. We have it in the record that they're
2 eight to zero by the ANC by the report. So I'm ready to move
3 forward.

4 MEMBER JOHN: So Mr. Vice-Chair, I agree with
5 everything that the Commissioner has said. I would further
6 add that the applicant's presentation that basically argued
7 that the matter of right would create the same level of shade
8 on the property of the party requesting -- I'm sorry -- of
9 the opposition.

10 But I find persuasive the detrimental reliance
11 argument, and I don't believe that we need economic data
12 because this is one of those things that sort of speak for
13 themselves, meaning if the applicant was given permission to
14 build lot line to lot line and was anticipating building two
15 houses, then I can imagine that there -- two flats -- then
16 I could imagine that there would be economic hardship based
17 on that, relying on those representations.

18 So just looking at the photographs -- and I know
19 I said earlier that we might need additional information to
20 see where the windows would be. But typically in these
21 houses with doglegs, there's a window that provides light to
22 the rear of those structures.

23 And I also credit the testimony of the Office of
24 Planning in particular that there are other similar types of
25 buildings in this square. And so I am in support of the

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1 application based primarily on the detrimental reliance of
2 that.

3 VICE CHAIRPERSON HART: Board Member White?

4 MEMBER WHITE: Yes, I think the record is very
5 full here. I've tried to ask as many questions as I could
6 that I had some concerns about. But with OP's comprehensive
7 report that outlined why they believe that the variance test
8 was met in order to be granted the side yard relief.

9 And the big thing is that these lots were created
10 prior to the current regulations and they're very narrow
11 lots. So it really created an exceptional situation in this
12 particular case. So I see very limited impacts -- adverse
13 impacts that this would cause to the surrounding community.

14 So I'm prepared to support the application as
15 well.

16 VICE CHAIRPERSON HART: Okay. I wanted to hear
17 from my fellow Board members and I have. I appreciate it.
18 And I really was looking or thinking about just the project
19 that is before us and trying to ascertain whether or not I
20 would be in support of it, and I think that I can be in
21 support of it.

22 I would echo the comments that my fellow Board
23 members have made so far, so I won't repeat them. And I will
24 therefore make a motion to approve the Application No. 19780
25 of 79-81 U Street LLC as read and captioned by the secretary.

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1 Do I have a second?

2 COMMISSIONER MILLER: Second.

3 VICE CHAIRPERSON HART: I know. It's been a long
4 day, I guess. Hearing a second, all those in favor, say aye.

5 (Chorus of aye.)

6 VICE CHAIRPERSON HART: Any opposed? Motion
7 carries.

8 MS. ROSE: Staff would report the vote as four to
9 zero to one with a motion by Mr. Hart, seconded by Mr. Miller
10 with Ms. White and Ms. John in support of the motion, Mr.
11 Hill not present and not voting.

12 VICE CHAIRPERSON HART: Summary order.

13 MS. ROSE: Thank you.

14 VICE CHAIRPERSON HART: Thank you all. And Ms.
15 Rose, do we have any other matters before the Board?

16 MS. ROSE: No, we do not.

17 VICE CHAIRPERSON HART: Hearing that, I will call
18 the hearing adjourned.

19 (Whereupon, the above-entitled matter went off the
20 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: DCBZA

Date: 06-27-18

Place: Washington, DC

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



Court Reporter

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