

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

JULY 25, 2018

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

PETER MAY, Commissioner, NPS
ROBERT MILLER, Vice Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

HILLARY LOVICK, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEVEN COCHRAN

ANNE FOTHERGILL
JONATHAN KIRSCHENBAUM
STEPHEN MORDFIN
KAREN THOMAS
ELISA VITALE

The transcript constitutes the minutes from the
Public Hearing held on July 25, 2018.

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

(9:41 a.m.)

1
2
3 CHAIRPERSON HILL: Hi, good morning, everyone.
4 The hearing will please come to order. We're located in the
5 Jerrily R. Kress Memorial Hearing Room at 441 4th Street
6 Northwest.

7 This is the July 25th Public Hearing of the Board
8 of Zoning Adjustment District of Columbia convening an act
9 of a chancery application pursuant to the Foreign Missions
10 Act, 22 USC 4301-4316, and Chapter X of the Zoning
11 Regulations.

12 My name is Fred Hill, Chairperson. Joining me
13 today is Lesyllee White and Lorna John, Board Members. The
14 Federal representatives are Marcel Acosta, representing the
15 National Capital Planning Commission, and Peter May,
16 representing the U.S. National Park Service.

17 Copies of today's hearing agenda are available to
18 you and located in the wall bin near the entrance door.
19 Please be advised that this proceeding is being recorded by
20 a court reporter and is also webcast live.

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

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1 When you're finished speaking, please turn your
2 microphone off so that your microphone is no longer picking
3 up sound or background noise. All persons planning to
4 testify either in support or in opposition will need to fill
5 out two witness cards. These cards are located at the table
6 near the entrance door and on the witness table.

7 Upon coming forward to speak to the Board, please
8 give both cards to the reporter sitting to the table of my
9 right.

10 The order of procedures for the Foreign Mission
11 cases is also listed in the door there as you come in.
12 Please note the requests for party status and a chancery
13 application are not applicable because it is a rule-making
14 procedure.

15 The Board may place further reasonable
16 restrictions on time restraints or permit additional time for
17 testimony as it deems appropriate. Once again, because this
18 is a rule-making procedure, there are no parties and there
19 is therefore no cross examination.

20 The record will be closed at the conclusion of
21 each case except will remain open for any materials
22 specifically requested by the Board.

23 The Board and the staff will specify at the end
24 of the hearing exactly what is expected and the date when the
25 material must be submitted to the Office of Zoning. After

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1 the record is closed, no other information will be accepted
2 by the Board.

3 The District of Columbia Administrative Procedures
4 Act requires that the public hearing on each case be held in
5 the open before the public pursuant to Section 405(b) and 406
6 of that Act.

7 The Board may, consistent with its rules and
8 procedures and the Act, enter into a closed meeting on the
9 cases for purposes of seeking legal counsel on a case
10 pursuant to D.C. Official Code Section 2-575(b)(4) and or
11 deliberating on a case pursuant to D.C. Official Code Section
12 2-575(b)(13), but only after providing the necessary public
13 notice in the case of emergency closed meeting after taking
14 a roll call vote.

15 The decision of the Board in this legislative
16 procedure must be based exclusively on the public record.
17 To avoid any appearance of the contrary, the Board requests
18 that persons present not engage the Members of the Board in
19 conversation. Please turn off all beepers and cell phones
20 at this time so as not to disrupt the proceedings.

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

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

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

4 MR. MOY: Good morning, Mr. Chairman, Members of
5 the Board. We have one short preliminary matter which as to
6 the, today's docket, where Case Application Number 19696 of
7 1001 through 1003, Rhode Island Avenue Northeast, LLC, which
8 has been postponed and rescheduled to October 17th, 2018.

9 There were other preliminary matters which staff
10 would suggest that the Board address those when the case is
11 called.

12 CHAIRPERSON HILL: Okay, great. Thank you. All
13 right.

14 Good morning, everybody. There's a couple of
15 things, I guess. I do want to tell you about the agenda so
16 that you can kind of follow along with what we're doing here.

17 We have a Foreign Missions case this morning first
18 and then we're going to have a continued hearing case because
19 Commissioner May is joining on us, on us, or on it with us,
20 which is Application Number 19772 of 1729 T Street.

21 Then we're going to go into our decision agenda
22 and we're going to first go with Application Number 19689
23 followed by Application Number 19739. They're the last two
24 in your agenda.

25 Then we're going to jump back to the front of the

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1 decisions agenda, go through those, and then we're going to
2 come back to our hearing agenda starting with Application
3 Number 19789 of HIP E, and then we're just going to follow
4 the agenda along at that point.

5 If there's anyone here wishing to testify, if you
6 could stand and take the oath administered by the secretary
7 to my left?

8 MR. MOY: Good morning. Even if you think you
9 might testify, if you would take the oath that would be, I'd
10 appreciate it.

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

14 (No audible response)

15 MR. MOY: Ladies and gentlemen, you may consider
16 yourselves under oath.

17 CHAIRPERSON HILL: All right, Mr. Moy. Whenever
18 you have an opportunity, if you'd like to call our Missions,
19 Foreign Missions case?

20 MR. MOY: Yes, sir. Thank you. If we can have
21 parties to the table, to Case Application Number 19788 of the
22 Royal Norwegian Embassy, captioned and advertised. This is
23 an application to renovate and expand a chancery by
24 renovating the exterior and constructing an addition to the
25 existing Norwegian Chancery Building. This is in the R-12

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1 Zone at premises 2720 34th Street Northwest and 3401
2 Massachusetts Avenue Northwest Square, 1939 Lot 39.

3 CHAIRPERSON HILL: Good morning. If you could
4 please introduce yourselves from my right to left?

5 MR. SEAGROVES: Cliff Seagroves, Acting Director
6 of the Office of Foreign Missions, Department of State.

7 MR. UTZ: Jeff Utz with Goulston and Storrs, land
8 use counsel for the applicant.

9 MR. WHITE: Steve White with Fentress Architects,
10 the architects for the projects.

11 MR. DIRDAL: Marius Dirdal, Deputy Chief of
12 Mission, Norwegian Embassy.

13 MR. VANPELT: Dan Van Pelt with Gorove Slade
14 Associates, the transportation consultant.

15 CHAIRPERSON HILL: Okay, great. Well, good
16 morning. Welcome. Mr. Utz, I guess you're going to be
17 presenting to us?

18 MR. UTZ: Yes, please.

19 CHAIRPERSON HILL: Okay. I know that I have a lot
20 of information here for us, Mr. Utz, which is great. And I
21 guess, Mr. Utz, I mean, I don't have a lot of particular
22 questions and we have a very full day today.

23 Normally, I mean I, we went through the record and
24 everything and solved the design and I think it's an
25 absolutely fabulous one. I should say it's an interesting

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1 design and I'd like to hear more about it. And depending
2 upon how many questions the Board has for the Embassy here,
3 then we're going to go ahead and ask those.

4 But why don't you just go ahead and if you could,
5 highlight the areas of relief you're asking for and how we're
6 meeting the criteria and let's see after we get past that if
7 the Board has any questions for you.

8 MR. UTZ: Sure, thank you, Chairman Hill. We will
9 get right to it. The package that we just handed out is the
10 set of plans from the application. Kind of reformatted a bit
11 to make sense from a presentation and kind of flow of a walk-
12 through perspective and then some additional pages and slides
13 have been added to kind of address the finer points with some
14 of those elements of the standards here.

15 We are here today -- and also just let me say
16 thank you for letting us appear before you and thank you for
17 scheduling us first. We really appreciate that.

18 We are here for relief for the Norwegian Embassy,
19 specifically the expansion of the modernization of the
20 chancery component of the building which is 2720 34th Street
21 Northwest.

22 The expansion totals about 4272 square feet of new
23 area and I'll let Steve speak a little more to the specifics
24 of what went into that. But we are essentially requesting
25 that the Board not disapprove the project, pursuant to

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1 Section 205 of the Foreign Missions Act, and Subtitle X,
2 Section 202.1 of the Zoning Regulations.

3 Here we are asking for the expansion of the
4 chancery in a low density residential zone and then also
5 asking for really three areas of kind of flexibility or
6 relief that accompany that. It's relief under Subtitle U,
7 Section 203.1 to expand the chancery use specifically in the
8 R-12 zone district, relief under Subtitle D, Section 704.1
9 to increase the lot occupancy.

10 The max in this zone is 40 percent. The site is
11 currently 41.7 percent and at the end of the project the lot
12 occupancy would be 45.4 percent. So it does create a bit
13 beyond what's allowed and then what's there now.

14 And then the third element of relief essentially
15 is Subtitle C, Section 1502.1 which is to construct the
16 elevator override in a manner that doesn't setback one to one
17 from the exterior wall, so we can show you specifically where
18 that is.

19 And then also as is customary, we have a basket
20 of public space improvements that relate to primarily 34th
21 Street, the entrance.

22 The rendering that's up on the screen right now
23 shows this probably the best, although there are some other
24 renderings that show it as well and we can detail that a
25 little more if you would like.

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1 But essentially the, right now there's a very kind
2 of a large cement step structure that leads up to a door on
3 34th Street in public space. It's actually private space.
4 It's behind the building restriction line but treated as
5 public space.

6 As you can see here, this project really goes a
7 long way to breaking that down, opening up the entrance to
8 the chancery to 34th Street and then improving the public
9 space by, the walls are now sheathed in stone. There's are
10 some bike racks that don't show up as well here and some
11 other items to essentially ingratiate the building a bit more
12 to public space.

13 The standards of relief, I won't bore you with all
14 of those now but we detailed them in the application
15 statement.

16 We're happy to go through them but there are six
17 specific elements that have to do with existence of this
18 building as a chancery, its kind of diplomatic mission, the
19 international obligations of the United States to facilitate
20 this particular use here, the diplomatic mission and also,
21 to provide secure facilities, the historic preservation
22 aspects of the building, adequate off street parking and
23 transportation-related elements to the structure, the
24 municipal interest of the District, and then the federal
25 interest of the country as determined by the Secretary of

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1 State.

2 So we have the Office of Foreign Missions here and
3 also in the record they will speak to the last one.

4 We're happy to detail any and all of those with
5 more information if you would want and happy to kind of walk
6 you through some of the high notes of the applicant and the
7 project.

8 CHAIRPERSON HILL: Let me just see the, now Mr.
9 Utz, let me ask the Board if they had any questions. But
10 also, I can't recall if we go through the Secretary of State,
11 I mean, Secretary of the State, the State Department and
12 owner as well.

13 (Off-microphone comments.)

14 CHAIRPERSON HILL: No, first of all, does the
15 Board have any questions for the Applicant? Okay. Then I'm
16 actually going to turn to the State Department.

17 MR. SEAGROVES: Thank you. There is a federal
18 interest in this case so on behalf of the Secretary of State
19 and pursuant to Foreign Missions Act, I'm here to convey
20 that, to the BZA the following comments and determinations
21 concerning the subject application.

22 These comments and determinations relate the to
23 the statutory criteria governing the BZA determinations that
24 lie within the purview of the federal government, namely
25 those addressed in the Foreign Missions Act.

1 First, with respect to the criteria set forth in
2 22 USC Section 4306(d)(1), we've determined that favorable
3 BZA action on the present application would fulfill the
4 international obligation of the United States to facilitate
5 the provision of adequate and secure premises for the
6 Government of the Kingdom of Norway in the District of
7 Columbia.

8 Second, pursuant to 22 USC 4306(d)(3), after
9 consultation with federal agencies authorized to perform
10 protective services, we have determined that there exist no
11 special security requirements related to parking in this
12 case.

13 I have also determined after similar consultation
14 and pursuant to 22 USC Section 4306(d)(4), that the subject
15 site and area are capable of being adequately protected.

16 Lastly, pursuant to 22 USC Section 4306(d)(6),
17 there is a federal interest in this project. The Government
18 of the Kingdom of Norway has been helpful in addressing the
19 United States' land use needs in Oslo, Norway.

20 Such cooperation was essential for successfully
21 achieving the Federal Government's mission in providing safe,
22 secure, and functional facilities for the conduct of U.S.
23 diplomacy and promotion of U.S. interest in that country.

24 And I can add personally, I visited Norway about
25 ten years ago to have similar discussions with the Oslo

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1 authorities that resulted in the completion of our new
2 chancery there. But that's all I have. Thank you.

3 CHAIRPERSON HILL: Okay, great. Thank you. Does
4 anyone have any questions for the State Department? Okay.
5 I'm going to turn to the Office of Planning.

6 MS. THOMAS: Yes. Good morning, Mr. Chairman,
7 Members of the Foreign Missions Board. I'm Karen Thomas for
8 the Office of Planning. We are in full support of this
9 application.

10 We believe that it has satisfied the municipal
11 interests which is one of the criteria that they are supposed
12 to meet, including the penthouse setback, the use, and the
13 lot occupancy requirements that they've been requesting. So
14 with that, I have nothing further to add and we can go with
15 the applicant's presentation. Thank you.

16 CHAIRPERSON HILL: All right. Does the Board have
17 any questions for the Office of Planning? Okay. Does the
18 applicant have any questions for the Office of Planning?

19 MR. UTZ: We do not, thank you.

20 CHAIRPERSON HILL: Okay. Is there anyone here
21 from the ANC? Is there anyone here wishing to speak in
22 support? Is there anyone here wishing to speak in
23 opposition? Okay.

24 Mr. Utz, I turn back to you. Is there anything
25 you'd like to add in conclusion?

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1 MR. UTZ: I don't believe we need to add anything
2 in conclusion.

3 CHAIRPERSON HILL: Okay. So I just wondered, is
4 it Secretary Dirdal? How do you say your last name, sir?

5 MR. DIRDAL: Me?

6 CHAIRPERSON HILL: Yes.

7 MR. DIRDAL: Dirdal.

8 CHAIRPERSON HILL: Could you say it in the
9 microphone?

10 MR. DIRDAL: Okay. Dirdal.

11 CHAIRPERSON HILL: Dirdal. Well, I mean again,
12 we don't often get to see the people here from the foreign
13 chanceries but it's a pleasure to have you here and it's nice
14 that we were able to have, you know, your participatory
15 help when we were doing things over in your country.

16 I normally am wearing a tie but it's the summer
17 right now so I'm the only one without a tie. Just wanted to
18 get that on the record.

19 (Laughter)

20 CHAIRPERSON HILL: So no, yes, you don't have a
21 tie either. All right. So do we have any other questions?
22 Okay. I'm going to go ahead and close the hearing. Is the
23 Board ready to deliberate? Okay. I can start?

24 I guess ANC 3C again, they had recommended their
25 approval. They had some issues and concerns I guess but that

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1 had been addressed through the process with negotiation with
2 the applicant. The State Department have made their
3 necessary determination in support of the application and
4 DDOT has also, has no objection to the application.

5 The Office of Planning has also recommended not
6 to disapprove. I think that the applicant has met the
7 criterion standards for which us to not to disapprove this
8 application and I will be in favor of it. Does the Board
9 have anything else they'd like to say?

10 Okay. Then I'll make a motion not to disapprove
11 Application Number 19788 of Royal Norwegian Embassy and I'll
12 ask caption and read by the Secretary, and ask for a second?

13 MEMBER MAY: Second.

14 CHAIRPERSON HILL: Motion made and seconded. All
15 those in favor, aye?

16 (Chorus of ayes)

17 CHAIRPERSON HILL: All those opposed?

18 (No audible response)

19 CHAIRPERSON HILL: The motion passed. Mr. Moy?

20 MR. MOY: Staff would record the vote as 5-0-0.
21 this is on the motion of Chairman Hill to not disapprove the
22 application as filed.

23 And Mr. Chair, I'm assuming that this is also in
24 regards to plans as shown on Exhibit 49(a)(1), (a)(2), and
25 (a)(3) which is your PowerPoint which shows the updated

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1 plans, correct?

2 MR. UTZ: Exactly, yes.

3 MR. MOY: All right.

4 CHAIRPERSON HILL: Yes, Mr. Moy, thank you.

5 MR. MOY: Second to the motion, Mr. Peter May,
6 also in support, Ms. White, Ms. John, Mr. Acosta. The motion
7 carries.

8 CHAIRPERSON HILL: All right. Thank you, Mr. Moy.
9 Thank you, gentlemen. Thank you so much.

10 MR. UTZ: Thank you.

11 MR. SEAGROVES: Thank you.

12 (Pause)

13 MR. MOY: The next case application, if we can
14 have parties to the table, including the ANC member if he or
15 she is present. Number 19772 of 1729 T Street, F, or rather
16 TF LLC, captioned and advertised for variances from the
17 closed court requirements, Subtitle F, Section 202.1. Floor
18 area, ratio requirement Subtitle F, Section 302.1. Lot
19 occupancy requirement Subtitle F, Section 304.1.

20 This would construct a five-unit apartment house,
21 RA-2 zone. This is at 1729 T Street, Northwest Square 151
22 Lot 15. Mr. Chair, this was last heard by the Board at its
23 June 13th hearing. Participating is yourself, Vice Chair
24 Hart, Ms. White, Ms. John, and Mr. Peter May.

25 CHAIRPERSON HILL: Great. Thank you, Mr. Moy.

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1 Good morning. If you could please --

2 MR. MOY: I believe that there is one person that
3 has not taken the oath.

4 CHAIRPERSON HILL: Oh, okay. If there's anyone
5 who hasn't taken the oath, if you could please stand and take
6 the oath administered by the Secretary to my left?

7 MR. MOY: Do you solemnly swear or affirm that the
8 testimony you're about to present in this proceeding is the
9 truth, the whole truth, and nothing but the truth? Thank
10 you. You may be seated.

11 CHAIRPERSON HILL: All right. Good morning. So
12 if you could please introduce yourselves from my right to
13 left?

14 MR. LEWIS: David Lewis, Goulston and Storrs, land
15 use counsel for the applicant.

16 MR. TEASE: Good morning. My name is Will Tease,
17 a principle of Tease Warren Architects, here on behalf of the
18 client.

19 MR. FLEISHER: My name is Travis Fleisher. I'm
20 the owner of the property.

21 CHAIRPERSON HILL: Okay. Mr. Lewis, I guess
22 you're going to present to us? So if you could just start,
23 I mean, with, you know, this being a continued hearing, what
24 has happened since the last time you were here and we can go
25 from that point in terms of what the Board may or may not

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1 have to ask you.

2 MR. LEWIS: Sure, sure. So just a quick back
3 ground. We're at 1729 T Street in the RA-2 zone also within
4 the Strivers' Section, Historic District, Northwest TC. The
5 applicant proposes to build a five-unit multifamily
6 residential building with a mix of studios, two bedrooms, and
7 three bedroom units.

8 One of the new items that we'll talk about in a
9 second is one of the studio units will be an IZ unit,
10 affordable at the 60 percent MFI level and just to note, the
11 project has already obtained approval from HBRB.

12 So we're seeking four items of variance relief.
13 As Mr. Moy mentioned, relief from the closed court, lot
14 occupancy, and the FAR requirements, and we are also now
15 seeking relief from the proportionality requirements of the
16 IZ Program by virtue of our opt-in to that program.

17 The last item is a new item since we were here in
18 June. And I should also note that the extent of the FAR
19 relief is significantly less than we were seeking when we
20 were here in June by virtue of opting into the IZ Program.

21 When we left here at the end of the June hearing,
22 we essentially had, the Board had essentially asked us to
23 provide two sets of deliverables. The first involved
24 construction mitigation slash an abutter agreement with the
25 two immediate neighbors who were here to testify last time.

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1 Travis will talk about that in a second.

2 The second set of deliverables essentially boiled
3 down to revising the program and working with OP to obtain
4 OP support. I'll discuss that in a second after Travis but
5 just to know preliminarily that we do have OP support in the
6 form of a new OP report in the record.

7 So with that introduction, I'll turn it over to
8 Travis to talk about the current status of discussions with
9 the immediate neighbors.

10 MR. FLEISHER: Hi. So we have neighbors on each
11 side of us that are going to be impacted by the construction,
12 so you had asked us to continue our conversations and develop
13 a preliminary construction agreement.

14 We met last night with the neighbors to the east
15 at 1725 T Street and developed a Memorandum of Understanding
16 that's going to lead to a more formal construction agreement
17 once we are closer to commencing construction.

18 We had reached out to the neighbors to the west
19 at 1731 T Street, who we had met with on about four or five
20 occasions in the past and had actually taken some concrete
21 steps to address some of their items related to the
22 construction, including adding some water infiltration
23 mitigation systems on our property.

24 We didn't have an opportunity to meet with them.
25 I had reached out to them last Friday to ask to set up a

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1 meeting but we've had some conversations via email. I
2 believe that there was something that was submitted to you
3 all from them yesterday. But the talks are ongoing and we're
4 committed to working with them to develop a construction
5 agreements once we have a more concrete sense of what we're
6 actually going to be able to build on the property.

7 MR. LEWIS: And now we just direct your attention
8 to, I believe Exhibit 53 in the record. At least that's the
9 number it should be. It was submitted either late last night
10 or early this morning from the 1725 neighbors' sort of
11 outlining the scope of a to be agreed upon construction
12 Memorandum of Understanding with again, 1725.

13 And then the neighbors at 1731 submitted an email
14 yesterday afternoon. I believe that's Exhibit 51. And
15 again, you know, the conversations with that group of
16 neighbor, well, that conversations with both group of
17 neighbors will be ongoing.

18 But, you know, we've been diligently pursuing
19 coming up with an agreement and just would point out that the
20 objections from both sets of neighbors do not pertain to the
21 variance relief requested. They really pertain to just the
22 simple fact that there'll be some sort of construction
23 project on the site and that the site has been somewhat
24 vacant or dormant for quite a while.

25 So in the interest of time, I plan to focus our

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1 presentation on the variance relief request. So just the
2 sort of the two new items, but I'm happy to address questions
3 related to the close court relief or the lot occupancy relief
4 if the Board has questions on those things.

5 So just sort of walking all through the history,
6 OP's initial report from June recommended approving the
7 closed court and lot occupancy relief but the initial OP
8 report recommended that the applicant opt into the IZ Program
9 to increase the matter of right FAR and that's exactly what
10 we're doing now.

11 So the applicant originally sought an FAR variance
12 to increase the density from the matter of right 1.8 to 2.3.
13 That's a consistent request with what the BZA approved and
14 with what OP supported for the recent application just down
15 the street at 1719 T Street. But recognizing that the zoning
16 regulations are slightly different today, the applicant has
17 opted into the IZ Program, increasing the matter of right FAR
18 from 1.8 to 2.16.

19 Just pause to note that by opting into the IZ
20 Program, the applicant will reserve one of the five units as
21 a for sale IZ affordable unit at 60 percent NFI.

22 So beyond the now matter of right 2.16 FAR, the
23 applicant seeks a modest FAR variance of 0.14. This is
24 equivalent to about 300 square feet, less than 300 square
25 feet on the 2000 square foot property.

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1 We've set forth the justification for this request
2 in our July 11th submission, but in brief, we believe the
3 property suffers from an exceptional condition that creates
4 directly a practical difficulty that justifies the 0.14 FAR
5 relief requested, namely the property has a party wall on
6 both sides that encroaches into the property by four to six
7 inches.

8 The effective area displaced by this party wall
9 encroachment is approximately 280 square feet. Ordinarily,
10 property would be able to benefit from this party wall but
11 as part of the conversations with the neighbors, the
12 applicant is voluntarily electing not to use the party wall
13 as part of its structural system. It is building an entirely
14 independent structural system inside of the party wall.

15 And so the party wall encroachment is effectively
16 just lost space on both sides of the property line. OP has
17 agreed with this assessment and has therefore supported the
18 FAR variance request.

19 By opting into the, so the fourth and final item
20 of variance we would like to talk about is the request for
21 a variance from the proportionality requirement of the IZ
22 Program. Will, if you could jump to the next, yes, thank
23 you.

24 We talked about this a little bit last time, about
25 why we initially weren't opting into the IZ Program. And

1 basically the way the IZ regulations work is that if you have
2 a five-unit building and --

3 CHAIRPERSON HILL: Hey, Mr. Lewis?

4 MR. LEWIS: Yes?

5 CHAIRPERSON HILL: That's okay. We don't have to
6 go through all of this portion of it. I remember your chart
7 from last time. And so --

8 MR. LEWIS: Okay. And some were asking for relief
9 from the proportionality requirement so we can provide a
10 studio rather than a two bedroom that would be required under
11 this sort of black and white text of the IZ regulations.

12 We think it's a pretty minor relief request, given
13 that we're in the program only voluntarily and OP has agreed
14 with that assessment as well. So other than these sort of
15 two modifications to the scope of our relief, we're not
16 really asking, we're not really proposing any changes to the
17 project relative to what you all reviewed last time. It's
18 really just kind of a repackaging of the relief requested.

19 CHAIRPERSON HILL: Okay. All right. Does the
20 Board have any questions of the applicant? Okay. All right.
21 I'm going to turn, Mr. Utz, I'm sorry, Mr. Lewis, to the
22 Office of Planning.

23 MS. FOTHERGILL: Good morning. I'm Anne
24 Fothergill with the Office of Planning. And the Office of
25 Planning rests on the record of the two OP staff reports,

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1 June 1 and July 18th, 2018, in support of the application of
2 the revised application and I'm happy to take any questions.

3 CHAIRPERSON HILL: Okay. Does the Board have any
4 questions for the Office of Planning? Okay. Does the
5 applicant have any questions for the Office of Planning?

6 MR. LEWIS: No, sir.

7 CHAIRPERSON HILL: Okay. All right. Is there
8 anyone here from the ANC? We did this last time. Is there
9 anyone here wishing to speak in support? Is there anyone
10 here wishing to speak in opposition?

11 Oh, okay. All right. Have you been sworn in?
12 Did you just arrive? Okay. Hold on one second then. Mr.
13 Moy, if you could, if anybody else has arrived, I'm going to
14 keep asking this the rest of the day, but if you could stand
15 and take the oath administered by the Secretary here to my
16 left? Ma'am, if you could stand and raise your right hand
17 over here to the left? Okay. That's fine. Sure.

18 MR. MOY: Oh, that's great. Do you solemnly swear
19 or affirm that the testimony you're about to present in this
20 proceeding is the truth, the whole truth, and nothing but the
21 truth? Thank you.

22 CHAIRPERSON HILL: Okay, ma'am. So you're
23 speaking also in opposition?

24 (Off-microphone comments.)

25 CHAIRPERSON HILL: Okay. That's okay. Whatever

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1 you have to do, you have to do on the microphone so just let
2 me figure it out first. So ma'am, you're here to speak in
3 opposition, so if you could come forward to the table? All
4 you have to do is push the microphone.

5 And so as a member of the public you'll get three
6 minutes and there's a clock on either side of you and in
7 front of you there and you can go ahead and begin whenever
8 you like. Also, I'm sorry, can you go ahead and introduce
9 yourself for the record and your home address?

10 MS. RANSOM: Yes. My name is Elizabeth Ransom.

11 CHAIRPERSON HILL: No, no, you just have to look
12 up here, ma'am.

13 MS. RANSOM: Okay. My name is Elizabeth Ransom.
14 I live at 1731 T Street. I'm here representing the owners
15 at 1731 T Street which is in the Historical District,
16 Strivers' District and is directly next door to the proposed
17 development.

18 CHAIRPERSON HILL: Okay. Could you say your last
19 name again?

20 MS. RANSOM: Ransom, like kidnap money.

21 CHAIRPERSON HILL: Okay. All right. Okay.
22 That's easy, thank you. Let's see. Okay. So you're here
23 representing someone, right?

24 MS. RANSOM: The condo owners.

25 CHAIRPERSON HILL: Okay. Do you have any letter

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1 authorizing that?

2 MS. RANSOM: I spoke here at the June 13th meeting
3 and I could, and I've uploaded a letter into the system which
4 you have and I copied in the correspondence which has all our
5 owners on it.

6 CHAIRPERSON HILL: Okay.

7 MS. RANSOM: I'm happy to submit --

8 CHAIRPERSON HILL: No, no, that's all right. I'm
9 just trying to, okay. All right. Well, unless the Board has
10 any objection, we'll go ahead and agree that Ms. Ransom is
11 representing the association and so you'll get five minutes
12 rather than three minutes. And then also, you were here at
13 the last hearing?

14 MS. RANSOM: Yes.

15 CHAIRPERSON HILL: Okay. And so you spoke at the
16 last hearing and the only reason why I'm bringing that up is
17 normally in the continued area we don't necessarily do
18 support and opposition again. But we'll go ahead and give
19 you your five minutes and you can begin whenever you like.

20 MS. RANSOM: Yes. So first of all, I'd like to
21 say at the last hearing I did speak in support of this
22 proposed development. We've met with Travis Fleisher and his
23 architects and we appreciate the efforts they've made to
24 communicate with the neighbors.

25 We've also, we spoke in support at the June 13th

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1 meeting. But we remain deeply concerned and disappointed by
2 the fact that Mr. Fleisher has yet to take sufficient steps,
3 steps that you recommended at the last hearing, to prevent
4 water infiltration into our property from his property.

5 We have flooding on our lower level, an area that
6 includes all our storage units and one of the living units
7 and mold is now developing. Renters in the building have
8 started to complain about the mold which presents a potential
9 litigation risk to owners in our building and a health risk
10 to everyone who lives there.

11 I live on the lower level myself and in addition
12 to the very expensive dehumidifying AC system we bought,
13 we've now added a separate dehumidifier which you run 24
14 hours a day to prevent mold and mildew from developing.

15 Our efforts to use flood dams and wet dry vacs
16 from the Home Depot is not keeping up with the rain. As you
17 know, it's a very rainy week. All of the contractors we've
18 had come out say they can't do their work because of the
19 continuous intrusion of water from 1729 T Street.

20 For example, SERVPRO of Virginia, SERVPRO of D.C.,
21 Basement Innovations Waterproofing, they will not come out
22 for the same reason because we can't, we're going to have
23 continuous water intrusion from 1729 T Street.

24 I understand that these problems started long
25 before Mr. Fleisher bought the property. But he's aware of

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1 the case that we've brought to the attention of the DCRA in
2 2016. It's on the record. It cited issues with the
3 properties overflowing roof down spout, the possibly blocked
4 city drain, and the grading of the yard towards ours.

5 It's also exacerbated by the lack of maintenance
6 of the party wall between our properties. These issues were
7 discussed in an in-person meeting with Mr. Fleisher on June
8 3rd where he acknowledged his obligation for his side of the
9 party wall.

10 We appreciate his willingness to view our basement
11 damage in person. He came with us and we walked into his
12 yard as well. We also appreciate that Mr. Fleisher and his
13 architect raised several ideas for solutions while speaking
14 with us that day.

15 He did send a contractor to remove the deck and
16 to tape a tarpaulin, at best a temporary measure, to the
17 party wall but it's clear that these measures have failed to
18 address the water infiltration.

19 The project's architects suggested that the city
20 main might be blocked which would cause the roof down spout
21 to overflow and direct water down our wall and the yard is
22 still graded towards our property.

23 I reviewed all these issues on the record at the
24 last hearing and in person to Mr. Fleisher and his attorneys
25 and yet we are unaware of any additional steps taken since

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1 we last met. It's been about six weeks, I think.

2 This is despite the fact that Mr. Fleisher
3 reported to you on July 11th in the record, that the
4 applicant and his neighbors are continuing to work through
5 an agreement on construction issues and the applicant fully
6 expects to submit to the Board an agreement with both sets
7 of immediate neighbors ahead of the continued July 25th
8 hearing.

9 Just a few days ago on Friday, Mr. Fleisher asked
10 us if we could provide language for a Memorandum of
11 Understanding as a first step. But that's not what you had
12 asked us to do. We would like to, we need a construction
13 agreement which covers both our immediate needs, significant
14 and ongoing water infiltration issues, and also the
15 forthcoming construction and demolition.

16 So we ask for your support in helping us work with
17 Mr. Fleisher to address these concerns as soon as possible.
18 In summary, we support the project but insist that Mr.
19 Fleisher take immediate steps to develop a construction
20 agreement that spells out a clear and timely process for
21 addressing water infiltration and preventing damage to 1731
22 during demolition and construction of the 1729 property.

23 CHAIRPERSON HILL: Okay. Does anyone have any
24 questions for the witness?

25 MEMBER WHITE: I just had one question. I'm

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1 looking at the cover of the presentation. So 1731 is the
2 building on the right? So 1729 here --

3 MS. RANSOM: That's correct. If you're looking
4 at it, it's on the left.

5 MEMBER WHITE: So it's on, it's the dark brick?

6 MS. RANSOM: It's the --

7 MEMBER WHITE: You're on the right. Okay. I see.
8 The image I'm looking at now.

9 MS. RANSOM: It's hard to see but it's the one on
10 the left. It's an historically significant building built
11 by architect Nicholas Haller in about 1902.

12 MEMBER WHITE: Is that right? Yes. Okay. So
13 essentially what you're asking for is an agreement that would
14 cover potential problems that are ongoing now --

15 MS. RANSOM: Yes.

16 MEMBER WHITE: -- as well as future damage that
17 could occur during construction?

18 MS. RANSOM: Yes, that's right.

19 MEMBER WHITE: Okay.

20 CHAIRPERSON HILL: Okay. Before I turn to the
21 applicant because I'm curious who is the applicant, I know
22 they're working through some stuff. Ms. Ransom, so you were
23 here last time in support?

24 MS. RANSOM: Yes.

25 CHAIRPERSON HILL: And this time you, at the

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1 beginning you said you're here in opposition but then at the
2 end you said you were in support. It doesn't matter. I
3 understand what your issues are, but you just want your
4 issues resolved --

5 MS. RANSOM: Yes.

6 CHAIRPERSON HILL: -- because something's going
7 to be there eventually. And so you'd like some kind of help.
8 I mean, for the Board, kind of some of our problems is
9 certain things are or aren't within our purview.

10 In terms of what we're doing here is just
11 determining whether or not they're meeting the standards for
12 us to grant the application based upon the regulations. So
13 construction is not something that is within our purview, but
14 we do our best to try to mitigate different things in terms
15 of construction with the neighbors as things are going on,
16 if that's something that got brought up.

17 That being the case, Mr. Fleishman, Fleisher, I'm
18 sorry. Fleisher. So Mr. Fleisher, you started off by saying
19 that you were in the middle of dealing with MoUs perhaps with
20 your neighbors, and I thought one you said you'd got to and
21 then the other you said you didn't.

22 And now I guess in terms of some of, you know, the
23 witness here is providing some testimony that you are trying
24 to do things but you haven't done them yet. Would you like
25 to respond in some fashion?

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1 MR. FLEISHER: So the challenge is asking us to
2 put together and invest the resources and time and energy to
3 put together an construction agreement before we even know
4 what we're able to build on the property. It's seems like
5 that's a bit putting the cart before the horse a little bit
6 and we've worked with them, met with them on several
7 occasions with the architects.

8 We took measures to put in temporary solutions
9 within two days of meeting with them. Everything that she
10 just mentioned now, this is the first time that I've heard
11 it about the contractors not going out there. As you guys
12 all know, we had incredibly heavy rain this week which
13 probably contributed to that more recently than in past --

14 CHAIRPERSON HILL: No, that's fine. So I hear
15 what you're saying. So again, you're still in the process
16 and if you --

17 MR. FLEISHER: We're --

18 CHAIRPERSON HILL: -- depending upon what happens
19 here, then you'll understand what you are able to build and
20 that's what's going to get you to move forward.

21 MR. FLEISHER: Yes, and in addition to that, we
22 have a raised permit filed. We're going to be doing
23 underpinning with requires certain neighbor letters and
24 structural engineers' reports. So there are going to be
25 opportunities for us to work --

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1 CHAIRPERSON HILL: Okay. All right. Okay. All
2 right. Again, does the Board have any questions for Ms.
3 Ransom?

4 Okay. All right. Thank you, Ms. Ransom. All
5 right. So I did is there anyone here in support. Is there
6 anybody here in opposition? Is there anybody who'd just like
7 to speak in some capacity?

8 Please, come forward. If you could just state
9 your name and address for the record, please?

10 MS. JIBRIN: Can you hear me?

11 CHAIRPERSON HILL: Yes.

12 MS. JIBRIN: Hi, my name's Janice Jibrin. I'm on
13 the, I'm a resident of the building on the other side, the
14 lighter colored building.

15 CHAIRPERSON HILL: Okay. Could you state your
16 last name for me again?

17 MS. JIBRIN: Yes, it's Jibrin. It's spelled J-I-
18 B, like boy, R-I-N, like Nancy. And I sent the letter last
19 night that you, if you need a hard copy, here it is.

20 So I'll make it quick. We're in support of the
21 project and we just wanted to put our plug, our building's
22 historic as well. And one of the nice things about our
23 building is we have a light well and we can, it really makes
24 a big difference because it's pretty much a long, dark
25 building.

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1 So Mr. Fleisher and his team are proposing a light
2 well for their building which might need some sort of, is it
3 variance? So we, that would make a big difference in our
4 quality of life. If he had a light well it would open up a
5 lot more light for us. If he doesn't, it'll make our place
6 a lot darker and I think it compromises the original historic
7 concept of our building. So that was our, that's just
8 something I wanted to put a plug in for.

9 CHAIRPERSON HILL: Okay.

10 MS. JIBRIN: Okay.

11 CHAIRPERSON HILL: All right, Ms. Jibrin. All
12 right. Does the Board have any questions for Ms. Jibrin?
13 Okay. All right. Thank you. I don't know what to do with
14 that, what exactly. Meaning that like, you can't change your
15 design to add a light well, correct?

16 MR. FLEISHER: They just wanted to reaffirm that
17 you guys support the non-conforming court special exemption.

18 CHAIRPERSON HILL: Oh, okay.

19 MEMBER MAY: It's the light well that's already
20 in?

21 MR. FLEISHER: Exactly. Yes, exactly.

22 MEMBER MAY: Okay.

23 CHAIRPERSON HILL: Okay. All right. Okay. Do
24 you have anything else to add in conclusion?

25 MR. LEWIS: No, just to sort of one follow-up

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1 comment on Ms. Ransom's comments.

2 CHAIRPERSON HILL: Sure.

3 MR. LEWIS: And frankly, this applies to the other
4 building as well. So we have a sort of MoU with the 1731
5 neighbors. We'd hoped to have something similar by today,
6 I'm sorry. We have something with the 1725 neighbors. We
7 hoped to have something similar today by 1731 and
8 unfortunately, that's not the case.

9 But what we sort of offer as a condition of an
10 order, if it's the Board's pleasure to grant it, is a
11 condition that we would provide to DCRA ahead of getting a
12 building permit, a either a construction agreement or an
13 abutter agreement with both sets of neighbors just to sort
14 of, you know, offer to you all that we're absolutely willing
15 to work in good faith, use all commercially reasonable
16 efforts, that sort of thing, to get the neighbors comfortable
17 with what we're proposing here.

18 CHAIRPERSON HILL: Okay. Well, it looks like the
19 neighbors are here now so you can, you know, after this speak
20 with them.

21 All right. Does the Board have anything else
22 they'd like to add? Mr. Moy?

23 MR. MOY: Before you make the motion if the Board
24 is about to do that, I just wanted clarification, Mr. Chair,
25 whether or not the plans that we're looking at is under

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1 Exhibit 48(a) because I noticed that the plans are also
2 showing on the PowerPoint. I just wanted to be sure that
3 they were consistent.

4 CHAIRPERSON HILL: Thank you. Will the applicant
5 --

6 MR. LEWIS: Sure. They're virtually identical
7 except for the IZ unit, interior demising walls of that unit.
8 So we uploaded plans that we have on the screen today. I
9 think it's Exhibit 52 maybe.

10 CHAIRPERSON HILL: Okay. So the plans in 52 are
11 the plans?

12 MR. LEWIS: Yes, sir.

13 MR. MOY: Thank you, sir.

14 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.

15 Okay. Is the Board okay with that? Okay. All
16 right. All right. I'm going to close the hearing. Is the
17 board ready to deliberate? Okay. I can start.

18 There was some questions I guess about the IZ
19 component and how they were trying to get the additional FAR
20 at the last hearing. It seems as though they have worked
21 with the Office of Planning in order to opt into the IZ
22 program and is helping to accommodate the increased FAR.

23 I would agree with the analysis that the Office
24 of Planning has provided in their most recent supplemental
25 report. I also do think or am pleased that ANC 2B was in

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1 support 9-0-0 and had no issues or concerns. And I am also
2 hopeful, not hopeful, I am glad to hear that the applicant
3 is continuing to work with the neighbors in getting an MoU
4 in place as well as a construction management plan once they
5 know what they are going to be able to build.

6 I believe that the applicant has made a good case
7 in how it's reached the standards for us to grant the
8 application based upon the regulations and so I will be in
9 favor of the application. Does the Board have anything else
10 they'd like to add?

11 MEMBER MAY: I would like to say this is a, has
12 been a very unusual case because of the unusual circumstance
13 of it. I mean, you know, we often have to consider the
14 unusual circumstance of the given property, but I don't
15 remember another time when the lot itself was so constrained
16 by the deep buildings on either side.

17 I mean, it's a very unusual circumstance, I think.
18 And I appreciate the fact that the applicant took the
19 concerns of the Board and the Office of Planning to heart and
20 we considered how to do this to make it work within the
21 regulations and I think that the relief that we're granting
22 is appropriate based on the changes that have been made. So
23 I'm very supportive of it now so I appreciate it.

24 MEMBER WHITE: Mr. Chair, I concur with your
25 comments as well as Mr. May's comments. I had concerns about

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1 the variance relief that they were requesting for FAR but
2 given the supplemental report of the Office of Planning,
3 which has now provided their recommendation to approve, I
4 would also be in support of the relief that they're seeking
5 for FAR closed court as well as lot occupancy.

6 And I am also pleased that they have dedicated at
7 least one unit for inclusionary zoning. I think you said 60
8 percent AMI or MRI. So I would be in support of the relief
9 that they're seeking as well.

10 But I would want to also just kind of supplement
11 my comments that I would hope that the parties definitely
12 work closely with the adjoining neighbors because the
13 concerns that they have raised about the construction and the
14 adverse impacts that it could have to their properties is a
15 concern, so I would hope that they would continue to get an
16 agreement in place so that they can move forward with their
17 project.

18 CHAIRPERSON HILL: Okay. Great, thank you.
19 Anyone else? Okay. Now with that, I'll go ahead and make a
20 motion to approve Application Number 19772 of 1729 T Street
21 as captioned and read by the Secretary and ask for a second?

22 MEMBER MAY: Second.

23 CHAIRPERSON HILL: Motion made and seconded. All
24 those in favor say aye.

25 (Chorus of ayes.)

1 CHAIRPERSON HILL: All those opposed?

2 (No audible response)

3 CHAIRPERSON HILL: Motion passed. Mr. Moy?

4 MR. MOY: If staff would record the vote as 5-0-0.

5 This is on the motion of Chairman Hill to approve the
6 application for the relief being requested. Seconding the
7 motion, Mr. Peter May, also in support Ms. White, Ms. John,
8 and Vice Chair Hart. The motion carries.

9 CHAIRPERSON HILL: Great. Summary order, Mr. Moy?

10 MR. MOY: Thank you, sir.

11 CHAIRPERSON HILL: Thank you. Thank you,
12 gentlemen.

13 (Whereupon, the above-entitled matter went off the
14 record at 10:28 a.m. and resumed at 12:36 p.m.)

15 CHAIRPERSON HILL: All right, Mr. Moy, let's start
16 again. And also, there's a reorder, is that correct?

17 MR. MOY: Yes, sir. My understanding is that the
18 reordering for the next three cases, the next one would be
19 19169C of Birchington. The second case would be HIP,
20 Application 19789, and the third one would be the other
21 modification of significance, 19521 of David Hunter Smith.

22 CHAIRPERSON HILL: Okay, we'll see how far we get
23 before lunch. I'm hoping we get through 19521A but no
24 promises.

25 MR. MOY: So, I see the parties to the table to

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1 19169C of Birchington LLC.

2 This is a request for a modification of
3 significance to the relief approved by BZA, Order 19169 to
4 include special exceptions from the loading requirement,
5 Subtitle C, Section 901.1, from the access requirement,
6 Subtitle C, Section 904.2, to construct a hotel in the D4R
7 Zone.

8 This is at 303 to 317 K Street NW, Square 526,
9 Lots 20 and 21, 804, 805, 824, 825, and 829.

10 CHAIRPERSON HILL: Okay, great, thank you. If you
11 could please introduce yourselves from my right to left?

12 MR. SEQUAR: Habte Sequar, a developer and owner
13 of the property.

14 CHAIRPERSON HILL: Can you spell your last name,
15 sir?

16 MR. SEQUAR: Last name, S-E-Q-U-A-R.

17 CHAIRPERSON HILL: All right, great, thank you.

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

20 MR. GIORDANO: Nic Giordano with BBGM Architects
21 and Interiors. I'm the architect for the project. Do you
22 want me to spell my last name?

23 CHAIRPERSON HILL: Good enough. Okay, Ms. Mazo,
24 I assume you're going to be presenting to us?

25 MS. MAZO: Yes.

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1 CHAIRPERSON HILL: So this is a modification of
2 significance and so I suppose if you could go ahead and run
3 through what the relief is you're asking and how you're
4 meeting the standards for us to grant the relief. I don't
5 have particularly a lot of questions for you unless the Board
6 has a lot of specifics.

7 So, I'm going to keep you down to 15 minutes on
8 the clock unless there's other things that the Board has as
9 you're going through this presentation.

10 The only one thing that I did mention was that
11 there were some things that OP had wanted from you and if you
12 could kind of speak to some of the things that they had in
13 terms of the additional information. And as I mentioned I'm
14 putting 15 minutes on the clock and you can start whenever
15 you'd like.

16 MS. MAZO: Thanks so much. Samantha Mazo, again,
17 from the law firm of Cozen O'Connor. I'm here today with the
18 project architect and with Mr. Sequar, on behalf of the
19 property owner. Mr. Sequar has actually had dental surgery
20 recently so he probably won't be testifying much but he is
21 here to respond to questions.

22 Just very briefly, again, this is a summary, this
23 is a modification of significance application. This initial
24 application was approved back in March of 2016 for a project
25 that looked, actually, very similar to this. It was just

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1 slightly different in the mix of uses. It had about 200
2 hotel rooms and then 30 residential units.

3 Since that time, the market has changed very
4 fortunately. Mr. Sequar and his group were able to obtain
5 financing and we were back here just this past January, when
6 you guys were kind and you granted a two-year extension to
7 the March 2016 approval on behalf of those financing changes.

8 I'm very excited to say that Mr. Sequar is ready
9 to move forward on this case. In fact, he said, Samantha,
10 we need to get this done because I want to get in for
11 building permits and get a shovel in the ground. So we're
12 in a good place here.

13 So what we're back for is an all-hotel project and
14 again, Mr. Giordano can walk you through some of the
15 specifics but the reason we're here for the modification of
16 significance is because the change from a mixed-use project
17 under the old zoning regulations, ZR58, to the current
18 project under the ZR16 necessitated slightly different
19 loading relief.

20 And so the all-hotel project of this size requires
21 relief -- I will step back. The 2016 approval approved rear
22 yard relief which, again, was under the old zoning
23 regulations, parking relief, which we don't need anymore, and
24 then loading relief which approved one 30-foot -- sorry,
25 relief from one 30-foot loading berth since that could not

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1 be accommodated on site.

2 What we are back for today is now relief from the
3 two additional 30-foot loading berths and driveway slope
4 requirements under the new ZR16.

5 With that, what we are seeking, the areas of
6 relief that we are seeking and have been confirmed by the
7 Zoning Administrator is a special exception for the relief
8 from the two 30-foot loading berths. And then also it's a
9 special exception for the driveway grade relief.

10 In terms of the special exception, as I'll discuss
11 a little bit at the end, the special exception is granted
12 pursuant to Subtitle C909, which has specific requirements
13 for the ability to grant special exceptions for loading
14 relief in sites that are just like this one, which is a site
15 that does not have an alley, Mr. Giordano will say the site
16 does not have alley access.

17 And also in order to accommodate off-street
18 loading or on-street loading, I mean in order to accommodate
19 any sort of loading within the property off the street or any
20 sort of parking, curb-cut would have to obviously be approved
21 be DDOT through the Public Space Committee but then also in
22 this particular case, the proposed curb-cut, as will be
23 discussed, does not satisfy some of the curb-cut requirements
24 that are established by DDOT.

25 And so those are the requirements for the special

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1 exception that we're seeking for the loading. And then also
2 the requirements for the special exception in regards to the
3 grade are that the property is exceptional in some way. And
4 allowing the slight decrease in grade to go from 12 to 14
5 percent is necessary for the project.

6 And here, as we'll discuss, the site is
7 exceptional in terms of its shape. It is unique because of
8 its shape but then also fortunately here, the ability to
9 increase the grade from the 12 to the 14 percent allows for
10 the inclusion of two 20-foot service spaces within the
11 property.

12 And so that is actually a very large improvement
13 over what was actually approved back in 2016. The project
14 in 2016 could only fit one 20-foot loading space and I think
15 Chairman Hill was on the Board back then.

16 There was a lot of back and forth with DDOT about
17 the location of that loading space. Because of the way that
18 the interior and below-grade areas of that project, in order
19 to accommodate all the parking spaces, they could not put the
20 one 20-foot loading space in a great location.

21 With DDOT, we finally came to a compromise with
22 DDOT and we moved forward on that project, but as Mr.
23 Giordano will say, we're very excited because this project
24 can provide two 20-foot loading spaces which is a real
25 benefit, as DDOT has identified, because it takes what's

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1 going to be the majority of the loading for a hotel use off
2 the street and will put it within the site in areas that are
3 more accessible.

4 So with that, I'm going to turn it over very
5 briefly to Mr. Giordano who will talk through the property
6 location as well as information regarding the curb-cut and
7 why the curb-cut as proposed has to be where it is and why
8 it doesn't exactly satisfy DDOT's standards, which normally
9 is not a good thing but in this case it's actually helpful
10 for being able to meet the special exception standards. So
11 a little complicated there.

12 CHAIRPERSON HILL: That's okay. Continue, please.

13 MR. GIORDANO: This slide shows where the site is.
14 It's the lots outlined in the green there, which is an L-
15 shaped lot at the corner of K and 4th, K being on the bottom,
16 4th on the side there.

17 The lot is completely surrounded by Lot 27, which
18 has been built now. There is no alley behind the lot and
19 this is not a historic district nor is it on one of the
20 special streets. It's in the Downtown Streetscape, I'm
21 sorry, but not primary, tertiary streets.

22 This is a plat of the property showing the lots
23 individually or that are comprised of our property. Again,
24 note the L-shape --

25 CHAIRPERSON HILL: Mr. Giordano, if you just want

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1 to talk about the ramp there? I'm flipping through your
2 presentation.

3 MR. GIORDANO: Oh, why don't we jump up, then, to
4 Slide -- want to go to the site plan and maybe talk there?

5 CHAIRPERSON HILL: Sure.

6 MR. GIORDANO: These are side-by-side comparisons
7 with what was approved in 2016 on the left and on the right
8 is the current proposal. On the left you'll see where the
9 curb-cut is. It starts at 20 feet and narrows down to 16 as
10 it goes into the building.

11 We're proposing to keep that at 20 feet all the
12 way down. We also were having to move it up northerly to the
13 northern property line. Previously, it was six and a half
14 feet below that property line, and moving it up there, we're
15 in a little conflict with DDOT's requirement that you have
16 a five-foot flare or a turnout on the drive.

17 This stays in your public space in front of your
18 building. We're going in front of the neighbor's public
19 space. Here's a blowup of that and you can see the five-foot
20 turnout. But this is recommended by DDOT.

21 There were other configurations we couldn't get
22 to work and we are more than 24 feet to the next curb-cuts.
23 They're fine with it and approved this.

24 Should I talk about grade already?

25 MS. MAZO: Yes, we'll talk about grade.

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1 MR. GIORDANO: The grading issue also is to get
2 down below the first floor. You can see the site is only 80
3 feet deep, the garage entrance is 20 out of that so you get
4 a pretty narrow useable area so that's why we've also moved
5 it to the top.

6 In the prior approval, the loading is in the
7 bottom right corner -- or the service, excuse me, service
8 delivery spot was in the bottom right.

9 So you went down a ramp, you did a turn, you went
10 down another short ramp to get to the service, and you're
11 wheeling pretty much across 40 feet of dry mile and behind
12 the handicaps and so forth.

13 So, DDOT would prefer it upper right, where you
14 have an immediate cross into the service elevator, which is
15 the left elevator in the core there. So we put two service
16 there and it's also combined or next to the trash and the
17 storage, which before the trash and storage were up there,
18 there was service down the corner. It just solved a lot of
19 efficiency issues in getting that done.

20 So to do that, to make that distance from curb-cut
21 or from building face down, we need to go to 13.9 or we'll
22 call it 14 percent, which really is negligible for any
23 vehicle, so that we didn't have to go round the curb again
24 and down to the lower area.

25 MS. MAZO: Mr. Giordano, can you also just speak

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1 to how we are still retaining a certain number of below-grade
2 parking spaces?

3 MR. GIORDANO: Even though those parking spots are
4 required now, we are keeping 42 -- it was 46 -- we're keeping
5 42 spaces and adding 18 valet for a total of 60, which we
6 think is more than enough for any potential parking we may
7 need, market rate.

8 CHAIRPERSON HILL: As Ms. Mazo mentioned, I was
9 here for the original one and so I remember this one now.
10 And so I'm just curious again about the changes that are
11 giving rise to a modification of significance. Does the
12 Board have any questions they'd like to ask of the Applicant?

13 MEMBER MILLER: Sure. Thank you, Mr. Chairman.
14 Yes, I was on the original case as well.

15 So, at the ANC Meeting, ANC6E, where you made the
16 modification presentation and they supported it in their June
17 20th letter, they mentioned that during the Meeting,
18 residents raised concern about rat abatement, which led the
19 Applicant to agree to have an internal trash room in the
20 hotel.

21 Do these revised plans that we have show the
22 internal trash? You may have mentioned this and maybe I
23 missed it.

24 MR. GIORDANO: It's in the upper right corner of
25 the plan on the right.

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1 MEMBER MILLER: So that's a part of what we're
2 considering today.

3 CHAIRPERSON HILL: Okay, anyone else? I'm going
4 to turn to the Office of Planning.

5 MR. COCHRAN: Thanks, Mr. Chair. OP's ready to
6 say on the record that we're recommending approval for both
7 the loading access and the loading facilities special
8 exceptions.

9 We'd also note that even though the uses are
10 changing, the all-hotel use is by right in this zone as long
11 as they buy credits. I'm sort of anticipating any questions
12 there might be from Mr. Miller about the absence of housing
13 on the site.

14 DDOT, I was in the Meetings with DDOT.

15 DDOT weighed their various requirements and said
16 that, essentially, getting the loading as close to the street
17 as possible, which the Applicant has done, outweighs any
18 consideration about the flare of the curb-cut because it
19 would also encourage the loading to happen inside the
20 building rather than double-parking on the street.

21 So everybody seems to be very happy with this
22 proposal.

23 CHAIRPERSON HILL: Okay, does anybody have any
24 questions for the Office of Planning? Okay, great. Does the
25 Applicant have any questions for the Office of Planning?

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1 MS. MAZO: Nope, we do not.

2 CHAIRPERSON HILL: Is there anyone here from the
3 ANC? Is there anyone here wishing to speak in support? Is
4 there anyone here who wishes to speak in opposition?

5 Okay, I kind of thought we were going to get
6 somebody actually because I remember in the case before,
7 there was a lot of concerns about parking and a lot of people
8 were concerned about the loading and unloading. So I'm glad
9 that has gotten addressed.

10 Does the Applicant have anything else they'd like
11 to add?

12 MS. MAZO: No, we have a very full record and we
13 would hope that the Board takes action today to support and
14 approve this case. Thanks very much.

15 CHAIRPERSON HILL: Okay, so is it Mr. Sequar?
16 This is finally going to move forward?

17 MR. SEQUAR: Absolutely, sir.

18 CHAIRPERSON HILL: Is this soul food place going
19 to get a spot in the hotel?

20 MR. SEQUAR: Yes.

21 CHAIRPERSON HILL: Okay, all right, I'm going to
22 go ahead and close the record. Is the Board ready to
23 deliberate? I think that the Office of Planning's report was
24 concise as to how they're meeting the criteria for us to
25 grant the modification of significance.

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1 It also is helpful to see that the ANC, six to
2 zero, was in support, six to zero to zero, and that you
3 raised no issues and concerns.

4 And also as I had mentioned before, there actually
5 was a pretty full Hearing when we first originally had it and
6 there was a tremendous amount of concern, or not a tremendous
7 amount of concern, there was concern from the community about
8 traffic and this, I guess, doesn't change much to the point
9 where there are people that have come out from the community.

10 So I would be in support of this application.
11 Does anyone have anything else they'd like to add?

12 MEMBER HART: No, Mr. Chairman, I think I would
13 also agree with you that the Office of Planning reports,
14 particularly on Page 3 which describes how the project would
15 meet Subtitle C909.3 from the access requirements for
16 Subtitle C904.2, and I would be in support of the application
17 as well.

18 I think the record is full and because I wasn't
19 on the case, I actually did read into the record so I'll be
20 participating.

21 CHAIRPERSON HILL: Okay, great, thank you.

22 MEMBER WHITE: Mr. Chair, I did read into the
23 record as well. I wasn't here in 2016 so I did go through the
24 history of the case and I think that they've done a very good
25 job of meeting the criteria and they've gotten support from

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1 OP as well as the ANC.

2 So I'm ready to move forward and support. It's
3 good to see they have two loading platforms. That's unusual
4 and I think that will do a lot in terms of mitigating some
5 of the negative impacts with respect to traffic. So I'm
6 ready to support the application.

7 CHAIRPERSON HILL: Okay.

8 MEMBER JOHN: Mr. Chairman, I also read into the
9 case because I was not here in 2016.

10 CHAIRPERSON HILL: I hope not to be here for
11 something as well in the future. I want to have somebody
12 else reading the case.

13 MEMBER JOHN: And based on what everyone has said
14 and the report, OP's report in the record, and DDOT's
15 approval of the two loading docks, I am ready to move
16 forward.

17 CHAIRPERSON HILL: Okay, then I'll make a motion
18 to approve Application Number 19169C as captioned and read
19 by the Secretary. And I'll ask for a second?

20 MEMBER HART: Second.

21 CHAIRPERSON HILL: Motion made and seconded. All
22 those in favor, aye?

23 (Chorus of ayes.)

24 CHAIRPERSON HILL: All those opposed?

25 (No audible response.)

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1 CHAIRPERSON HILL: The motion passes. Mr. Moy?

2 MR. MOY: The Staff would record the vote as five
3 to zero to zero.

4 This is on the motion of Chairman Hill to grant
5 the request for modification of significance. Seconding the
6 motion is Vice Chair Hart, also in support is Mr. Miller, Ms.
7 White, and Ms. John. The motion carries.

8 CHAIRPERSON HILL: Thank you. Summary order, Mr.
9 Moy?

10 MR. MOY: Yes, sir.

11 CHAIRPERSON HILL: Thank you. Thank you all very
12 much.

13 MR. MOY: If we can have parties to the table for
14 Case Application Number 19789 of HIP E Street Partners LLC.
15 This application was amended for special exception from the
16 inclusionary zoning bonus density requirements, Subtitle C,
17 1001.2, lot width and area requirements Subtitle D, Section
18 302.1.

19 And pursuant to load DCMR Subtitle X, Chapter 10
20 for variances for the lot, occupancy requirements Subtitle
21 D, Section 302.1, front setback requirements, Subtitle D,
22 Section 305.1, and side yard requirements, Subtitle D,
23 Section 307.4 and 307.5 to construct ten attached principal
24 dwelling units, R3 Zone, at 5101, 5103, and 5111 E Street SE,
25 Square 53, 16, Lots 1, 2, and 8 to 10.

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1 CHAIRPERSON HILL: Could you please introduce
2 yourselves for the record?

3 MR. MILLER: Chris Miller with the HFA.

4 MS. FERREIRA: Catharina Ferreira, Principal at
5 Architectural, I am the architect.

6 MS. McDONALD: Odette McDonald, H2 Design Build.

7 MR. YANCEY: Harvey Yancey, H2 Design Build and
8 HIP, LLC.

9 CHAIRPERSON HILL: Great, thank you. You guys
10 look very familiar and so I'm glad to have you back again
11 within a week. So, the last Hearing we postponed it to allow
12 the Applicant to re-post notice to reflect the amended
13 relief.

14 The Board waived the requirement that the amended
15 notice be republished in the Register and mailed to the
16 neighbors within two-inch feet. The Board also asked OP to
17 file a supplemental and asked that the ANC report be uploaded
18 to the record.

19 We did not hear from the Applicant in terms of how
20 the request that they're making and how they're meeting the
21 standard for us to grant that request. Ms. Ferreira, I'm
22 going to turn that to you.

23 After having a chance to yet again review the
24 files, I'm pretty clear as to where you are so I don't have
25 a lot of specific questions.

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1 We just want to kind of go over and provide an
2 overview of what you're requesting relief from and how you're
3 meeting the standards, and we'll allow the Board to ask any
4 questions from there, okay?

5 MS. FERREIRA: Thank you, Mr. Chairman. The
6 proposed development consists of ten individual warehouses
7 on a site located at the corner of 51st and E Street SE,
8 which is Zone R3.

9 We are requesting relief, or rather we are opting
10 in for the IZ option to include one inclusionary zoning
11 dwelling and, therefore, apply the higher-density standards
12 to this development. And that is Subtitle C, Section 101.2.

13 We are requesting relief from Subtitle D, Section
14 302.1 regarding the minimum lot width and lot area
15 requirements for making lots labeled 511A, B, C, and D on the
16 site plan, and E, 16 feet wide, 1600 square feet, as is in
17 conformance with inclusionary zoning standards.

18 And we are also seeking relief from making lots
19 labeled 5101A, B, C, D, E 20 feet wide and 1600 square feet,
20 which exceeds the lot width standard for IZ development but
21 meets the square footage requirement.

22 We are also requesting relief from Subtitle D,
23 Section 305.1 regarding front setback and it is sought along
24 both 51st Street and East Street SE, and I should clarify
25 that even though we are requesting relief, we are providing

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1 a partial setback because the buildings are actually designed
2 with protruding bay windows that project forward three feet.
3 But on the East Street side, those bay windows will be on the
4 lot line and the main building wall will actually be three
5 feet back.

6 And then on the 51st Street side, they will
7 actually be an additional five-foot setback, as coordinated
8 with the Office of Planning and discussed at the previous
9 Hearing.

10 We are also requesting relief from Subtitle D,
11 Section 307.4 from the site setback requirements along the
12 east side of proposed lot labeled 5111E along East Street SE,
13 and the south side of proposed lot labeled 5103C along 51st
14 Street SE.

15 And that is the five-foot setback requirement
16 applicable to end of rowhouses based on the new 2016 zoning
17 regulations.

18 How we meet the exceptional condition uniqueness,
19 overall lot dimensions and trying to maximize or optimize the
20 development of the site have predisposed the project to have
21 the need to seek relief.

22 There is a requirement that ten units needed to
23 be provided based on a contract that exists between my
24 clients and the D.C. HFA to provide ten workforce housing
25 units on the site. It is also required in order for

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1 inclusionary zoning standards to apply that a minimum of ten
2 units be provided.

3 So that is the goal for the project and how it has
4 been planned, and in order to achieve that goal, we must
5 request the relief from the Sections mentioned. There are
6 also several other aspects of the lot that, in my opinion,
7 are unique, its location, its size, the fact that it's
8 surrounded by a variety of development types.

9 There are single family homes, there's a church,
10 there's a multi-unit building adjacent. There are many
11 varying conditions in terms of setbacks and there are also
12 very similar rowhouses immediately across, which I think is
13 significant in this case.

14 And they also don't have any significant setbacks
15 and completely fill the lot from end to end.

16 Practical difficulty, I alluded to this one
17 previously. Without optimizing the lot usage, my clients
18 would not be able to meet the requirements to provide ten
19 dwelling units on the site. And there's some additional
20 information about that in the burden of proof which is in the
21 record.

22 And then the no substantial detriment to the
23 public good or integrity of the zone plan, I would agree with
24 the Office of Planning that we do meet that requirement as
25 well because we are complying with the zoning regulations in

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1 terms of the design of the buildings, the bulk, the lot
2 occupancy, the height in every aspect we can in reality.

3 And we are actually trying to bring a benefit to
4 the public by providing more workforce housing, which is
5 something that is greatly needed in the city.

6 Thank you.

7 CHAIRPERSON HILL: Great, thank you. Does the
8 Board have any questions for the Applicant?

9 MEMBER WHITE: Just a quick question, explain to
10 me again how you meet the front setback criteria?

11 MS. FERREIRA: If you have the site plan in front
12 of you, it's Sheet Z100, along 51st Street there's no setback
13 required, or proposed I should say. The building immediately
14 to the south of our site is actually 80 feet from the
15 property line along that same street.

16 It is a freestanding multi-unit building with a
17 large parking lot in front of it so it would be impossible
18 for us to meet that setback as this is what sets the standard
19 for this block.

20 So, what we are proposing instead is basically the
21 bay window on the property line and the three-foot setback
22 for the main building wall and that is very similar to the
23 condition that we see across the street in the townhouses.

24 And then along East Street SE, we initially were
25 showing the same condition as along 51st Street but we have

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1 since revised it in coordination with the Office of Planning,
2 and we are now providing a five-foot setback and there's
3 still the additional three-foot setback between the front of
4 the bay window and the main building.

5 CHAIRPERSON HILL: I'm going to turn to the Office
6 of Planning.

7 MR. KIRSCHENBAUM: Good afternoon, Board Members,
8 Jonathan Kirschenbaum for the Office of Planning. OP worked
9 extensively with the Applicant on this application. We
10 recommend approval for special exception relief to permit a
11 minimum lot width of 60 feet in exchange for the provision
12 of an inclusionary zoning housing unit.

13 And we recommend approval of the requested
14 variance relief for side yards and lot occupancy, and we also
15 submitted into the record a supplementary report regarding
16 the revised front setback variance request, and we recommend
17 approval for that. Please let me know if you have any
18 questions.

19 CHAIRPERSON HILL: Does the Board have any
20 questions for the Office of Planning? Does the Applicant
21 have any questions for the Office of Planning? Is there
22 anyone here from the ANC?

23 Is there anyone here wishing to speak in support?
24 Is there anyone here wishing to speak in opposition? Ms.
25 Ferreira --

1 MEMBER MILLER: Mr. Chairman?

2 CHAIRPERSON HILL: Yes?

3 MEMBER MILLER: I'm sorry, I just wanted to make
4 one statement and ask one question of the Applicant. I meant
5 to do that when you asked if anyone had any questions of the
6 Applicant.

7 So the statement that I read into the record, I
8 was not here last week but I read into the record so that I
9 could participate, and the question is could you just refresh
10 my recollection, even though I read into the record, as to
11 the size of the workforce housing units and the size of the
12 inclusionary zoning units, the number of bedrooms each has?

13 MS. FERREIRA: Sure, I would like to. The sizes
14 do vary, there are 16-foot-wide rowhouses, 5 of them, and
15 then 20-foot-wide rowhouses, the other 5. Besides that, the
16 layout is very close to the same.

17 The 20-foot-wide rowhouses will actually have a
18 total of 3 bedrooms on the upper floors and this is something
19 that we are in the process of revising.

20 We talked about this a little bit last week but
21 we are attempting to add one more bedroom to those, and then
22 the smaller 16-foot-wide row will have 3 bedrooms total, 1
23 of them being located at the lowest level.

24 And that is sort of a bonus room that could be
25 used in either of these row-house types as a guest room, as

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1 a family room, and that's really up to the buyers in the end
2 but they do have the option of also using it as a bedroom and
3 it has its own full bathroom adjacent to it.

4 We have also revised the plans to include garages
5 at the back and this is something that was not part of the
6 original design but we have done this based on feedback from
7 the community and at the request of my client.

8 MEMBER MILLER: And the workforce housing units
9 per regulations are for households up to 120 percent of the
10 median family income?

11 MS. FERREIRA: That's correct.

12 MEMBER MILLER: And the inclusionary zoning unit
13 will be up to 80 percent pursuant to the IZ regulations? Is
14 this a for sale? So would it be for up to 80 percent?

15 MS. FERREIRA: Yes.

16 MEMBER MILLER: I just wanted to confirm that for
17 the record. Thank you for your presentation.

18 MS. FERREIRA: You're welcome.

19 CHAIRPERSON HILL: Anyone else? So to the
20 Applicant, you don't have anything else to add? I'm going
21 to close the Hearing.

22 Is the Board ready to deliberate? Okay, well we
23 did hear from this Applicant last week and there were some
24 issues that need to be resolved with posting. So I'm glad
25 to see those issues have been resolved.

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1 I also am in agreement with the analysis that the
2 Office of Planning has provided in their supplemental report
3 and the ANC was in favor to one, raising no issues and
4 concerns. So I will be in support of this application. Does
5 anyone have anything they'd like to add?

6 MEMBER WHITE: Mr. Chair, I'd be in support as
7 well and I'd like to add that I did read into the record.
8 I was out part of the time last week so I did have to brief
9 myself before weighing in.

10 But I think they've met the criteria, thanks for
11 providing the additional feedback regarding the front
12 setback. It's good to see that OP supported the application
13 which made it easier to support, and I'm also happy to see
14 the workforce housing and inclusionary zoning that you're
15 doing with respect to this project.

16 But with all that being said, I think they've met
17 both the special exception and the variance criteria for this
18 application.

19 CHAIRPERSON HILL: Okay, then I'll go ahead and
20 make a motion to approve Application Number 19789 as
21 captioned and read by the Secretary and ask for a second?

22 MEMBER WHITE: Second.

23 CHAIRPERSON HILL: Motion made and seconded, all
24 those in favor say aye?

25 (Chorus of ayes.)

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1 CHAIRPERSON HILL: All those opposed?

2 (No audible response.)

3 CHAIRPERSON HILL: The motion passes. Mr. Moy?

4 MR. MOY: Staff would record the vote as five to
5 zero to zero. This is on the motion of Chairman Hill to
6 approve the application for the relief being requested.
7 Second, the motion of Ms. White, also in support Ms. John,
8 Vice Chair Hart, and Mr. Miller. The motion carries.

9 CHAIRPERSON HILL: Thank you. Summary order, Mr.
10 Moy?

11 MR. MOY: Thank you, yes, sir.

12 CHAIRPERSON HILL: And again, Mr. Moy, I guess
13 we're going to try to hear one more case and then we're going
14 to take a break for lunch. Thank you all very much.

15 MR. MOY: Very good. So, if we could have parties
16 to the table to Case Application Number 19521A of David
17 Hunter Smith.

18 Mr. Chairman, this is a request for a modification
19 of significance to the relief approved by BZA Order Number
20 19521 to include variance from the accessory building
21 requirements of Subtitle D, Section 1209.4 to construct a
22 second-story accessory apartment above an existing garage in
23 the R20 Zone.

24 This is at 3520 S Street NW, Square 1303, Lot 29.

25 CHAIRPERSON HILL: Thank you. If you could please

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1 introduce yourselves for the record?

2 MR. SMITH: Good afternoon, my name is David
3 Smith, I am the homeowner and the Applicant. With me
4 is...please go ahead?

5 MS. FERREIRA: Catharina Ferreira, Principal at
6 Architectural, I'm the architect.

7 MR. MURPHY: Rick Murphy here representing ANC2E.

8 CHAIRPERSON HILL: All right, Mr. Murphy. So,
9 let's see, this is a modification of significance. So Mr.
10 Smith or is it Ms. Ferreira? Mr. Smith, you're going to be
11 presenting to us?

12 MR. SMITH: That's correct.

13 CHAIRPERSON HILL: So Mr. Smith, you were here
14 before and now you're here asking for a modification of
15 significance. So if you could during your testimony provide
16 to the Board what exactly you're doing in terms of the
17 modification of significance?

18 I guess it would be helpful if you clarify again
19 for the Board what was approved beforehand and then now what
20 changes are being made that brings us up to, again, the level
21 of modification of significance.

22 We'll be hearing only on the modification of
23 significance but it would be helpful to again just refresh
24 the memory as to what the Board had done previously.

25 In terms of the ANC, I can see they were in denial

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1 five to zero to zero, and the ANC is here so the ANC as an
2 automatic party to any cases will have an opportunity too.
3 You're going to give your testimony, the ANC will have an
4 opportunity to cross-examine that testimony.

5 The ANC will then have an opportunity to give
6 their testimony, you will have an opportunity to cross-
7 examine their testimony and then also provide a rebuttal and
8 conclusion at the end of your testimony.

9 So, I'm going to go ahead and start with 15
10 minutes, we're going to kind of move it along here, and you
11 can begin whenever you like.

12 MR. SMITH: Thank you. The way I propose to
13 proceed is to first start with a chronology of how we got
14 where we are today. Then Ms. Ferreira, who is the architect,
15 will discuss the structure and design changes, and then I'd
16 like to walk through the three-part test for a variance and
17 why we meet each of the three parts.

18 CHAIRPERSON HILL: That sounds great.

19 MR. SMITH: I also wanted to note that the burden
20 of proof in the case, which we submitted, referred to in
21 Exhibit B, it described what Exhibit B was but somehow it
22 didn't quite get uploaded. I have a copy of it. It is a
23 September 25, 2017 DCRA zoning approval.

24 CHAIRPERSON HILL: Do you have copies for
25 everybody?

1 MR. SMITH: I do. I have ten copies.

2 CHAIRPERSON HILL: Okay, if you could just pass
3 them up to the Secretary there and provide one there to the
4 ANC Commissioner, please? Has everyone been sworn in by the
5 way?

6 MR. SMITH: I have.

7 CHAIRPERSON HILL: Everybody's been sworn in?
8 Okay, all right.

9 MR. SMITH: Mr. Chairman, as you noted, we were
10 here on July 19, 2017 when the Board granted a special
11 exception in the case. At the time, the ANC did not submit
12 a report reflecting its view on the special exception,
13 however, I do want to be clear that the ANC did have the
14 opportunity to do so.

15 In fact, starting in March 2017, Ms. Ferreira had
16 several communications with the ANC Commissioner in whose
17 single-member District this project was located, including
18 two in-person Meetings.

19 I'm happy to go through a detailed chronology of
20 all the communications if you deem them relevant, but I would
21 suggest skipping that now and coming back to it if you want
22 to hear more.

23 CHAIRPERSON HILL: That's a good idea.

24 MR. SMITH: So the regulations in Subtitle U,
25 Section 253 for accessory apartments are quite detailed and

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1 include provisions regarding alley access, gross floor area,
2 protruding windows, and prohibitions on a roof deck.

3 Previously, we were here in 2017 for a special
4 exception to approve an accessory apartment in an R20 Zone
5 pursuant to Subtitle U. Accessory apartments, as you may
6 know, are allowed in all R Zones except for the R19 and R20
7 Zones, in which they are allowed by special exception.

8 Like I said, there are detailed regulations in
9 Subtitle U and we follow these regulations to a tee. We do
10 our best to comply with the zoning code. As a result, the
11 only zoning relief we sought was for the special exception
12 and we did not seek zoning relief from any other aspect of
13 Subtitle U.

14 I'll note that no one in our household owns a car
15 and at one point in planning this project we said let's just
16 get rid of the garage, which is empty anyhow, and put in a
17 one-story accessory building with an accessory apartment
18 which would have been significantly cheaper.

19 But as you know, Subtitle U, Section 253.9 says
20 that in an R20 Zone an accessory apartment, quote, shall only
21 be permitted on the second story of an attached accessory
22 building. So that's what we proposed.

23 We wanted to do everything we could to comply with
24 every provision of the zoning code so we said, fine, we'll
25 propose a two-story accessory building with an accessory

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1 apartment on the second floor. The Board approved the
2 special exception in 2017, July 19, 2017.

3 We applied for a building permit on August 14,
4 2017. DCRA completed review of the zoning discipline -- I'm
5 sorry, I will note that at the Hearing the Office of Planning
6 supported the grant of the special exception relief in July
7 2017 and its report did not identify the need for any other
8 zoning relief.

9 The Board granted the special exception on August
10 14, 2017. We applied for a building permit. DCRA completed
11 its review of the zoning discipline on September 25, 2017.
12 That's the Exhibit B to the burden of proof that I just
13 handed up.

14 There's been a lot of commentary in some of the
15 letters in opposition saying, oh, the DCRA quickly fixed its
16 error so how could we have relied on the error? I do want
17 to point out it was not a matter of days, it was a matter of
18 September until January.

19 Shortly after September 25, 2017, DCRA completed
20 a review of all disciplines except for structural review.
21 The structural review had extensive comments on the soil
22 testing done. These were all addressable issues that took
23 some time but we got it done.

24 After September 25, 2017 when the zoning was
25 approved, we hired a general contractor, put down a deposit

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1 with a general contractor, applied for a raze permit,
2 received a raze permit.

3 We hired a contractor, a separate contractor, to
4 put solar panels on the roof of the structure, applied for
5 and received a permit authorizing the panels and also net
6 mirroring. We order kitchen cabinets which had to be custom-
7 designed and have a long lead time.

8 In the meantime, I'll also mention that we had a
9 second child so we were trying to get the apartment built as
10 quickly as possible so that we could have someone there who
11 could help us with childcare.

12 On December 3, 2017, we received an email saying
13 the final-discipline structural review was complete. The
14 next day, December 4, 2017, we received an email from DCRA
15 saying the permit was approved and ready to pick up.

16 Independently, we had also received an email from
17 the Zoning Administrator, Matt LeGrant, saying he would like
18 to have a meeting with us. He didn't explain what the
19 meeting was about but we attended the meeting as it happened
20 also on December 4, 2017.

21 I believe it's simply a coincidence that it was
22 the same day that the permit was approved. At the meeting
23 which, for the record I should be clear, I did not attend but
24 Ms. Ferreira and my wife attended, Mr. LeGrant raised a
25 concern about the height of the structure, not the number of

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1 stories.

2 Mr. LeGrant found puzzling the relationship
3 between Subtitle D, Section 1209.4, which provide for height
4 and story restrictions in accessory buildings in the R20
5 Zone, and Subtitle U's requirement in 253.9 that accessory
6 apartments shall only be permitted on the second story of a
7 detached accessory building.

8 He asked us to give an explanation of our
9 understanding of how these two provisions interacted. We did
10 a week later. We didn't receive a response but we had an
11 email saying the permit was ready so we followed up on
12 December 26, 2017 and asked if Mr. LeGrant had any objection
13 to our picking up the permit.

14 Perhaps understandably given the holidays, we did
15 not receive a response but on January 3, 2018 we went, paid
16 the permit fees, and picked up the permit. I'd like to note
17 what we did here. We did not begin construction. Instead,
18 we contacted Mr. Morphin that day to make sure DCRA had
19 properly issued the permit. We didn't want to be going ahead
20 with a permit that had been issued by accident.

21 There's been a lot of talk in the letters in
22 opposition about how quickly DCRA revoked the permit, but
23 that is, I believe, purely because we were acting in good
24 faith and trying to follow up in addressing the concern. We
25 wanted to make sure Mr. LeGrant's concerns had been

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1 addressed. Apparently, they had not been.

2 On January 9, 2018, the permit was cancelled. The
3 noticed of cancellation, which is Exhibit 8, cited the 15-
4 foot height requirement of Subtitle D, 1209.4. This is the
5 first time, other than the meeting with Mr. LeGrant earlier,
6 that this height requirement had been raised with us. It did
7 not mention the number of stories.

8 So on January 17, 2018, we submitted revised plans
9 to Mr. LeGrant which complied with the height restriction.
10 We did not receive a response and we followed up again. On
11 March 9, we received a response, which is Exhibit 9, stating
12 that we now comply with the height requirements but do not
13 comply with the story requirement.

14 So Subtitle D says you can only build a one-story
15 accessory building. Also Subtitle U says an accessory an
16 apartment must be on the second story of an accessory
17 building. So we are now here returning to the Board for
18 additional relief. The structure, as Ms. Ferreira will
19 describe, has been shrunken slightly but is otherwise largely
20 unchanged from what was here in July 2017.

21 I also want to note another development, which
22 does have some legal relevance, which is we had originally
23 intended the accessory apartment for either a full-time nanny
24 or renter who might help with childcare.

25 In the past two months, my sister-in-law has been

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1 diagnosed with cancer and because we are her only family in
2 the United States, she moved from San Francisco to Burleith
3 to live near us. Unfortunately, the apartment had not been
4 constructed so she can't live there so she's renting nearby
5 and would be the first resident of the accessory apartment.
6 I'll turn it over Ms. Ferreira.

7 MS. FERREIRA: So I'd like to start just by
8 explaining a little bit the design rationale behind the
9 original building, which is not something that's really part
10 of the request being requested here, but just to give
11 everyone an overview because I did not have the opportunity
12 to attend the ANC Hearing.

13 I was out of the country at the time and did not
14 have the opportunity to present the intent behind the design
15 of the building to the Commissioners and the community.

16 And I will start by saying that it was designed
17 as a one-story building. It was designed as a one-story
18 garage with a mansard roof that happens to conceal an ADU
19 within it.

20 As an architect who is very sensitive about scale
21 and height issues, like any of the neighbors are who have
22 voiced their opinion in the letters, I also wanted to make
23 sure this building was going to be as small as possible.

24 The previous concern that had been raised
25 regarding the height and it being in excess of 15 feet was

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1 eliminated in the revised design that now shows the building
2 as 15 feet tall. And you might ask how did you accomplish to
3 have 2 stories in a 15-foot-tall building? Well, we did it
4 by sinking it slightly into the ground.

5 The height of an accessory building has very
6 specific rules of measurement. It is measured from the
7 finished grade on the side facing the principal dwelling and
8 we revised the design of the building to comply with those
9 rules of measurement.

10 Now, of course, grade is something that can be
11 manipulated and we are manipulating the grade in order to
12 meet the height requirement. We are also increasing the
13 construction cost. There's more expensive insulation that
14 needs to be installed in a shallower roof, for example.

15 There's now drainage that needs to be installed
16 at the bottom of our ramp down from the alley to the garage
17 itself. We are now creating a taller retaining wall on the
18 side facing the house in order to create a lower I'll call
19 it area-way between the garage itself and the yard.

20 So these are all things that have, in fact, added
21 construction cost to the building but we went ahead and made
22 those revisions in order to comply with as many aspects of
23 the zoning regulations as we can. The only aspect of this
24 structure that does not comply with the by right regulations
25 is that it does have a second story.

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1 We already have the approval for the ADU, that was
2 part of the previous case and I'd just like to reiterate that
3 the structure as designed does comply with the restrictions
4 for an accessory building by right, except for the fact that
5 it has a second story. So that is the only thing that we are
6 actually requesting relief from.

7 MR. SMITH: And to be clear, it's a purely
8 interior question. It's not a question about the height.
9 So there's a three-factor test for the variance. As you
10 know, the first question is that there has to be a unique or
11 exceptional condition affecting the property.

12 I just want to be clear, there's a long line of
13 cases from the Court of Appeals, as you probably know, and
14 I'm quoting, there's no requirement that uniqueness is
15 inherent in the land at issue. In fact, that's a quote from
16 Fleischman v. Board of Zoning Adjustment, 27 A.3d 554.

17 In Monaco v. D.C. Board of Zoning Adjustment
18 407A.2d 1091, the Court of Appeals had that extraordinary
19 circumstances can encompass the past zoning history.

20 In one more case, De Azcarate v. District of
21 Columbia, it said that good faith reliance on the actions of
22 the Zoning Administrator later determined to be erroneous can
23 satisfy the unique circumstances in the practical
24 difficulties test.

25 Practical difficulties will certainly occur if a

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1 variance is not granted here. We've done our best to comply
2 with Subtitle U as much as possible. We've gone through
3 great expense to do so and we've relied on the reasonable
4 actions of both the DCRA and the Office of Planning.

5 It may be that those interpretations turned out
6 to be erroneous but our reliance on them was not
7 unreasonable.

8 Finally, well, not finally but penultimately, an
9 additional relevant consideration in granting a variance is
10 the severity of the variance requested that something be --
11 the D.C. Court of Appeals said just last year in St. Mary's
12 Episcopal Church.

13 It's really hard to imagine a less severe variance
14 than this one. Nobody from the outside of the building will
15 be able to -- it will be very hard to tell from the outside
16 of the building that anything is any different.

17 We could just build this without a floor for the
18 second story but everything else would be exactly the same.
19 So, this is as unsevere a variance as, really, could be
20 imagined.

21 Finally, I will note as far as the third factor,
22 the requested relief can be granted without substantial
23 detriment to the public good. The Court of Appeals again in
24 Fleischman said a reason to grant a variance is that the
25 reason we're requesting the variance is born from our

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1 considerations of the zone plan.

2 That's exactly why we are trying to build a two-
3 story accessory building, because Subtitle U says if you want
4 to have an accessory apartment you need to put it on the
5 second story. Otherwise, we could have signed something
6 different.

7 So, there are two parts of the zoning code that
8 are either in significant tension or outright conflict and
9 we're doing our best to resolve them here. And the Court of
10 Appeals said that's a reason to grant a variance.

11 I'll also note that none of the immediately
12 adjacent neighbors have expressed an objection. There was
13 a letter in support of the neighbor immediately to the west.
14 There is no objection in the record and I represent that the
15 neighbor immediately to the east has no objection.

16 If you look at the letters in opposition, I don't
17 believe there is a single person living on S or R Street who
18 submitted a letter in opposition. The building would, again,
19 be in the alley between S and R Street.

20 The letters in opposition and, I would venture,
21 the basis of the ANC's opposition are concerns of neighbors
22 who live several blocks away. And it's hard to understand
23 what else we could do to resolve their concerns. That's it,
24 thank you very much.

25 CHAIRPERSON HILL: Great, thank you, Mr. Smith.

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1 Does the Board have any questions at this point for the
2 Applicant? Commissioner Murphy, do you have any questions
3 on cross for the Applicant?

4 MR. MURPHY: No questions on cross.

5 CHAIRPERSON HILL: Thank you. Commissioner, I'm
6 going to put 15 minutes on the clock for you and you can
7 begin whenever you like.

8 MR. MURPHY: I promise I won't take that long.
9 We're all hungry. I'm Rick Murphy and I'm here representing
10 ANC2E. I actually represent single-member District 3 in the
11 ANC.

12 Ed Solomon, who is the Commissioner representing
13 single-member District 1, where this property is situated is
14 traveling and that's why I'm here. But in the ANC's
15 resolution I was nominated as a representative.

16 I think what we need to do is review a little bit
17 how we got here. I do not disagree with anything Mr. Smith
18 has said but I have a slightly different take on it frankly.

19 Last year, the Applicant applied for and received
20 the special exception for this project under Subtitle U,
21 Section 253.

22 The record, however, will show that the Applicant
23 did not apply for relief from the unambiguous height
24 requirements of Subtitle D, Section 1209.04, which apply only
25 in the R20 Zone.

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1 This property is in the R20 Zone, all of the ANC2E
2 is the R20 Zone, so what decision gets made here today could
3 have important policy considerations for the rest of the R20
4 Zone. And I stress it's unambiguous. Under Subtitle D,
5 Section 1209.4 you can't have a building with two stories as
6 an accessory building in the R20 Zone. Period.

7 I cannot speak to the conversations Ms. Ferreira
8 may have had with Commissioner Solomon. I do know that I've
9 been told that when the time came to consider this, the ANC
10 didn't get notice and I don't think it was through anybody's
11 fault other than perhaps the post office.

12 We were having trouble with postal delivery at the
13 ANC Office so we didn't have official notice for this, hence
14 no presentation, no resolution from the ANC at that time.

15 At the time of the first application, the Office
16 of Planning relying on various sections and Subtitle E of the
17 2016 zoning code advised this Board that the special
18 exception the Applicant was seeking was the only zoning
19 relief required.

20 The Office of Planning made no reference to the
21 provisions in Subtitle D that are cited and, in fact, the
22 Subtitle to which the Office of Planning referred applies
23 only in the RF Zone. It has no application to the R20 Zone.

24 Obviously, the Office of Planning was mistaken
25 because Subtitle E applies only to RF zone. This Board,

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1 after receiving the Office of Planning's recommendation,
2 granted the special exception and as Mr. Smith points out,
3 after the permits were first issued, the Zoning Administrator
4 apparently discovered the error and caused the building
5 permits that have been improperly issued to be revoked.

6 Now the Applicant has come back and filed an
7 application for a modification of special significance with
8 respect to the earlier case.

9 This time the Applicant is not seeking a special
10 exception, he's seeking a variance which, of course, is
11 supposed to be a much more difficult thing to get than a
12 special exception.

13 And he's seeking a variance rather from the
14 explicit requirements of Subtitle D, Section 1209.4, which
15 restricts new accessory buildings within the R20 Zone to a
16 maximum of 1 story at 15 feet in height.

17 As the Board is aware, in order to obtain a
18 variance, an Applicant must show that the application
19 presents a special situation resulting in practical
20 difficulty.

21 Now, the Office of Planning acknowledges that
22 there's nothing really special about this property, and in
23 fact, the R20 Zone is quite full of lots of this shape,
24 garages like the one that exists on the Applicant's property.
25 It's just not unique at all.

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1 And then the Office of Planning argues perhaps a
2 little ironically that the application presents a special
3 situation because of the mistake that was made the first time
4 around.

5 ANC2E submits that the application does not
6 present the type of special situation the zoning code
7 requires for the grant of a area variance.

8 As the Office of Planning acknowledges, there are
9 similar lots all over the R20 Zone and the grant of an area
10 variance for this particular project could have significant
11 implications for the remainder of the ANC2E, R20 Zone.

12 With that as background, I'd like to read into the
13 record the resolution adopted if that's necessary, by the
14 ANC2E. Actually in my absence, I was away at the time this
15 Meeting took place, and that's why it was unanimous but only
16 a five-zero vote.

17 Whereas the condition affecting the Applicant's
18 property is not unique because there are numerous alley-
19 facing garages already in existence throughout the R20 Zone,
20 including accessory buildings with respect to which
21 homeowners have sought zoning relief to permit the addition
22 of a second story containing an accessory apartment.

23 Whereas issuance of the variance requested by the
24 Applicant would result in a substantial detriment to the
25 public good and integrity of the R20 Zone Plan because it

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1 would open the door to the construction of second-story
2 living units adjacent to alleys throughout the R20 Zone in
3 variation of the explicit and unambiguous prohibition on two-
4 story accessory buildings in the R20 Zone contained in the
5 2016 zoning regulations.

6 Whereas Subtitle 2253.8F1 of the 2016 zoning
7 regulations states that the accessory buildings shall be
8 located such that it is not likely to become objectionable
9 to neighboring properties because of noise, traffic, parking,
10 or other objectional conditions.

11 And whereas the Burleith community is impacted by
12 daytime and the evening on street parking from three schools,
13 including the Duke Ellington School of the Arts, which
14 includes a state-of-the-art 800-seat auditorium which is
15 rented out for big events quite frequently, Hardy Middle
16 School, the Washington International School, nearby
17 Georgetown University and Medstar Georgetown University
18 Hospital.

19 Therefore, be it resolved ANC2E opposes the
20 issuance of a variance from the accessory building
21 requirements to permit the construction of a two-story
22 accessory building at 3520S Street NW.

23 Thank you for your attention, if you've got any
24 questions, I'm happy to try to answer them.

25 CHAIRPERSON HILL: Thank you, Commissioner. Does

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1 the Board have any questions for Commissioner Murphy?

2 Commissioner, just real quick, the one question
3 I had was, again, the reason why you guys weren't here the
4 first time was notice, meaning you think there's something
5 in the mail you didn't see.

6 MR. MURPHY: We never got the actual mailed
7 notice, that's what I was told by our Executive Director.

8 CHAIRPERSON HILL: And then as far as the posting,
9 nobody necessarily noticed it. I'm just saying that's why,
10 you guys just didn't know about it? Otherwise you would have
11 come and --

12 MR. MURPHY: I can't deny, and Ms. Ferreira's
13 biting her lip, she had conversations with Commissioner
14 Solomon about that.

15 I don't know about the content of those
16 conversations but I know they did communicate. I don't know
17 whether she gave notice of when this thing was going to
18 happen.

19 CHAIRPERSON HILL: Back in the original
20 application?

21 MR. MURPHY: Yes, back in the original
22 application.

23 CHAIRPERSON HILL: Hold on one second.

24 MEMBER HART: One quick question, actually kind
25 of looking back at that as well, what's interesting here is

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1 that what the Applicant is looking for now is a variance and
2 before it was a special exception.

3 Sometimes people, and I don't know if this was
4 true of you or the ANC or not, but there's a difference kind
5 way that you look at them. The variance is oh, my gosh,
6 that's something that if this goes something else might come
7 down the pipe.

8 And so it kind of raises the alarm bells a little
9 bit more than a special exception might. But do you know if
10 you would be -- do you have an inclination as to where the
11 ANC would have been on the special exception?

12 MR. MURPHY: It's hard to speculate not knowing --

13 MEMBER HART: I just didn't know if it came up
14 during --

15 MR. MURPHY: Don't know. We never considered it.

16 MEMBER HART: I don't want to put you on the spot.

17 MR. MURPHY: But, no, I would like to respond to
18 that. Speaking for myself as an ANC Commissioner, this ANC
19 has not deliberated and voted on this issue but speaking
20 solely for myself, the alarm bells definitely go off for me
21 when it comes to requesting variance relief on something that
22 could be serious elsewhere in the zone.

23 Special exception is something entirely different.
24 There, the regulations clearly contemplate that circumstances
25 may apply where this kind of relief should be allowed.

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1 Here we're saying, boy, this is really bad, not
2 being allowed to have a second story on an accessory
3 building, and therefore, it's available for variance relief
4 and I do fear the imaginary horrible of garage-owners
5 throughout ANC2E coming in and asking to be able to put
6 accessory apartments upstairs.

7 And that's what brings us here today.

8 CHAIRPERSON HILL: Okay. Anyone else for the
9 Commissioner?

10 MEMBER JOHN: Yes, Mr. Chairman. Mr. Murphy, the
11 Applicant could build a one-story accessory structure as a
12 matter of right, right?

13 MR. MURPHY: That is my understanding.

14 MEMBER JOHN: 15 feet --

15 MR. MURPHY: There are going to be certain
16 requirements but yes. The issue here is the height, the
17 second story.

18 MEMBER JOHN: And so the parking issues would be
19 the same, would it not?

20 MR. MURPHY: That is a fair point Ms, John. If
21 it becomes an apartment, it would be the same issues we have
22 upstairs.

23 The parking issues we're talking about really goes
24 to the question of having variance relief because if we start
25 putting accessory apartments on all the alleys in the

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1 neighborhood, we're going to have a real parking problem.

2 CHAIRPERSON HILL: Okay, Mr. Smith, do you have
3 any questions on cross for the Commissioner?

4 MR. SMITH: I don't have any questions on cross,
5 I do have some points I'd like to make in rebuttal. I don't
6 know if now is the appropriate time?

7 CHAIRPERSON HILL: Rebuttal's good, we'll wait for
8 rebuttal, not just yet. But, I guess, Ms. Ferreira, I asked
9 you a question. As Commissioner Murphy -- and they're ANC
10 by the way.

11 You were the ANC, which actually is pretty active
12 and actually seems to be relatively knowledgeable as to what
13 they're doing which can be of benefit and unfortunate for you
14 as well.

15 So I mentioned that which is that they've been
16 before us before often times and who was it that you -- so
17 could you clarify again what happened the last time and who
18 you spoke to, Commissioner Solomon? And what the discussion
19 was about, pertaining to the original application?

20 MS. FERREIRA: Sure, I'll be glad to. I'll start
21 by saying that our first outreach to the ANC happened in
22 March figure out 2017 and that is four months before the
23 Hearing actually took place, just to bracket the discussion.

24 And there were several attempts made to get in
25 touch with the Commissioner and I did succeed a few times and

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1 we met both in person and discussed the project on the phone
2 more than once.

3 During one of those discussions, towards the end
4 of our communication regarding the case and very close to
5 when the hearing actually took place, Mr. Solomon had
6 indicated on the phone, not in writing but on the phone, he
7 told me that he would be supplying a letter and that he would
8 most likely be in support of the project.

9 And I have actually uploaded a timeline of my
10 outreach to the ANC and a summary of my conversation with Mr.
11 Solomon onto the record for the first half of this case.

12 CHAIRPERSON HILL: Which Exhibit is that? You
13 don't recall?

14 MS. FERREIRA: I don't recall at the moment but
15 I can look it up.

16 MEMBER HART: You mean this is for --

17 MS. FERREIRA: For the original case.

18 CHAIRPERSON HILL: We can look for it. So you
19 didn't present with the ANC under the special exception?

20 MS. FERREIRA: No, we did not because we were
21 never able to get on their calendar.

22 CHAIRPERSON HILL: Right. Well, some of the
23 discussion here is possibly -- I don't know. It doesn't
24 matter. I mean, you were here before in front of us. And
25 so I'm sure we went through why.

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1 MS. FERREIRA: We did.

2 CHAIRPERSON HILL: And we did approve your special
3 exception. So again, possibly some of it -- why you did or
4 didn't is not really -- it really doesn't matter right now
5 to me. Because, like, that's for a previous -- I was just
6 kind of curious. So that's okay.

7 MR. MURPHY: If I may.

8 CHAIRPERSON HILL: Sure, Commissioner Murphy.

9 MR. MURPHY: And I'll be very quick.

10 CHAIRPERSON HILL: Sure.

11 MR. MURPHY: Just one process question. It didn't
12 get on before the ANC because the receipt -- receipt of the
13 notice is what creates the agenda. That's how the executive
14 director puts it. And then so --

15 CHAIRPERSON HILL: No, I'm sorry, Commissioner.

16 MR. MURPHY: Well, I -- I have -- I have no doubt
17 that -- that Commissioner Solomon and through him, the ANC,
18 had notice that this project was coming down the pipe the
19 first time around.

20 CHAIRPERSON HILL: No, Commissioner Murphy. This
21 is why I'm just kind of clarifying now. I'm talking about
22 the original application.

23 MR. MURPHY: Yes, I understand that.

24 CHAIRPERSON HILL: So the original application,
25 you're saying you also didn't get notice of the original

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1 application?

2 MR. MURPHY: That's the one we didn't get notice
3 of.

4 CHAIRPERSON HILL: Okay. Oh, I'm sorry. So you
5 got notice of this one, obviously.

6 MR. MURPHY: Yes.

7 CHAIRPERSON HILL: You're here.

8 MR. MURPHY: The ANC --

9 CHAIRPERSON HILL: Okay.

10 MR. MURPHY: -- did not receive a presentation,
11 did not resolve one way or the other --

12 CHAIRPERSON HILL: Got it. I understand.

13 MR. MURPHY: -- on the --

14 CHAIRPERSON HILL: For the special exception?
15 Okay.

16 MR. MURPHY: For the special exception.

17 CHAIRPERSON HILL: All right. I'm going to turn
18 it over to the Office of Planning.

19 MR. MORDFIN: Good afternoon. I'm Stephen Mordfin
20 with the Office of Planning. And the Office of Planning
21 recommends approval of this application as -- as an area
22 variance. The -- although this -- we found this to be an
23 exceptional situation that results in a practical difficulty,
24 not that the property is unique. So -- because the property,
25 we do acknowledge that the property is similar to all the

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1 other ones surrounding it.

2 But in this case, we find that there's an
3 exceptional situation. And that exceptional situation is
4 that this application -- or the previous application did go
5 through the entire process without anyone noticing, although
6 the onus is on the applicant to apply for every piece of
7 relief that's necessary. But they got so far as even being
8 issued the permit before it was caught that they did not have
9 all of the relief necessary for their proposal.

10 We also find that there's no substantial detriment
11 to the public good because the building as currently designed
12 will be the exact same size as you could build as a one-story
13 building because of the design of the building. It's going
14 to be no more than 15 feet in height. It's going to be no
15 more than 450 square feet an area. And so therefore, we find
16 that it would not be a detriment to the public good because
17 it will appear the same as any other accessory structure that
18 could be built on other lots within -- within that zone and
19 within that square.

20 And we also find that it would be no substantial
21 harm to the zoning regulations because it will allow an
22 accessory apartment, but at the same time -- which it will
23 be a maximum of two that will be on that property. At the
24 same time, the applicant also has the ability to establish
25 an accessory apartment within their dwelling.

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1 So the density does not change. You could have
2 two, either two within the main structure or, as they're
3 proposing, one within the accessory structure and one within
4 the main and they both equal two units. So therefore, we
5 don't find that there will be substantial harm to the zoning
6 regulations.

7 And so therefore, the Office of Planning
8 recommends approval of the application.

9 CHAIRPERSON HILL: Okay. So Mr. Mordfin, as far
10 as the variance, again, the first prong is the fact -- and
11 as the Office of Planning support -- is the fact that the
12 applicant has been through this process thus far in terms of
13 getting the permit. I mean, that's the uniqueness.

14 So in other words -- or my question, I suppose,
15 to you is that the concern that this could be something now
16 that would proliferate through the block would not be the
17 case because they wouldn't be able to -- unless somehow the
18 same situation happened where -- well, I guess you couldn't
19 -- you see what I'm saying? Like, that's the uniqueness is
20 that this couldn't happen next door now?

21 MR. MORDFIN: Well, first, I'd say it's an
22 exceptional situation and not the uniqueness of the property
23 that we find in this case which is the history of the
24 application as the applicant has gone through and we've
25 discussed. As for this being a catalyst for other

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1 applications to come through, we review every application
2 individually. So while we looked at this one, based on
3 what's filed in the record, another application we would look
4 at whatever is in --

5 CHAIRPERSON HILL: No, I understand.

6 MR. MORDFIN: -- the file for that case and
7 whatever is pertinent to that application. I don't see that
8 we -- we wouldn't look at it and say, well, we recommended
9 approval for this case. Therefore, we'd recommend approval
10 of another, because it --

11 CHAIRPERSON HILL: I understand. No, I
12 understand. I should've crafted my question a little bit
13 better. But yeah, okay, I've got to think for a second. All
14 right. Anyone else?

15 MEMBER HART: Yes, Mr. Mordfin. Okay. I'm trying
16 to wrap my head around this. So if the applicant were to
17 have come last year for a variance, your recommendation would
18 have been -- well, I don't know what your recommendation
19 would have been. But they couldn't have used this line of
20 reasoning that you've raised for the first prong because they
21 wouldn't have had -- this would be a new application before
22 us.

23 But they went through the process and got a
24 special exception which was what they thought they needed to
25 get. I'm not saying that that was a bad thing. I'm just

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1 trying to get to a -- if the application was before us as a
2 variance, then we wouldn't be able to -- well, I guess we
3 wouldn't be here. But it just seems that all of this is
4 relying on the fact that there was an error that was made at
5 DCRA, and that's the exception.

6 And I just -- I mean, DCRA is fallible. So I
7 mean, we all are. People make mistakes. So it just seems
8 like we're relying on that to be the reasoning. The
9 rationale seems a little bit -- I don't know. I'm just not
10 sure if I'm there yet. But if you could kind of give me some
11 more background on those two. Have we done this before? I
12 don't remember us making this or hearing this argument
13 before, even though we've known that DCRA has made mistakes
14 before.

15 MR. MORDFIN: Well, what would have happened
16 before if they filed it then, I don't know because that
17 application didn't come before --

18 (Simultaneous speaking.)

19 MEMBER HART: Yes, I know. And I didn't mean to
20 bring it up, but --

21 MR. MORDFIN: As for now, we find that this is a
22 uniqueness to this application that they went all the way and
23 that nobody noticed it, including the issuance of the permit.
24 And so in this case, we find that that is an exceptional
25 situation. Whether or not --

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1 MEMBER HART: But --

2 MR. MORDFIN: -- it would be in another case,
3 every case is different, and it's --

4 MEMBER HART: No, no. I understand that. But
5 this is something that can -- the DCRA issue is it's an error
6 and that error has then created this situation. And that is
7 something that I'm pretty sure we've heard before. We've
8 heard in terms of DCRA making an error and that the applicant
9 has relied on that. But I hadn't heard the OP say that,
10 well, that is the actual exceptional situation that has
11 created this. And that part is the one that's different for
12 me. So I just didn't know if there was a different way that
13 you all were kind of thinking about this or -- I don't know.

14 MR. MORDFIN: No, we were looking at it the way
15 that it's written into the OP report and that, in this case,
16 we see that what the applicant relied on, the applicant
17 relied on it for moving forward because they thought they had
18 a building permit for preparing for construction. So in this
19 case, we looked at it that way.

20 MEMBER HART: Okay. Thank you.

21 CHAIRPERSON HILL: I mean, we have done this. We
22 have heard this argument before, or at least I remember going
23 through it a couple times on different cases. I don't know
24 whether you were here or not, Mr. Hart.

25 Just real quick for the applicant. Mr. Smith,

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1 what's there now?

2 MR. SMITH: There's currently a garage. That's
3 kind of a charitable term. It's virtually unusable. It's
4 a -- it's a one-story shack.

5 CHAIRPERSON HILL: Okay. So you haven't made any
6 changes to what you had, not that it matters again. It's the
7 way it is before the special exception? You haven't done
8 anything yet?

9 MR. SMITH: Other than got a raise permit and, you
10 know --

11 CHAIRPERSON HILL: All of the expenses?

12 MR. SMITH: -- for all the expenses, yes.

13 CHAIRPERSON HILL: The legal expenses --

14 MR. SMITH: Yes.

15 CHAIRPERSON HILL: -- everything that's gone
16 through?

17 MR. SMITH: We -- we did everything we could to
18 make sure we were authorized to begin construction.

19 CHAIRPERSON HILL: Sure.

20 MR. SMITH: And that's why we are here today.

21 CHAIRPERSON HILL: Sure. I understand. Okay.
22 Anybody else have questions for the Office of Planning?
23 Sure, Mr. Miller.

24 MEMBER MILLER: Thank you, Mr. Chairman. So Mr.
25 Mordfin, I appreciate your report and the presentation and

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1 the answers to the previous questions. And I think you've
2 answered this question, but I'll just ask it again in a
3 different way.

4 So you don't see this case, which is its own
5 individual case, as a general precedent for allowing second
6 stories of accessory dwellings in the R-20 zone?

7 MR. MORDFIN: That's correct. We do not.

8 MEMBER MILLER: And you do believe that -- you
9 agree that the R-20 zone does not permit second stories of
10 accessory dwellings as a matter of right or it only permits
11 them through a variance?

12 MR. MORDFIN: That's correct.

13 MEMBER MILLER: And I can go back to the Office
14 of Planning or maybe the applicant. It can go back to the
15 ANC for the same question that I'm about to ask you. The
16 Office of Planning was extensively involved with developing
17 this customized R-20 zone for the Georgetown-Burleith area.

18 I can see the rationale for height, but what was
19 the rationale -- and I've seen many of those hearings. So
20 I heard a lot of testimony, so I should know the answer to
21 this question. But what is the rationale for not permitting
22 a second story of an accessory building to have a dwelling
23 unit if it met the additional height restriction that doesn't
24 exist elsewhere?

25 MR. MORDFIN: I was not a part of those

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1 discussions, but I can get that information --

2 MEMBER MILLER: You're lucky.

3 MR. MORDFIN: -- for you.

4 MEMBER MILLER: So maybe I just would ask, I think
5 Commissioner Murphy made a reference to this. But maybe can
6 I ask, Mr. Murphy? What do you see as the rationale for not
7 permitting a dwelling unit on an accessory building in the
8 R-20 zone if it otherwise met the other requirements,
9 including the height restriction?

10 MR. MURPHY: Well, I didn't participate in any of
11 the work that went into the -- all 1,100 pages of the 2016
12 code. I -- I can imagine, since my district is one that's
13 very -- fairly similar to the Burleith district, that one of
14 the considerations was if you put second stories on all the
15 garages in -- in Georgetown, in Burleith, they -- they would
16 very soon be filled up with students from Georgetown
17 University.

18 And just -- I'm just thinking what practically
19 goes on here is that we would have a lot -- a lot more
20 density than -- than people wanted to see in -- in the
21 historic district. Seven of -- of the eight SMDs in ANC 2E
22 are in the federally denominated historic district, the only
23 one we've got in the city in the residential areas. And I
24 expect that had -- that played a role in this decision, but
25 that's all speculation on my part.

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1 MEMBER MILLER: Thank you. Did the applicant want
2 to speak to that issue or just to give you -- since everybody
3 else has.

4 MR. SMITH: Sure. I -- I -- I believe I'm
5 reiterating something that Mr. Murphy just said. But
6 Burleith is not within the Georgetown historic district. The
7 -- it's the R-20 zone is a custom zoning which I -- I can't
8 speak to why relief was including in the Georgetown historic
9 district.

10 But if you look at the preamble to the R-20 zone
11 explains the purposes of the zone which is to preserve the
12 historic district. Those concerns, if they are what
13 motivated the one-story limitation, have -- apply with less
14 force because relief does not -- doesn't have any kind of
15 historic designation whatsoever. Does that answer your
16 questions?

17 MEMBER MILLER: Thank you.

18 CHAIRPERSON HILL: Okay. All right. Does the
19 Commissioner have any questions for the Office of Planning?
20 Say it on the microphone, please.

21 MR. MURPHY: I do not.

22 CHAIRPERSON HILL: Thank you. Does the applicant
23 have any questions for the Office of Planning?

24 MR. SMITH: No, thank you.

25 CHAIRPERSON HILL: Okay. Is there anyone here

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1 wishing to speak in support? Is there anyone here wishing
2 to speak in opposition? Okay. If you could come forward,
3 please. Were you sworn in earlier?

4 MS. JUPPENLATZ: Yes.

5 CHAIRPERSON HILL: Okay. If you could just please
6 state your name and address. And we'll put three minutes on
7 the clock, Mr. Moy.

8 MS. JUPPENLATZ: My name is Gail Juppenlatz, and
9 I live on Whitehaven Parkway in Burleith.

10 Noting this exceptional situation was only created
11 by DCRA's error and it shouldn't be the grounds for approval.
12 This -- the ultimate ramification is too great for our
13 neighborhood, and it's just compounding the error that was
14 made to permit this based on an error.

15 But what I planned to say was, members of the
16 Board, the applicant is seeking an area variance. In Section
17 X, an applicant for the area variance must prove that as a
18 result of the attributes of the specific piece of property,
19 the strict application of zoning regulation will result in
20 peculiar and exceptional practical difficulties for the
21 owner. That seems pretty clear that the lot alone is the
22 grounds for the variance.

23 The personal issues and costs of the owner should
24 not be considered here, let alone the DCRA error. The -- the
25 permit was in place for whatever. He actually had the permit

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1 for only a couple of days. It may have been granted before,
2 but he had a permit for only a short period of time. And the
3 original garage is still intact.

4 The initial ruling of the BZA on the application
5 was based on self-certification by the applicant, and I'm not
6 sure if he self-certified. But he did self-certify that it
7 was an R-20 zone, but I don't know if he self-certified. But
8 in fact, the -- the regulations and the compliance that were
9 cited that are all based on Section E which was the
10 regulations for the RF zone. I'm not sure if that came from
11 him or if that came from the Office of Planning or DCRA.

12 However, no approval was -- was asked for, given
13 for the specific, as testified, 20-foot high building. And
14 there is no special exception for height in D5201.1. The R-
15 20 zone maximum height is 15 feet which we all know now.
16 Additionally, the BZA stated that this was not the final
17 word, and the special exception was subject to a thorough
18 review. Thus, the permit was correctly rescinded.

19 Regarding a garage with an ADU on the second
20 floor, as permitted in Section U 253.9, it refers to both the
21 R-19 and the R-20 zones. But R-20 specifically does not
22 permit a second floor. So the second floor, as specified,
23 cannot be constructed in the R-20 zone. A 15-foot maximum
24 height does not allow for a seven-foot ceiling, a seven-foot
25 garage door, plus floors and insulation and a roof. And that

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1 appears to be the intent, actually, of the regulations for
2 the R-20 zone. Mr. Levy presented something. If there's an
3 exhibit there that, he clarifies that.

4 Regarding the building, the applicant has provided
5 the plans to sink the building below grade by one and a half
6 feet. The building is 15 feet high measured from the alley
7 grade. However, the regulations state is must be measured
8 from the side of the building facing the main house and
9 measured from the elevation of the ground abutting the
10 building. Abutting the building is an -- is an -- is an
11 excavated entry door level, and I believe the old OP analysis
12 is incorrect. The height of the building is not reduced to
13 15 feet. When measured according to the regulations, the
14 building is actually 16 and a half feet high.

15 Further, that grade slope of a five-foot apron to
16 get into the garage is very steep, and it's like driving your
17 car into an 18-inch deep pothole. I don't think you can do
18 it without ruining your car, and I think it's very
19 problematic.

20 The applicant referred to two-garage ADUs in one
21 of his rebuttals. They're not comparable. Each one had a
22 second story and they're very old. Some are -- one of them
23 is at least 30 years old. They weren't constructed under the
24 current regulations and probably not permitted. Neither has
25 a business license for a rental.

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1 Because this type of building will have such an
2 impact on Burleith, it was most unfortunate that the entire
3 Burleith village knew nothing about this first BZA hearing
4 and missed the opportunity to oppose it. Burleith is a low-
5 density area defined as a small lot residential neighborhood
6 of mostly attached homes. Increasing the density, this
7 community will not maintain the character, charm, and the
8 safety of this neighborhood.

9 In closing, I believe this variance should be
10 denied. The applicant did not provide the required burden
11 of proof that his lot qualifies for a variance. The entire
12 applicant -- application should be denied based on the fact
13 that the building is higher than permitted as measured
14 according to the regulations and the second story is not
15 permitted in the R-20 zone.

16 Thank you.

17 CHAIRPERSON HILL: Okay. Thank you. Does the
18 Board have any questions of the witness? Okay. Ms.
19 Dubbenlatz?

20 MS. JUPPENLATZ: Juppenlatz.

21 CHAIRPERSON HILL: Juppenlatz. So where do you
22 live in relationship to the applicant?

23 MS. JUPPENLATZ: I live on Whitehaven Parkway
24 which is a couple of blocks away. And the reason I really
25 care about this is because directly behind me is someone who

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1 started to do the same thing he plans to do of putting a 15-
2 foot from the alley grade and it is just an eyesore. It is
3 huge. It's twice as big as the garage -- garage that's
4 behind it. When I sit and I look out my bedroom window or
5 sit on my back deck, all I can see is this huge box behind
6 me. That one has a stop work order because he -- he
7 requested permission to rebuild his one-story garage. And
8 clearly, it was -- it was --

9 CHAIRPERSON HILL: Okay, okay, okay.

10 MS. JUPPENLATZ: -- a one story, but anyway. But
11 I know what it looks like. It is huge when you compare it
12 to the garages next to it.

13 CHAIRPERSON HILL: Okay. All right. Does the ANC
14 Commissioner have any questions for the applicant -- I mean,
15 the witness? Does the Board --

16 MR. MURPHY: I do not.

17 CHAIRPERSON HILL: Does the applicant have any
18 questions of the witness?

19 MR. SMITH: I do have one question. Ms.
20 Juppenlatz, you don't live on S Street or R Street, is that
21 right?

22 MS. JUPPENLATZ: No, I do not. I live on
23 Whitehaven Parkway.

24 MR. SMITH: And how often do you use the alley
25 between R and S Street?

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1 MS. JUPPENLATZ: Actually, I do wander the alleys.
2 So not necessarily yours, but I do go through the alleys, as
3 do every -- you know the alleys are very well used. We have
4 11 kids on our block, and they are constantly playing in the
5 alleys.

6 MR. SMITH: Mm-hmm. And can you see my house from
7 your house?

8 MS. JUPPENLATZ: I don't --
9 (Simultaneous speaking.)

10 CHAIRPERSON HILL: Mr. Smith, we've already
11 established where she lives. Okay. All right. Okay, great.
12 All right. Thank you very much. Thank you. All right.
13 Let's see. Sure, of course. Please go ahead.

14 MEMBER WHITE: I'm just looking through the record
15 because I had to go through the record. But is there a
16 picture -- a proposed picture of what this would look like?

17 MS. FERREIRA: I believe it's the last sheet on
18 the architectural plans that are on the record.

19 MEMBER WHITE: What exhibit is that?

20 MS. FERREIRA: Actually, I apologize. It's not
21 part of the resubmitted or the revised drawings. It was part
22 of the original submission and that would be part of the
23 previous case.

24 MR. SMITH: And to clarify, that's before the
25 height reduction.

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1 MS. FERREIRA: Yes, before the height reduction.

2 MEMBER WHITE: I'll look at Mr. Miller's. Thank
3 you.

4 MS. FERREIRA: But if I may clarify the height
5 issue because it was just mentioned, the height was measured
6 from the side facing the house. It just happens to be the
7 same on the alley side. Which, honestly, we didn't actually
8 have to do. We -- we could have kept it higher from the
9 alley side and simply raise the grade even more from the
10 house side. But in recognition of height concerns and some
11 of the letters that had been posted and trying to be good
12 neighbors, we actually made the choice to sink it into the
13 ground and make it ever lower.

14 CHAIRPERSON HILL: Okay. Mr. Mordfin, I actually
15 just have a quick question for you. I mean, this was
16 measured correctly as far as the Office of Planning's
17 analysis has gone, correct?

18 MR. MORDFIN: That is correct. There is a letter
19 in the file that the applicant submitted. It's an email to
20 the applicant's architect from Matthew LeGrant, who's the
21 zoning administrator, stating that the height of the building
22 is 15 feet. I believe it's Exhibit No. 9.

23 CHAIRPERSON HILL: Okay. All right.

24 MR. SMITH: Exhibit 8.

25 CHAIRPERSON HILL: Exhibit 8? Okay. Thank you.

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1 All right. So Mr. Smith, you have some rebuttal, and we'll
2 give you an opportunity for a conclusion. Actually, what I'm
3 going to do is I'm going to rebuttal, giving a small
4 opportunity for a conclusion to the ANC Commissioner.
5 Although it's not in the regulations to do so in terms of
6 other party members, we like to hear from whoever is here at
7 the end as well. And then you'll get the final word.

8 So go ahead and give us a couple minutes of
9 rebuttal, if you like, and then we'll go onto a conclusion
10 from the Commissioner.

11 MR. SMITH: Okay. Thank you, all. I'll try to
12 be as fast as I can. I just want to make a couple points.

13 One is the ANC's concerns about parking are not
14 legally relevant today. They also are not factually founded.
15 The -- the -- the Burleith Citizens Association recently
16 conducted a survey this year of parking of residents --
17 impressions of parking. And eight percent of Burleith
18 residents who responded, only eight percent found parking in
19 the neighborhood to be difficult. So -- but in any event,
20 parking has nothing to do with one or two stories, so it is
21 not legally relevant to the variance being requested.

22 The question was asked about whether or not errors
23 of the zoning administrator can count as unique circumstances
24 and the basis of the hardship. And I can point to two cases
25 in the Court of Appeals in which the Court of Appeals has

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1 said that it can. I mentioned them before, but I'll just
2 note them again.

3 Monaco v. D.C. Board of Zoning Adjustment said
4 that extraordinary circumstances can encompass the past
5 zoning history. That's 407 A.2d 1091. And then the
6 DeAzcarate v. D.C. BZA, 388 A.2d 1233 has said that, good
7 faith reliance on actions of the zoning administrator that
8 are later determined to be erroneous can satisfy the
9 practical difficulties test. So this issue has come up not
10 just before the Board but also before the Court of Appeals,
11 and they take our side of that argument.

12 Finally, I don't believe this is opening the door
13 to very much at all. There is -- certainly, at some point,
14 there's going to need to be a clarification about how
15 Subtitle U interacts with Subtitle D. It is possible that
16 just the grant of a special exception is enough to make a --
17 under Subtitle U, is enough to make a property unique in
18 order to justify the variance. That's an argument for some
19 other day. That's not -- that's the issue of precedent that
20 people are concerned about.

21 That's not the argument we're making here. We're
22 making the argument which is supported by the case law I just
23 mentioned that our good faith reliance on the actions of the
24 zoning administrator and the Office of Planning are -- make
25 our case unique. And I think the case law is -- is clear

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1 that they do.

2 Thank you.

3 CHAIRPERSON HILL: Okay. Mr. Smith, are you an
4 attorney?

5 MR. SMITH: I don't practice land use law.

6 CHAIRPERSON HILL: So you're an attorney?

7 MR. SMITH: Yes.

8 CHAIRPERSON HILL: Okay. There's a lot of
9 attorneys here. Okay. And you can always tell the attorneys
10 when they throw out case law really in a way that's like just
11 rolls right off the tongue. It's not like -- exactly, like
12 dinner conversation which would've been helpful for me in
13 this job, just to let you know. Let's see.

14 Oh, yes, if this were not to be granted, right,
15 what would you guys end up doing, do you know?

16 MR. SMITH: I would candidly say I'd have to cross
17 that bridge when we come to it. I -- I -- you know, we do
18 have -- we have the right to build this structure, just
19 without the --

20 CHAIRPERSON HILL: The second story.

21 MR. SMITH: -- without a story.

22 CHAIRPERSON HILL: Right.

23 MR. SMITH: You know, we've put a lot of money
24 into the solar panels. We've gotten the solar panels
25 approved. We, you know, bought solar panels. They're

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1 sitting in a warehouse somewhere.

2 CHAIRPERSON HILL: So you bought solar panels?

3 MR. SMITH: Yes.

4 CHAIRPERSON HILL: You bought solar panels?

5 MR. SMITH: Well, I've put a deposit on them, yes.

6 I don't know if, yes, that the contractor still owns them or
7 I do. But it was, like, a 40 percent or 30 percent --

8 CHAIRPERSON HILL: Okay.

9 MR. SMITH: -- deposit.

10 CHAIRPERSON HILL: Okay.

11 MR. SMITH: I -- I -- I don't know is the -- is
12 the honest answer. We may build the structure anyway and in
13 order to not have to change the solar permitting and
14 everything --

15 (Simultaneous speaking.)

16 CHAIRPERSON HILL: Right. So you have the
17 architectural drawings obviously and everything ready to go
18 because you went through permitting?

19 MR. SMITH: That's right.

20 CHAIRPERSON HILL: All right. Okay. All right.
21 Commissioner Murphy -- and Commissioner, thanks for hanging
22 out here as long as you have. I mean, this is -- sometimes
23 I think the ANC Commissioners, they have a worse time than
24 we do. At least we're prepared to be here all day.

25 MR. MURPHY: The pay is great, so --

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1 CHAIRPERSON HILL: Yeah, I know. I'm sure,
2 exactly, exactly. I hope you're not up for election again
3 this time around. Let's see. If you could please give us
4 a little bit of a conclusion.

5 MR. MURPHY: Yeah, yeah, and I'll be very brief.
6 I -- I think what we've got here frankly is -- and I know
7 what we've got here is we've got an unambiguous section in
8 zoning code that says in -- in the R-20 zone, you can't have
9 an accessory building with two stories on it. The applicant
10 has applied to build an accessory building that's two
11 stories.

12 I think Board Member Hart put his finger right on
13 the issue here. The applicant started this process by filing
14 an application last year that did not request relief from
15 that unambiguous provision in -- in Subtitle D. It's right
16 there in zoning code. Didn't apply for it. It was his
17 mistake.

18 So he's now trying to -- and that's what started
19 the ball rolling. And he sought relief -- special exception
20 relief under Subtitle U, leaving out this important thing.
21 That started the ball rolling and off we went, and that's
22 what got us here today. Now, the applicant is -- is basing
23 his request for a variance, a very significant kind of zoning
24 relief, on the fact that -- that there was a mistake in his
25 application. That's -- that was the genesis of that -- this

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1 problem.

2 On behalf of ANC too, I submit that it would just
3 be inappropriate to allow an applicant to bootstrap his or
4 her way into zoning relief to which he or -- he or she is not
5 entitled on what is essentially the basis of a mistake that
6 they made at the front end of the process. And I suspect
7 that that -- though I have not read all the cases, so they
8 won't -- there won't be any -- any of them rolling off the
9 tongue of this lawyer, that that would distinguish this
10 situation from the cases Mr. Smith has -- has cited.

11 And thank you for your time, and I know we're all
12 hungry.

13 CHAIRPERSON HILL: Okay. That's right.
14 Commissioner Murphy, I was also going to ask you if you're
15 an attorney. You're also an attorney, is that --

16 MR. MURPHY: I am.

17 CHAIRPERSON HILL: Okay, great, wonderful. All
18 right.

19 MR. MURPHY: I can't help it.

20 CHAIRPERSON HILL: Sure.

21 MR. MURPHY: It's like original sin.

22 MR. MURPHY: I know, everybody in D.C. Let's see.
23 Okay. I guess -- all right. Well, anyway -- okay. So Mr.
24 Smith, you want to go ahead and give us your conclusion?

25 MR. SMITH: I would just encourage -- you know,

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1 there's nothing in the zoning code that says this variance
2 is any different than any other variance. I believe we --
3 this is a unique situation which, as Mr. Mordfin says, is
4 highly unlikely to repeat itself. That's step one.

5 Step two is whether practical difficulties --
6 well, I'm sorry -- exceptional condition affecting the
7 property which is sometimes referred to as unique. I see Mr.
8 Hill is -- I'm reacting to Mr. Hill.

9 CHAIRPERSON HILL: No, I'm sorry. Mr. Mordfin --
10 I didn't know if you were putting words into Mr. Mordfin's
11 mouth. So that's why I was looking over there.

12 MR. SMITH: I -- I -- I see. I -- I apologize.
13 I -- I should move to strike my comment on what Mr. Mordfin
14 said. But I do believe this is a unique or exceptional
15 condition.

16 CHAIRPERSON HILL: Move to strike. Move to
17 strike. I like it.

18 MR. SMITH: Sorry. I'll try -- I'll try to be a
19 little --

20 CHAIRPERSON HILL: That's all right. I'm going
21 to use that at dinner tonight.

22 MR. SMITH: Okay. I probably would anyway. And,
23 you know, this is a unique situation. It's very unlikely to
24 happen again. So that makes it unique because there's really
25 concern about these things proliferating because it's really

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1 not going to happen again.

2 Two, practical difficulties will occur if a
3 variance is denied. I think that's fairly clear that
4 significant expenses would have been for nothing. And also,
5 the Board's approval of the special exception would
6 essentially be vitiated if a variance is denied.

7 And third, the request for relief can be granted
8 without substantial detriment to the public good. I really
9 don't see how one or two stories has any significant effect
10 on the public good. But I would just remind the Board that
11 I don't believe there is a single letter in opposition from
12 a homeowner or resident living on R or S streets. And there
13 are, in fact, I believe, eight letters in support from those
14 -- the people living there.

15 CHAIRPERSON HILL: Okay. Thank you. All right,
16 great. Just so everybody knows here, we're taking lunch
17 after this.

18 So I don't know what the Board wants to do. I'm
19 a little stuck. And so I don't know if we need to close the
20 hearing, if there's anything we need to ask for, if we all
21 just want to kind of chew on it a little bit more. Ms. White
22 has a question.

23 MEMBER WHITE: I may want to chew on it a little
24 bit more. But before I do that, I just wanted to get -- you
25 said something a second ago about your neighbors. Can you

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1 just tell me generally what the adjacent neighbors and the
2 neighbors across the alley, what their opinions are regarding
3 how it could potentially impact them or not?

4 MR. SMITH: To -- to the extent that -- yeah, yes,
5 I can. The -- there's a letter in support from the neighbor
6 at 3522 S Street. That is the property immediately to the --
7 well, sorry. I'll start.

8 Before we began on this project, we obviously
9 talked to our immediately adjacent neighbors to see if -- if
10 they cared. And we didn't want to -- you know, there's a big
11 debate in the neighborhood about pop ups and people don't
12 like pop ups. We could have pop upped as a matter or right,
13 as I understand it, by adding a third story to our main
14 building. We can go up to 35 feet, I believe. But in any
15 event, there are many third story additions being added. We
16 didn't want to do that, in part because there are a number
17 of concerns in the neighborhood about that.

18 So when we decided to -- to go with an accessory
19 dwelling unit on the garage, we talked to the property owners
20 immediately adjacent to us on the right and the left on S
21 Street. And at the time, this is in 2017, the neighbor
22 immediately to the right had some reservations because she
23 had -- also has a two-story garage. It's also -- I don't
24 know tall it is. I believe it's about 18 feet.

25 And she said she wishes she hadn't built it. So

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1 she said that she -- you know, it's fine with us building it
2 but rather -- would rather not. And she submitted comments
3 to the record. She has since submitted another letter saying
4 that given that we are now reducing the height, she has no
5 objection.

6 The neighbor to the other side, which is 3518 S
7 Street, has -- has not submitted a letter in support either
8 way or an objection either way. I've talked with them about
9 it. They are -- I want to be careful to make sure -- I mean,
10 I suppose they're not excited about having new construction
11 next door but also, you know, don't have strong objections.

12 I -- at the time, I have -- we tried reaching out
13 to some people on -- after some letters in opposition came
14 in, in the previous year, and we reached out to some of the
15 neighbors on R Street who, at the time, submitted letters in
16 opposition. Some of those people have now moved, so they are
17 no longer objecting. And some of them, you know, said that
18 they're just against density. And so there you have it.
19 Those people --

20 MEMBER WHITE: Thank you.

21 MR. SMITH: -- have not submitted new comments.

22 CHAIRPERSON HILL: Okay. So does the Board need
23 anything from anybody? I mean, there was some -- Mr. Miller,
24 you seem like you had maybe some questions for the Office of
25 Planning. I don't know. You're okay?

1 I'm not closing the hearing at this second while
2 I continue to express where I am just in case anybody had
3 anything else before we close the hearing. I mean, we could
4 deliberate if you all are ready to deliberate and -- okay,
5 all right. Well, then this is interesting. Okay. I'll go
6 ahead and close the hearing. I'm sorry?

7 MR. SMITH: I'd just like to clarify one aspect
8 of the relief we're seeking. We're, of course, seeking the
9 variance. That's what we mostly have been focused on. But
10 to the -- to the extent that this special exception was
11 premised on an 18-and-a-half-foot special exception, I don't
12 know if we need to go back to the Board to make sure you're
13 still okay with the fact that it's now smaller.

14 I -- I -- I don't believe so, but I just want to
15 make sure that the -- the -- the structure is, in fact,
16 smaller than the one that was approved for a special
17 exception. I think the zoning administrator perhaps is
18 allowed to grant that as an exercise as a discretion in many
19 cases now.

20 CHAIRPERSON HILL: Mr. Moy, we don't have to
21 change the way this is being requested, right?

22 MS. LOVICK: From what I understand, he's not
23 changing the relief that was granted before, just maybe a
24 modification of plans that was approved before.

25 CHAIRPERSON HILL: Okay. So the plans that are

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1 submitted into the record now are where?

2 MR. MOY: I was just looking at it. It's --

3 MR. SMITH: Exhibit 7, I believe.

4 CHAIRPERSON HILL: And so those are the plans that
5 you are seeking relief for now?

6 MR. SMITH: That's -- that's correct.

7 CHAIRPERSON HILL: Okay. I mean, the variance
8 relief, I understand. Okay, all right. I think you're okay
9 then, unless OAG is going to tell me differently. No? Okay,
10 all right. So -- all right. Okay.

11 Then I'm going to close the hearing. And I guess,
12 is the Board ready to deliberate? So I already told you I
13 was torn. If somebody else wants to start the deliberation
14 and see where we get.

15 MEMBER HART: I'm not sure if you want to hear me
16 first, but --

17 CHAIRPERSON HILL: Well, everybody is going to go
18 because we're all going to talk before lunch, I guess.

19 MEMBER HART: Oh, sure. I mean, I kind of see
20 this -- I mean, some of this was -- some of the questioning
21 that I had was really around the first prong of the variance.
22 And I am still not thinking that I support that part of it.
23 I disagree with the Office of Planning. I understand that
24 there is a -- I understand that the DCRA, the zoning
25 administrator has made an error. I get that. But it just

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1 seems that that's -- I just didn't think that that was enough
2 for me.

3 And I know that the zoning administrator has made
4 errors before, and I just can't get past that part of it.
5 So it makes it hard for me to support the application. And
6 I understand the information that you provided, and I
7 understand how you've kind of come to this point. I do
8 empathize with the plight that you're in, but I'm just there.
9 I can't get to that -- get past the first prong, so --

10 CHAIRPERSON HILL: Commissioner Miller?

11 MEMBER MILLER: Thank you, Mr. Chairman. I think
12 that there is an exceptional situation resulting in a
13 practical difficulty based on the zoning history here. And
14 I think it's -- so I agree with the Office of Planning's
15 analysis on that point and the applicant's analysis on that
16 point. And that there's no substantial detriment to the
17 public good or to the zoning -- harming to the zoning
18 regulations as analyzed by the Office of Planning.

19 I think it's unlikely that -- this doesn't -- no
20 BZA case has a precedent for other cases anyway. But I think
21 it's unlikely that this case would -- I don't think it's
22 probable that anybody in the zoning administrator's office
23 or this Board's office or the OAG that advises us, the Office
24 of Planning that evaluates these cases will ever forget that
25 the R-20 zone does not allow the accessory building to have

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1 a dwelling unit on a second floor.

2 So because of that, because of this whole case,
3 you've highlighted that, that prohibition. So I just don't
4 think it's going to lead to any proliferation of the garages
5 coming in here and asking for variances. If it is, we will
6 probably have a -- unless the zoning regulations are changed,
7 and they may need some clarification. So I'll take
8 responsibility for that and the 1,100 other pages. But I
9 think that the mechanisms are in place to prevent it from
10 being a precedent setting issue. And so I think the -- the
11 circumstances, I think, are exceptional in this particular
12 case with what's happened here.

13 And so I'm ready to support the application.

14 MEMBER JOHN: Mr. Chairman.

15 CHAIRPERSON HILL: Sure. Go ahead, Ms. John.

16 MEMBER JOHN: I also agree with OP's analysis, and
17 I'm able to support the application based on the theory of
18 detrimental reliance because the regulations are a bit
19 confusing in the sense that you would have to know and that
20 you have to look at the other provision, 1209.4, to
21 understand the limit on the two stories and the height.

22 So the applicant did make an error in submitting
23 a request for a 20-foot building -- 20-foot high building.
24 The applicant also stated that he's bought solar panels and
25 incurred expenses in reliance on having had that permit. And

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1 he thought he was cleared to move ahead because he'd been to
2 the BZA, had an approval, and he went to DCRA for the
3 permitting, and that whole process had played itself out.

4 So based on all of those considerations, I also
5 don't think that there is any harm to the public good because
6 the structure as revised will be 15 feet high. It will look
7 the same as a regular garage with no second story. So I
8 mean, how harmful could that be? Because the public, without
9 opening the door, would not know that there are two stories.

10 The other thing is that the applicant could build
11 an ADU as a matter of right meeting the conditions and the
12 parking situation would be the same. The density would be
13 the same in terms of having habitable space in the alley.
14 I think a lot of the opposition seems to be opposed to the
15 idea of having dwelling units in the alley as opposed to what
16 the regulations allow. And because the regulations allow it,
17 then I do not believe there's any harm to the public good.
18 And I believe that the applicant has acted in good faith and
19 has relied on the permit that was actually issued by DCRA.

20 CHAIRPERSON HILL: Okay. Ms. White.

21 (Off-microphone comment.)

22 CHAIRPERSON HILL: Sure. Hey, we'll see what
23 happens, whether I'm the end or not.

24 MEMBER WHITE: I'm listening to the analysis. I
25 mean, I could probably make a good legal argument on both

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1 sides, to be perfectly honest. But always what I pay
2 attention to is that the variance test is a very strict test.
3 But I'm looking at the three prongs, and I'll take it from
4 the bottom up.

5 The third prong, no substantial harm to the zoning
6 regulations, I think he's met that test with respect to the
7 fact that if this relief were granted because it was kind of
8 a unique situation, I think an argument could be made that
9 I would feel comfortable with that there would be no
10 substantial harm to the zoning regulations. And I'm looking
11 at OP's report, and one of the things they said, it wouldn't
12 increase the appearance of bulk as the proposed accessory
13 structure would not exceed the maximum building height and
14 building area permitted for accessory structures.

15 And then the second prong, no substantial
16 detriment to the public good, I think there would be some
17 adverse impacts. Because, obviously, in this neighborhood,
18 they seem to have some strong feelings about preserving the
19 look and feel of the neighborhood. But one of the last
20 questions and I also looked at the exhibits that were filed
21 with respect to letters of support and letters of opposition
22 and also asking you directly about what your adjacent
23 neighbors feel. And I can respect your opinion in terms of
24 this being something that definitely kind of changes the look
25 of the neighborhood.

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1 If the adjacent neighbors were strongly opposed
2 and if they testified as well, I probably could have been
3 somewhat swayed on that one. But I think with this
4 particular relief that you're asking for, given the
5 elevations, I think that for this case, I could make an
6 argument that it shouldn't be a substantial detriment to the
7 public good.

8 And then the hardest one is exceptional situation
9 resulting in a practical difficulty. And I think where I
10 stand right now, unless someone can sway me to the other
11 side, is that I think it was an exceptional situation in
12 terms of them getting the permission to do this accessory
13 apartment structure and then it being cancelled -- then the
14 permit being cancelled later. So I think that did -- as Ms.
15 John said, it did create a certain level of kind of a
16 detrimental reliance with respect to this particular
17 property.

18 So right now, I'm kind of leaning towards
19 concurring with OP's report.

20 CHAIRPERSON HILL: Okay. All right. So for what
21 it's worth then, I was thinking about it more. But I'm glad
22 that we got to this point where we're having the discussion
23 now because we might as well go ahead and have the discussion
24 now.

25 There has been times in the past with cases that

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1 I've been involved in where there has been detrimental
2 reliance from things that have happened from DCRA or the
3 zoning administrator providing their opinion on things and
4 then the process -- the applicant moving forward based upon
5 what was provided from either DCRA or this Board. And the
6 questions that I had really for the applicant were has had
7 been the case in other cases that we had been through. They
8 had, like, torn down the building. They had done a lot of
9 work on the property. And so they had suffered some damages.

10 So I guess, I was kind of struggling with if
11 somebody had done enough work, is that going to make it more
12 likely that I could buy into the argument the Office of
13 Planning is making that it is an exceptional situation that
14 is resulting in a practical difficulty. And that was where
15 I was kind of struggling with it, like, why should it matter
16 if the person did work or didn't do work?

17 Is the fact that they have -- and I'm just now
18 speaking for another couple of minutes on it, just so if this
19 happens again with us is that, is it that they made plans,
20 that they talked to the architects, that they have
21 architectural drawings, that they put deposits down? I mean,
22 what financial number would be there that kind of made me
23 think that it is an exceptional situation that you've relied
24 on this information moving forward?

25 And so I'll kind of hold off my analysis of that

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1 just for one second which then to go forward on with the
2 second and third prong in terms of I would agree that -- I
3 mean, as is all of our cases, we look at each individual case
4 on whether or not those cases are meeting the criteria for
5 us to grant or deny them. However, I still do think about
6 whether this is going to be something that the next door
7 neighbor might do or, like, with regard to, like, changes in
8 the block, in the row. Is it something that might actually
9 lead to a domino effect of what's going on?

10 And I'm not saying I necessarily take that into
11 consideration, but that is a possibility. However, in this
12 case, I would agree with the testimony that we've heard thus
13 far which is that as Commission Miller just pointed out, it's
14 unlikely that anybody is going to make this same error again
15 that would get someone in this kind of situation. So it then
16 kind of turn me to they're within the 15 feet. They're doing
17 everything that they're able to do except for the second
18 story.

19 I mean, we're here. We're stuck with the second
20 story. This is all about the second story. And so even the
21 applicant had made a comment that the exact same thing could
22 be built, just without the second story, which doesn't mean
23 that I would be in favor of any kind of variance against
24 that, meaning you still follow the regulation. So you're not
25 supposed to get a second story, you don't get a second story.

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1 You can build whatever you want within the height
2 limitations. However, due to the approvals that they
3 received and the directions that they have gone in, I can
4 also agree with the analysis that the Office of Planning is
5 providing in terms of the first prong of the test.

6 I think that, again, this is not something that
7 will continue to move down the block or be another something
8 that could happen within the R-20. And I don't know, Mr.
9 Miller, if there's different things that are being cleared
10 up so that -- I mean, the R-20, as you said, took a long time
11 to get to the point that it is. And so I can understand why
12 the Commissioner has spent all of his time here today to
13 provide that testimony as well as other people from the
14 community.

15 But I do think that this is an exceptional
16 situation that is meeting a practical difficulty. And I
17 don't think that this is going to be something that can be
18 repeated. So I would agree with the analysis of the Office
19 of Planning and then I would be in favor of the application.
20 So I know I got three. I don't know if I got more than that.

21 So I'm going to go ahead and make a motion to
22 approve Application No. 19521A as captioned and read by the
23 Secretary and ask for a second.

24 MEMBER MILLER: Second.

25 CHAIRPERSON HILL: Motion made and seconded. All

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1 those in favor, say, aye.

2 (Chorus of aye.)

3 CHAIRPERSON HILL: All those opposed?

4 MEMBER HART: Nay.

5 CHAIRPERSON HILL: Motion passes, Mr. Moy.

6 MR. MOY: Staff would record the vote as four to
7 one to zero. This is on the motion Chairman Hill to approve
8 the application for the relief being requested. Second the
9 motion, Mr. Robert Miller. Also in support of the motion,
10 Ms. White, Ms. John. Opposed to the motion, Vice Chair Hart.
11 The motion carries.

12 CHAIRPERSON HILL: A full order, Mr. Moy?

13 MR. MOY: Yes, sir. Thank you.

14 CHAIRPERSON HILL: Okay. Thank you. Thank you
15 all very much. Okay.

16 So we're going to take a lunch break, and we're
17 going to come back at 3:00, 3:10 to be probably realistic.
18 But we're going to shoot for 3:00.

19 (Whereupon, the above-entitled matter went off the
20 record at 2:35 p.m. and resumed at 3:21 p.m.)

21 CHAIRPERSON HILL: All right, Mr. Moy. Whenever
22 you'd like.

23 MR. MOY: Thank you, Mr. Chairman. And for the
24 record, we are reconvening after a lunch recess. The time
25 is 3:20 p.m.

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1 If we can call parties to the table, including the
2 ANC, to Case Application No. 19786 of Steve and Nancy Perry.
3 This application is captioned and advertised for special
4 exception under Subtitle E, Section 5201, from the lot
5 occupancy requirements of Subtitle E, Section 304.1, and from
6 the nonconforming structure requirements, Subtitle C, Section
7 202.2. This would construct a third-story rear addition to
8 an existing principle dwelling unit, RF-1 zone. That is at
9 1016 Massachusetts Avenue Northwest, Square 965, Lot 41.

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

11 If you could please introduce yourself for the
12 record.

13 MS. FOWLER: Hi, I'm Jennifer Fowler. I'm the
14 architect.

15 CHAIRPERSON HILL: All right, Ms. Fowler. I
16 didn't have a lot of questions for you unless the Board did.
17 If you could just kind of -- I thought the record was pretty
18 concise on this case. If you could, however, briefly go over
19 what you're requesting, and I will kind of move from there.
20 Thank you.

21 MS. FOWLER: Okay. Thank you. This is a pretty
22 straightforward rear addition on the back of an existing
23 three-story house that has a two-story rear portion that
24 we're extending. So the existing lot coverage is at 63.3
25 percent, and we're not changing that number. But we are

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1 building up above the existing footprint. So we're
2 requesting relief for the lot occupancy as well as the 202.2
3 to enlarge a nonconforming structure.

4 We have ANC support for this. We also have CHRS
5 support. It's been through the HPRB, has been approved as
6 well as letters of support from the two adjacent neighbors
7 as well as neighbors on 11th Street that would be affected
8 that look out onto the addition directly.

9 CHAIRPERSON HILL: Okay. Does the Board have any
10 questions for Ms. Fowler? Okay. I'm going to turn it to the
11 Office of Planning.

12 MR. MORDFIN: Good afternoon. I'm Stephen
13 Mordfin, and the Office of Planning recommends approval of
14 this application, finding it to be in conformance with the
15 criteria necessary for the granting of a special exception
16 relief and therefore recommends approval and is available for
17 any questions. Thank you.

18 CHAIRPERSON HILL: Okay. Does the Board have any
19 questions for the Office of Planning? All right. Is there
20 anyone here from the ANC? Is there anyone here wishing to
21 speak in support? Is there anyone here wishing to speak in
22 opposition? Ms. Fowler, I'm going to turn it back to you if
23 you have anything else you'd like to add?

24 MS. FOWLER: No, I don't. Thank you.

25 CHAIRPERSON HILL: Okay. All right. I'm going

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1 to close the hearing. Is the Board ready to deliberate?
2 Okay.

3 As I mentioned before, I didn't have any questions
4 concerning it, and I thought the record was full. I thought
5 that the analysis that the Office of Planning had provided
6 was concise as to how the regulations are being met. Also
7 in support was ANC 6A, seven to zero citing no issues of
8 concern. There were four letters in support as well, as the
9 applicant had stated, a letter of support from the Capitol
10 Hill Restoration Society. So I would be in approval of this
11 application.

12 Does anyone have anything they'd like to add? All
13 right. I'm going to move forward and make a motion to
14 approve Application No. 19786 as read and captioned by the
15 Secretary and ask for a second.

16 MEMBER MILLER: Second.

17 CHAIRPERSON HILL: Motion made and seconded. Al
18 those in favor, say aye.

19 (Chorus of ayes.)

20 CHAIRPERSON HILL: All those opposed?

21 (No audible response.)

22 CHAIRPERSON HILL: Motion passes, Mr. Moy.

23 MR. MOY: Staff would record the vote as five to
24 zero to zero. This is on the motion of Chairman Hill to
25 approve the application of the relief being requested.

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1 Second in the motion, Vice Chair Hart. Also in support, Ms.
2 White, Ms. John, Mr. Miller. Motion carries.

3 CHAIRPERSON HILL: Thank you. Summary order, Mr.
4 Moy.

5 MR. MOY: Thank you, sir.

6 CHAIRPERSON HILL: Thank you very much. Thank
7 you.

8 MR. MOY: The next application, if we can have
9 parties to the table to Case Application No. 19801 of MM --
10 and I believe it's pronounced Jahanbin, J-A-H-A-N-B-I-N,
11 caption advertised with special exception under the penthouse
12 requirements, Subtitle C, Section 1500.3(c) to expand an
13 existing penthouse bar and restaurant use in the ARTS-2 zone.
14 This is at 911 through 913 U Street Northwest, Square 360,
15 Lots 38 and 39.

16 CHAIRPERSON HILL: All right. Can you please
17 introduce yourselves for the record.

18 MR. SULLIVAN: Good afternoon, Mr. Chair and
19 members of the Board. Marty Sullivan on behalf of the
20 applicant.

21 MS. WILSON: Good afternoon. Alexandra Wilson on
22 behalf of the applicant.

23 MR. PARKER: Good afternoon. Justin Parker, one
24 of the co-owners of The Dirty Goose.

25 CHAIRPERSON HILL: Okay. Mr. Sullivan, are you

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1 presenting to us?

2 MR. SULLIVAN: Yes, sir.

3 CHAIRPERSON HILL: Okay. So I didn't particularly
4 have a lot of questions concerning this application.
5 However, if you would please go over what exactly you're
6 proposing and how you're meeting the criteria. And we can
7 see if the Board has any questions as you kind of move along.
8 And I'll let you begin whenever you'd like.

9 MR. SULLIVAN: Thank you. If I might have about
10 10, 15 seconds to just pull this up.

11 CHAIRPERSON HILL: Sure, go ahead.

12 MEMBER MILLER: So while he's pulling that up, Mr.
13 Chairman, if his presentation can include the Office of
14 Planning's request that the -- can you just touch on
15 confirming that the proposed penthouse and roof deck meet the
16 penthouse setback requirements of the regulations.

17 CHAIRPERSON HILL: All right, Mr. Sullivan. Did
18 you hear that as well?

19 MR. SULLIVAN: Yes, I did.

20 CHAIRPERSON HILL: Okay, great.

21 MR. SULLIVAN: Thank you, Mr. Chair and members
22 of the Board. My name is Marty Sullivan with Sullivan and
23 Barros on behalf of the applicant. The co-applicant here is
24 the operator of the bar, The Dirty Goose, located at 913 U
25 Street Northwest. They currently have an existing bar with

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1 a roof deck on the top of the building at 913 U Street. And
2 this request is to extend the use of that roof deck to the
3 roof above the building at 911 U Street. And their use is
4 not within 911 U Street at this point. It would just be
5 going onto the roof.

6 The applicant is proposing to expand to the
7 adjacent roof. And this is going to be -- they're also
8 enclosing a portion of the rooftop space that is currently
9 open. So the net increase in the space that's open will not
10 be the total amount of the space on top of the roof at 911.

11 So under the 2016 regulations, or the new
12 penthouse regulations that came into effect right before the
13 2016 regulations, penthouse use that includes a nightclub bar
14 or a cocktail lounge now needs special exception relief. And
15 even though most of this space is outside and not within the
16 penthouse, it's accessed by way of a penthouse. And a
17 portion of it will be in a penthouse. So therefore, we
18 require the relief, a special exception relief under 1500.3.

19 Here, you see the -- the roof plan for the two
20 projects. On 913 U Street, all of what you see on 913 is
21 existing space right now, and it will be enclosed. It's all
22 open. It will be enclosed from the rear line up to about the
23 area where the stairs come out onto the roof. You can see
24 a doorway there -- a sliding door. So that'll be enclosed
25 where it wasn't enclosed, and the new space will be next door

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1 at 911 U. So the space that's being added from 911 is 567
2 square feet. They're enclosing 335, so there's a net of
3 about 230 square feet of additional open space.

4 Some photos to give you some context here. This
5 is the front of the establishment. This is a picture from
6 the roof looking to the east. And this is looking across the
7 street. That's 9 1/2 -- yeah, this is across U Street. It's
8 across from 9 1/2 Street there. There are not any
9 residential uses close to the site. It's all commercial uses
10 around it. I think the Grimke School was going in. When
11 it's built, it's going to be the closest thing to this
12 property.

13 This is the front -- currently, the front of the
14 existing roof deck. It's buffered by mechanical equipment
15 on the front of the building roof leading up to U Street.
16 And this is looking to the north the rear -- out the rear of
17 the property. View to the east, okay, now that's east and
18 these are all commercial establishments here.

19 The zoning commission did not adopt any specific
20 criteria for this special exception relief. So it's the
21 general purpose requirements. Subtitle K, 800.1 listed
22 several purposes of the ARTS zones where this is located,
23 including to expand business and job opportunities and
24 encourage development of residential and commercial
25 buildings, strengthen the design character and identity of

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1 the area by means of physical design standards. We think
2 this supports the general purpose for this special exception
3 relief.

4 The -- the use is consistent with the types of
5 businesses currently located in the area. The Dirty Goose
6 is a currently thriving business that strengthens the
7 character of the area. And the use of the building as a
8 restaurant and bar is an example of successful adaptive reuse
9 of an older building, and the expansion will further
10 contribute to that adaptive reuse.

11 Support for this, ANC 1B voted unanimously to
12 recommend BZA approval. And they also voted unanimously to
13 recommend ABRA approval which hasn't been received yet. They
14 haven't gone to ABRA yet. This is a current operation. It's
15 been operating without complaint. It's not a very
16 significant increase. There's no residential uses adjacent
17 to the site. This is a high-impact area, a limited amount
18 of space being increased.

19 So for all those reasons, we think it safely meets
20 the general special exception requirements, and that's all
21 we have. If you have any questions.

22 CHAIRPERSON HILL: Can you speak to just the
23 Subtitle C, 1502.1?

24 MR. SULLIVAN: Yeah, so we've asked the zoning
25 administrator for clarification on that. We're self-

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1 certifying. But the -- the -- the building currently extends
2 up in the back, the area you see there. That's an existing
3 part of the building. And the only thing being added to that
4 is on the other side of that. So that's either part of the
5 building. Or if it is a penthouse, it's an existing
6 penthouse that's not being not being added to.

7 CHAIRPERSON HILL: Okay. All right.

8 MR. SULLIVAN: But we have asked the zoning
9 administrator for clarification and -- but to that extent,
10 we're self-certifying and taking the risk that we would have
11 to come back for a modification.

12 CHAIRPERSON HILL: Okay. Commissioner Miller, are
13 you okay?

14 MEMBER MILLER: Yes, for now.

15 CHAIRPERSON HILL: Okay. Does anybody have any
16 questions for the applicant? All right. Turning to the
17 Office of Planning?

18 MS. VITALE: Good afternoon, Mr. Chair, members
19 of the Board. Lisa Vitale with the Office of Planning, and
20 we will rest on the record in support of the requested
21 relief. I am happy to answer any questions at this time.
22 Thank you.

23 CHAIRPERSON HILL: Okay. Great, thank you. Does
24 the Applicant have any questions for the Office of Planning?

25 MR. SULLIVAN: No. Thank you.

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1 CHAIRPERSON HILL: Does the Board have any
2 questions for the Office of Planning?

3 (No response)

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

6 (No response)

7 CHAIRPERSON HILL: Is there anyone here wishing
8 to speak in support?

9 (No response)

10 CHAIRPERSON HILL: Is there anyone here wishing
11 to speak in opposition?

12 (No response)

13 CHAIRPERSON HILL: Okay. Mr. Sullivan, do you
14 have anything in conclusion?

15 MR. SULLIVAN: No. Thank you.

16 CHAIRPERSON HILL: Okay. Mr. Parker, how long
17 have you guys been there?

18 MR. PARKER: It will be two years on August 18.

19 CHAIRPERSON HILL: Okay. Wonderful name. It's
20 a great name. I was confused for a second. Great name.

21 MR. PARKER: Thank you.

22 CHAIRPERSON HILL: All right. Okay. Nobody else?

23 (No response)

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

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1 Okay. I can start.

2 I would agree with the Office of Planning's
3 analysis concerning the application as to how it's meeting
4 the requirements.

5 There was the question that Mr. Miller brought up
6 in terms of the penthouse setback. C1502.1.

7 But as the Applicant has stated, it's a self-
8 certified application. And so, we'll see whether or not we
9 come back here or not after they get through with the Zoning
10 Administrator.

11 And I am comforted by the fact that the ANC 1B was
12 also in support nine to zero to zero. DDOT had no
13 objections.

14 And I would be moving forward in approval of this
15 application. Does the Board have anything else they'd like
16 to add?

17 (No response)

18 CHAIRPERSON HILL: Okay. I'm going to make a
19 motion to approve Application Number 19801 as captioned and
20 read by the Secretary. And ask for a second.

21 VICE CHAIR HART: Second.

22 CHAIRPERSON HILL: Motion made and seconded. All
23 those in favor say aye.

24 (Chorus of ayes)

25 CHAIRPERSON HILL: All those opposed?

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1 (No response)

2 CHAIRPERSON HILL: Motion passes. Mr. Moy?

3 MR. MOY: Staff would record the vote as five to
4 zero to zero. This is on the motion of Chairman Hill to
5 approve the application for the relief being requested.

6 Seconding the motion is Vice Chair Hart. Also in
7 support, Ms. White, Ms. John, and Mr. Miller. The motion
8 carries.

9 CHAIRPERSON HILL: Great. Thank you. Summary
10 order.

11 MR. MOY: Thank you, Sir.

12 CHAIRPERSON HILL: Thank you Mr. Moy. Thank you
13 all very much.

14 MR. MOY: If we can have parties to the table,
15 including the ANC 5D. This is to Case Application Number
16 19803 of 1151 Oates Street, NE, LLC.

17 This Application is before the Board for special
18 exceptions under the Residential Conversion Provision,
19 Subtitle U.

20 This is what has been captioned and advertised,
21 Subtitle U, Section 320.2, and under Subtitle E; Section 5201
22 from the side yard requirements of Subtitle E, Section 307.4;
23 nonconforming structural requirements, Subtitle C, Section
24 202.2.

25 This would construct a third story in a three-

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1 story rear addition to an existing flat. And convert it to
2 a three-unit apartment house, RF1 Zone.

3 This is at 1151 Oates Street, NE, Square 4064, Lot
4 804.

5 CHAIRPERSON HILL: Okay great. Thank you Mr. Moy.
6 Could you please introduce yourself for the record?

7 MS. WILSON: Good afternoon, Alexandra Wilson on
8 behalf of the Applicant.

9 MR. MARKUS: Hi, Rich Markus, Architect.

10 MR. SULLIVAN: Hi. I'm sorry, Marty Sullivan on
11 behalf of the Applicant.

12 CHAIRPERSON HILL: Ms. Wilson, are you going to
13 be presenting? Mr. Sullivan, are you going to be presenting?
14 Okay.

15 MS. WILSON: I'll be presenting.

16 CHAIRPERSON HILL: Okay. So, if you could, since
17 this is kind of a waiver of the ten-foot rule, if you could
18 just kind of tell us a little bit about how you're meeting
19 the standards, for us to grant the relief. And then also the
20 relief that you're requesting.

21 I'm going to put 15 minutes on the clock just so
22 I know where we are. And you can begin whenever you like.

23 MS. WILSON: Thank you. So, the property is
24 currently configured as a flat.

25 And we're requesting special exception relief in

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1 order to convert it to three units and construct a third
2 story and three story rear addition.

3 As you mentioned, we're also going more than ten
4 feet past one of the adjacent properties at 1153 Oates
5 Street. And that neighbor has submitted a letter in support
6 of the project.

7 We are also requesting special exception relief
8 pursuant to E-5201. Because we have two existing, non-
9 conforming side yards.

10 And we're not doing anything with those side
11 yards. But, we are extending them upwards with a third story
12 addition.

13 And so we need relief for those side yards and for
14 extending an existing non-conforming situation.

15 The Office of Planning is recommending approval.
16 And the ANC is in support.

17 Here is a photo of the existing conditions on the
18 property. And then the proposed.

19 MR. SULLIVAN: It didn't take it.

20 MS. WILSON: Oh, okay. Hold on. Technology.

21 CHAIRPERSON HILL: That's all right. I'm looking
22 through your slide deck in the record.

23 MS. WILSON: Okay.

24 CHAIRPERSON HILL: But go ahead and pull it up.

25 MS. WILSON: I don't know. You do some magic

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1 here. There we go.

2 Okay. So, as you can see, there is a photo of the
3 existing conditions on the property. And the proposed.

4 We are setting back the third story three feet.
5 Originally we were going to get rid of the cornice. And we
6 had it flush with the front facade.

7 But after discussions with the Office of Planning,
8 we decided that it would be best to keep the cornice. And
9 not ask for the waiver for the architectural elements.

10 And this is the site plan. Would you -- yeah, go
11 ahead. Briefly.

12 MR. MARKUS: The existing building, it's a -- it's
13 unique on the block. It's a freestanding building.

14 So it's not touching either building on either
15 side. And we are just extending the two walls that are in
16 the back.

17 There's kind of a thinner portion in the back.
18 It's about 15 feet wide, a little bit less.

19 And we're extending that back the 15 feet. And
20 then on the third floor, we're extending that up.

21 Taking the existing walls going up. And then
22 setting back the front.

23 And it will be one unit on each floor for three
24 units.

25 MS. WILSON: The Application safely meets the

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1 General Special Exception Requirements, as it will not
2 adversely affect the properties to the east and west.

3 The owner of 1153 Oates Street is in support. And
4 it will not extend more than ten feet past the adjacent
5 apartment building at 1149 Oates Street.

6 It also safely meets the requirements of U 320.2
7 as it is limited to 33 feet in height. Proposing three
8 units.

9 There is an existing residential building on the
10 property. The property has 3,750 square feet.

11 The addition does extend an additional five feet
12 past the rear wall of 1153 Oates. And we have shadow studies
13 at the end of the presentation to show that it will not
14 adversely impact that property.

15 The addition will not block a chimney or vent.
16 It will not interfere with solar panels. And as I mentioned,
17 we set back the third story three feet. And are maintaining
18 the existing cornice.

19 The light and air available to neighboring
20 property shall not be unduly impact -- affected. Here are
21 the shadow studies. We uploaded them to the record. But
22 there is a negligible difference between the impact of a
23 matter of right addition and the proposed addition on 1153
24 Oates Street, NE.

25 MR. MARKUS: Just one question, or statement. The

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1 owner, she extensively, we went through this many times with
2 the ANC talking about the shadow studies.

3 And she met the direct neighbor onsite. And
4 actually measured out where the addition was going to be.
5 And explained very clearly what the impact of the sun,
6 looking at the sun study. And where the house was on
7 compared to hers. And she's the one that signed off and
8 filed the letter.

9 VICE CHAIR HART: But you're saying that she
10 didn't actually see the sun study. She saw --

11 MR. MARKUS: No.

12 VICE CHAIR HART: It was a description?

13 MR. MARKUS: No, no, both. She had the sun
14 studies in her hand when they met physically onsite.

15 And they measured that.

16 VICE CHAIR HART: That's fine. I just wanted to
17 make sure I understood that.

18 MR. MARKUS: Sorry. Yes.

19 VICE CHAIR HART: And Ms. Wilson, you said
20 something about -- I think I may have heard it incorrectly.

21 Did you say that they -- that you didn't need a
22 waiver from the ten-foot rule?

23 MS. WILSON: No. We do need a waiver.

24 VICE CHAIR HART: Okay. I thought -- I thought
25 so. I thought I heard you say that you don't need it.

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1 MS. WILSON: I apologize.

2 VICE CHAIR HART: And I was like, oh, maybe I'm
3 missing something.

4 MS. WILSON: I apologize. I may have said that.

5 VICE CHAIR HART: And with regard to the -- and
6 I just don't know this myself. Setbacks for railings?

7 Just in general, if you could just kind of
8 describe. For the rooftop railings.

9 MR. MARKUS: I can talk to that. So, it's a
10 building code question.

11 So, we did -- are showing a deck on the roof. And
12 if you do an open railing, it's required to be set back the
13 same height as the railing itself.

14 But what we're showing on the two sides is a
15 closed parapet wall. So, we're extending the parapet wall
16 up.

17 So it's a solid wall. And it does not need to be
18 setback from the exterior wall on either side.

19 But the railing at the front and back is set back
20 on the roof deck.

21 VICE CHAIR HART: It's set back from what?

22 MR. MARKUS: What you would call the building
23 edge. Front and back building edge.

24 So it's set back much further than the height of
25 the railing from the front of the building. And then the

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1 railing that's across the back is set back much further than
2 the railing height from the rear of the building.

3 VICE CHAIR HART: And do you have an elevation on
4 the east or west -- or just the side elevations?

5 MR. MARKUS: I don't think it's in this set. I
6 do have one if you wanted to see it.

7 I just have one paper copy.

8 VICE CHAIR HART: Well, what I was trying to
9 understand is, I'm looking at the -- I guess it's page six.
10 Wait, give me a second.

11 I was looking to see where it is in your set. In
12 your PowerPoint. It may not be in there. Oh, maybe it is.
13 Okay.

14 So, if you look at page three, or pages -- or
15 slide number five, they have -- it shows the railing. It
16 shows the third floor.

17 Okay, maybe that's what I -- okay. So the third
18 floor comes out -- pages -- no, page five.

19 So, okay. So, you're just saying the railing just
20 stops at a point. And because the rest of the building kind
21 of con -- it's hard to tell where the -- what happens to the
22 third floor.

23 But I'm assuming that you're saying that it goes
24 all the way to the edge of the building on the back. And
25 then three feet from the front.

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1 MR. MARKUS: Are you talking about the deck on the
2 very top?

3 VICE CHAIR HART: Yes.

4 MR. MARKUS: Okay. The railing that you see there
5 is set back from the back edge of the house. Pretty
6 substantially.

7 VICE CHAIR HART: So it is like 30 feet or
8 something. It's a -- or it's a long distance.

9 MR. MARKUS: Yeah.

10 VICE CHAIR HART: I don't want to sit and measure.

11 MR. MARKUS: It's like 20 something. Yeah.

12 VICE CHAIR HART: Okay.

13 MR. MARKUS: It's deceiving on the facade because
14 you see it all straight.

15 VICE CHAIR HART: Well, that's why I was kind of
16 like, is there a section or an elevation on the sides to be
17 able to see that?

18 MR. MARKUS: Oh. Do you know where that section
19 is? Yeah. That section.

20 MR. SULLIVAN: Exhibit 35A.

21 VICE CHAIR HART: Thank you.

22 MR. SULLIVAN: And it's drawing A400. Is that
23 correct?

24 VICE CHAIR HART: I appreciate it. Thanks.

25 MR. MARKUS: Yes. Does that answer the question?

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1 VICE CHAIR HART: Yeah. That's what I was looking
2 for. Thanks.

3 MR. MARKUS: Okay.

4 CHAIRPERSON HILL: Now just how tall is that
5 railing there?

6 MR. MARKUS: Forty-two inches.

7 CHAIRPERSON HILL: Okay. Thank you.

8 MEMBER WHITE: I think I missed something. Did
9 you say there was an ANC report in here? Or, I thought you
10 said you got approval. But I didn't see anything in the
11 record.

12 MR. SULLIVAN: We have an approval.

13 MEMBER WHITE: Okay.

14 MR. SULLIVAN: We don't have the report.

15 MEMBER WHITE: You don't have the report. Okay.
16 Can you give me some background on this?

17 MR. SULLIVAN: Yeah, sure. Well, and Mr. Markus
18 attended all the meetings with --

19 MEMBER WHITE: Right.

20 MR. SULLIVAN: With the property owner, who was
21 trying to be here. And somehow didn't make it.

22 I don't know if it was parking or what.

23 MEMBER WHITE: Okay.

24 MR. SULLIVAN: Or it might have been the change
25 of pace of the Board's hearing. I was -- I probably gave her

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1 too much room to play with. But they had several meetings.
2 She's met with neighbors several times. And met with the ANC
3 and the single member district many times. And I think two
4 full ANC meetings. And secured a unanimous vote and
5 approval. They didn't file their report yet. And we started
6 last week trying to get it. And we've been interacting with
7 them.

8 There is an email to Mr. Moy, if the Board could
9 use that. From one of the Commissioners that's been working
10 closely on this, saying we did vote on this. And we'll get
11 you the report right away.

12 But the Chair, who has the report and was going
13 to file it, is traveling. And he's out all week, so.

14 MR. MARKUS: And I was at the meeting myself where
15 they voted. And they -- I think there was one abstention.

16 But, they voted in favor.

17 MEMBER WHITE: Okay. Well, you testifying, this
18 provides some more detail for the record.

19 So that's good. At some point you probably should
20 just send it in as soon as you can.

21 MR. SULLIVAN: Yeah. Well they -- they said that
22 they would promise that they would get it in.

23 And he's traveling the whole week. So, it might
24 be Monday.

25 CHAIRPERSON HILL: Okay. All right. Does anybody

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1 have any questions for the Applicant?

2 (No response)

3 CHAIRPERSON HILL: All right. I'm going to turn
4 to the Office of Planning.

5 MR. KIRSCHENBAUM: Good afternoon Board Members.
6 Jonathan Kirschenbaum for the Office of Planning.

7 We worked closely with the Applicant to design a
8 building that would fit more harmoniously within the existing
9 street scape.

10 And we recommend approval of the special exception
11 relief, and also the waiver. And we stand on our
12 recommendation.

13 And let me know if you have any questions. Thank
14 you.

15 CHAIRPERSON HILL: Okay. Great. Does anybody
16 have any questions for the Office of Planning?

17 (No response)

18 CHAIRPERSON HILL: Does the Applicant have any
19 questions for the Office of Planning?

20 MR. SULLIVAN: No. Thank you.

21 CHAIRPERSON HILL: Is there anyone here from the
22 ANC?

23 (No response)

24 CHAIRPERSON HILL: Is there anyone here wishing
25 to speak in support?

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1 (No response)

2 CHAIRPERSON HILL: Is there anyone here wishing
3 to speak in opposition?

4 (No response)

5 CHAIRPERSON HILL: Ms. Wilson, Mr. Sullivan, do
6 you have anything else you'd like to add?

7 MS. WILSON: No. Thank you.

8 CHAIRPERSON HILL: Okay. Mr. Sullivan, after
9 lunch sometimes the sugar just gets rushed. And we can kind
10 of like run through.

11 Does the Board have any final questions?

12 (No response)

13 CHAIRPERSON HILL: All right. I'm going to go
14 ahead and close the hearing.

15 Is the Board ready to deliberate? Okay.
16 Actually, wait.

17 There was one more thing before I close. There
18 was the Applicant had requested a waiver from the 21-day
19 filing rule.

20 Is that right Ms. Wilson?

21 MS. WILSON: Yes. I believe it was just a week.
22 Because we had to update the roof plans.

23 CHAIRPERSON HILL: Okay. And you did update the
24 roof plans. And the ANC was aware of that minor change to
25 the roof plan?

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1 MS. WILSON: Yes.

2 CHAIRPERSON HILL: Okay. All right. That's fine.

3 So, I -- unless the Board has any objection, I'm going to go
4 head and approve the waiver of the 21-day filing rule.

5 Okay. Once again, closing the record. Ready to
6 deliberate.

7 And so I am in agreement with the recommendation
8 and the analysis provided by the Office of Planning. It was
9 good to hear on the record that the ANC 5D is in support.

10 However, we don't have an official letter. But
11 there is one that the Applicant has stated will be in the
12 record from the ANC.

13 DDOT had no objection. There were three letters
14 in support.

15 And I am satisfied in terms of how the criteria
16 is being met for the Application to be granted. And so I
17 will be in support.

18 Does the Board have anything they would like to
19 add?

20 (No response)

21 CHAIRPERSON HILL: I'm going to go ahead and make
22 a motion to approve Application Number 19803 as captioned and
23 read by the Secretary. And ask for a second.

24 VICE CHAIR HART: Second.

25 CHAIRPERSON HILL: Motion has been made and

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1 seconded. All those in favor, say aye.

2 (Chorus of ayes)

3 CHAIRPERSON HILL: All those opposed?

4 (No response)

5 CHAIRPERSON HILL: The motion passes. Mr. Moy?

6 MR. MOY: Staff would record the vote as five to
7 zero to zero. This is on the motion of Chairman Hill to
8 approve the Application for the relief being requested.

9 Second the motion Vice Chair Hart. Also in
10 support, Ms. White, Ms. John, Mr. Robert Miller.

11 So the motion would carry. Mr. Chair, are you --
12 would you allow the record to be open so that we can receive
13 the ANC report?

14 CHAIRPERSON HILL: Yes, please. I'm sorry.
15 Please leave the record open for the ANC's report.

16 MR. MOY: And this would be subject to -- to the
17 updated plans under Exhibit 42A and 42B.

18 CHAIRPERSON HILL: Thank you for that
19 clarification. A summary order Mr. Moy.

20 MR. MOY: Thank you, sir.

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

23 MR. MOY: Okay. The next case before the Board,
24 if we can have parties to the table to Appeal Number 19766
25 of ANC 1A.

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1 Captioned and advertised as the Appeal of the
2 decision made on February 15, 2018 by the Zoning
3 Administrator, Department of Consumer and Regulatory Affairs
4 to issue a Building Permit Number B1712178.

5 To permit the conversion of an existing principal
6 dwelling unit to a four-unit apartment house, RA-2 zone, at
7 1477 Girard Street, NW, Square 2669, Lot 824.

8 CHAIRPERSON HILL: Okay. Good afternoon. If you
9 could please introduce yourselves from my right to left.

10 MS. LORD-SORENSEN: Good afternoon Chairman Hill
11 and members of the Board. Adrienne Lord-Sorensen, Assistant
12 General Counsel with the D.C. Department of Consumer and
13 Regulatory Affairs.

14 MR. LeGRANT: Good afternoon, Matthew LeGrant,
15 Zoning Administrator, DCRA.

16 MR. SULLIVAN: Marty Sullivan, Sullivan and Barros
17 on behalf of the property owner.

18 MR. RUEDA: Guillermo Rueda, Architect.
19 Supporting the ANC.

20 MR. BOESE: And Kent Boese, ANC 1A.

21 CHAIRPERSON HILL: Could you say your name again,
22 sir?

23 MR. BOESE: Sure. First name is Kent. Last name
24 is Boese.

25 CHAIRPERSON HILL: Boese. All right. Thank you

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1 Commissioner Boese.

2 All right. So, well I guess the first thing the
3 Board, I guess we can kind of talk about, if there's a Motion
4 to Dismiss the appeal as moot on the basis that the original
5 permit was revoked and the revised permit has been issued.

6 Mr. Sullivan, did you enter that Motion?

7 MS. LORD-SORENSEN: Excuse me, Chairman Hill. We
8 need to be sworn in.

9 CHAIRPERSON HILL: Oh. Sure.

10 MS. LORD-SORENSEN: We weren't here this morning.

11 CHAIRPERSON HILL: Okay. If anybody else hasn't
12 been sworn in, if you can please stand and take the oath
13 administered by the Secretary to the left.

14 MR. MOY: Do you solemnly swear or affirm that the
15 testimony you are about to present in this proceeding is the
16 truth, the whole truth, and nothing but the truth.

17 (Witnesses sworn.)

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

19 CHAIRPERSON HILL: All right. Okay. So, back
20 again to my question, Mr. Sullivan?

21 MR. SULLIVAN: To the extent that we requested
22 that, we would withdraw the request. We're happy to have the
23 Board hear the Appeal of the revised permit.

24 CHAIRPERSON HILL: Okay. All right, great. So
25 then you are withdrawing your motion.

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1 MR. SULLIVAN: That's correct.

2 CHAIRPERSON HILL: Okay. All right, so then after
3 that, so Commissioner Boese, we're going to begin with you.

4 And so what, you know, we do have the documents
5 that have been entered into the record. And so what the
6 process is, is you can go ahead and give your testimony in
7 how you believe that the Zoning Administrator has erred in
8 your appeal.

9 And then the DCRA will have an opportunity to
10 cross any questions they might have upon your testimony. And
11 then as will the building owner.

12 And then we're going to go -- move over to DCRA.
13 They're going to get to present. You're going to get to
14 cross them.

15 Same thing goes with the building owner. And then
16 also the Office of Plan -- oh no, I keep thinking the Office
17 of Planning is involved. They're not.

18 And then there will be an opportunity for you to
19 provide rebuttal to the testimony that is given. And then
20 also normally I like to give a little bit of a conclusion to
21 everybody.

22 However, the conclusion is usually reserved for
23 the Appellant. So, you'll get the last word.

24 And so we're going to go ahead and do that order.
25 What I'd like to do is if I could, just I'm trying to see

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1 if we can do this in as efficient a manner as possible.

2 So, I'm going to put 20 minutes on the clock for
3 now. Just because each person's going to get the same amount
4 of time. And we'll see how -- where we get to. And the
5 Board will have questions as we kind of go along.

6 So, whenever you're ready, you can go ahead and
7 begin.

8 MR. BOESE: Thank you. And my first question will
9 be, with 20 minutes, would that include Mr. Rueda who's here
10 in support of the ANC?

11 CHAIRPERSON HILL: Initially for your 20 minutes,
12 yeah. If you could have Mr. Rueda talk during that portion.

13 MR. BOESE: Okay.

14 CHAIRPERSON HILL: But, you know, if it ends up
15 that you need more time, you know, we're going to do whatever
16 we need to do, to be able to hear this in a manner that's
17 thorough.

18 MR. BOESE: Agreed. I just want to make sure that
19 I'm managing time.

20 CHAIRPERSON HILL: Thank you. Thank you.

21 MR. BOESE: So, why we're here today is ANC 1A has
22 seen an increasing number.

23 CHAIRPERSON HILL: I'm sorry, Mr. Rueda, you had
24 a question?

25 MR. RUEDA: I apologize.

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1 CHAIRPERSON HILL: That's okay.

2 MR. RUEDA: I apologize. But --

3 CHAIRPERSON HILL: You can't get your thing up?

4 MR. RUEDA: This thing is -- yeah. It's not up
5 on the -- my thing is not up.

6 (Off-microphone comments.)

7 MR. BOESE: All right. Well, while he's working
8 on that.

9 So, our commission over the last eight years that
10 I've been serving on the commission has seen an increasing
11 number of conversion projects. Particularly with rowhouse
12 dwellings.

13 That are very problematic by the time that the
14 construction is over. So, one of our motivators in this
15 case, once the -- the conditions were brought to our
16 attention, was to try to get ahead of that.

17 And try to correct some of the problems that we
18 saw. Rather than have another problem on our hands.

19 To list the illustrations briefly as to what our
20 concern is, I'll briefly note for instance, 3652 Park Place,
21 which you may be familiar with, because the owner is Berkley
22 Smallwood, recently converted a rowhouse into two units.

23 But due to the building permits and their
24 construction, they were clearly building a third unit. And
25 it was only by coming here that there's now a covenant that

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1 they can only use it for two.

2 And similarly at 452 Newton Place, the owner was
3 working off of a building permit that was full of errors.

4 CHAIRPERSON HILL: Commissioner Boese, I'm sorry.
5 What are we looking at? Just to make sure the Board knows
6 what we're talking about.

7 MR. BOESE: Oh, these -- yes, the properties in
8 question that are on the screen are similar to the subject
9 property that we'll be talking about. They're at 471 and 473
10 Girard Street.

11 CHAIRPERSON HILL: Okay. So these are samples of
12 things that you're --

13 MR. BOESE: These are samples that are from the
14 street. These are two and three houses down from the project
15 that we're here to talk about today.

16 CHAIRPERSON HILL: Okay.

17 MR. BOESE: So, that kind of gives you an idea of
18 where we're headed.

19 But, to go back to 452 Newton Place again, a
20 recent case which Mr. Sullivan is also involved in. The
21 building was being converted illegally to three units based
22 on erroneous permits and approved plans from the DCRA.

23 And it was only through neighborhood diligence
24 that caught the error. Causing them to then build two units
25 that they could not reasonably sell.

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1 And so they illegally converted one of the units
2 to three units. So, long and short, that's why we're here
3 today.

4 Is we want to make sure that what's going on here
5 on Girard Street doesn't give us another one of these
6 headaches. Where someone is trying to get something that is
7 not permitted.

8 And by the time that it comes before this Board
9 in a zoning variance case, it's not one of these shrugs, well
10 it's there, what do we do? Oh, it's a DCRA mistake that
11 creates an exceptional circumstance.

12 So, at 1477 Girard, we have the rowhouse, which
13 is the case before us, that's proposed to be converted into
14 a four-unit condominium building. That shouldn't be hard if
15 you follow the regulations.

16 But it's not happening with this project. It has
17 also not happened in several other conversions such as 1471
18 and 1473 Girard, which are on the photograph in front of you.

19 Similar to what is occurring at 1477, the building
20 at 1471 was also approved with a noncompliant mezzanine that
21 was required by DCRA to be revised. The drawings were then
22 revised to exclude a described mechanical mezzanine from FAR,
23 by showing a lowered ceiling height.

24 However, in that case, the developer cannot secure
25 a Certificate of Occupancy, because the upper level was built

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1 out as a master bedroom suite with the ceiling of nine feet,
2 six inches.

3 At 1477 Girard, the case we're here for today, the
4 most egregious error in the approved plans and the revised
5 building permit, is a similar effort to build more than is
6 allowed in an upper level.

7 Which has an identified use of storage, with a
8 noncompliant ceiling height that attempts in order to exclude
9 it from GFA and FAR, due to guidance from DCRA.

10 This area defies logic. According to the
11 International Building Code, Section 1208.2, it establishes
12 a minimum ceiling height for storage rooms in occupiable
13 spaces at not less than seven feet.

14 Yet the Office of the Zoning Administrator
15 determined their scope of review of the revised permit, which
16 is B1809616, to be limited to whether the application
17 complied with the District Zoning Regulations.

18 And in order to force this building into
19 compliance, they determined that the storage level would need
20 to be less than six feet, six inches. So that the level
21 would not count towards GFA and FAR.

22 Thus, being in compliance in that area. To do
23 this, the level is shown to have a functional headroom of
24 seven feet. But only have actual ceiling of six feet, six
25 inches, by use of a dropped ceiling.

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1 This is not only a cheat, it violates the DC
2 Building Code for occupiable storage space. Both Zoning and
3 Building Code must apply in this case.

4 Furthermore, in reviewing the plans for the fourth
5 level, it is clear that its legitimate purpose is occupiable
6 space rather than storage space. It is connected to the
7 floor below with stairs.

8 It has windows on three sides. It has a balcony
9 on the south elevation. And the plans show an intent to
10 install hardwood flooring throughout.

11 Collectively these features and finishes are not
12 consistent or necessary for a legitimate use of storage. But
13 rather as a loft, living space that will no doubtedly be used
14 for purposes other than storage.

15 Should the Board agree with the interpretation
16 that DCRA is presenting today, you will be setting a new
17 precedent that will be adopted over and over again to get
18 around the intent of our zoning and building regulations.

19 DCRA proposes to provide a false way for GFA to
20 be excluded from spaces used for storage. Like the spurious
21 conversion of basements to cellars, as a way to allow
22 projects to routinely build an extra floor on other levels
23 not counted -- and not counted.

24 So, in an effort to validate this project,
25 developed as originally approved, DCRA required changes to

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1 the architectural drawings not limited to the ANC's comments.

2 For example, a noncompliant penthouse enclosure
3 was eliminated. The changes did not remedy all of the
4 violations. And present new conflicts between the structure,
5 architectural, and surveyor information.

6 So, as I briefly mentioned before, the exclusion
7 of the upper story from FAR, by designating it as storage,
8 lacks a legitimate purpose. And should thus be disallowed.

9 You can find BZA precedent in BZA 17285, later
10 upheld by the District of Columbia Court of Appeals in
11 Economides versus D.C. Board of Zoning Adjustment. Where the
12 Board disallowed a retaining wall as it served no legitimate
13 purpose.

14 The same illegitimacy is apparent with this
15 storage level that possesses all the characteristics of
16 living space that should be counted in FAR.

17 In the Economides case "the purpose of the
18 structure -- the purpose of this structure, the BZA opined,
19 was not to resist the lateral pressure as a retaining wall
20 is designed to do, but rather to provide an artificially
21 created surface for leisure activities."

22 The Board can apply the logic in Economides to
23 this case. What is storage?

24 It is not defined in the zoning regulations. So
25 one must turn to Webster's. Storage. A space or a place for

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1 storing.

2 Such a self-evident definition sheds only limited
3 light on analyzing whether this prime upper story is defined
4 as storage. You are being asked to accept the proclamation
5 of the Zoning Administrator to define storage.

6 But you have before you, the rational criteria
7 laid out in Economides. Which is, what is this so called
8 storage level designed to do?

9 As earlier stated, the storage level contains
10 windows, has an accessible balcony, a finished floor, is open
11 to the level below it. And is easily accessible with an open
12 stairway.

13 It is not functioning like storage. It is
14 functioning like living space. Space that can readily be
15 built out to be compliant with clear ceiling height
16 requirements.

17 So, in closing, you are being asked to set a
18 precedent. One that is not based upon the actual words in
19 the Zoning Regulations or supported by BZA precedent.

20 And one that if accepted, could be used in any
21 zone to get a floor that should not be there.

22 With that, I will turn it over to Mr. Rueda.

23 MR. RUEDA: Thank you very much. Good afternoon
24 Members of the Board. My name is Guillermo Rueda and I'm an
25 architect.

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1 And I have about 30 years of experience. The last
2 three of which I have been providing technical guidance to
3 development teams, adjacent property owners, and ANCs on
4 Building and Zoning Code compliance issues.

5 A lot of the testimony that Mr. Boese just gave,
6 duplicates some of the analysis that I obviously have been
7 talking about. So, I'm trying to figure out how to condense
8 my --

9 CHAIRPERSON HILL: You don't have a slide -- Mr.
10 Rueda, I mean, the thing that might be helpful is, is I was
11 looking at your -- at 25A.

12 MR. RUEDA: Yes.

13 CHAIRPERSON HILL: Which seems to have the floor
14 plans. I mean, you -- you're not necessarily always on this
15 side of the table.

16 You know, we see you on the other side of the
17 table as well. And so, you know, maybe you can point out,
18 given, you know, point out exactly where you see the Zoning
19 Administrator has made his error.

20 MR. RUEDA: So --

21 CHAIRPERSON HILL: And I don't know if you want
22 to pull up that -- if it's helpful at all to pull up that
23 exhibit or not.

24 MR. RUEDA: It's a section. It's a building
25 section that shows the -- kind of the where the FAR is

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1 erroneously -- yeah, that's the one.

2 CHAIRPERSON HILL: Yeah. There you go.

3 MR. RUEDA: So, the analysis for this section was
4 primarily focused on the original five points that we raised
5 in the Appeal. And a lot of the testimony that I had
6 prepared was to basically validate that.

7 Because DCRA didn't even recognize that the permit
8 had been revoked based on the questions that we raised back
9 in April. So that's been established now, I guess, through
10 Mr. Sullivan's withdrawal of the -- whatever he withdrew.
11 Sorry.

12 But yes. But the application still has the same
13 errors. Which rather than having a mechanical mezzanine
14 shown, they now have an upper storage level.

15 And I think that that's primarily the area that
16 is most egregiously accepted as FAR that's discounted from
17 the GFA. I mean, I can spend time talking about how the
18 drawings were revised to show fill in the rear yard.

19 And how the area ways are different between the
20 structural drawings and the architectural drawings. I think
21 those -- those speak to the errors and conflicts that we saw
22 that raised a lot of questions that led to our discussions
23 with DCRA.

24 And I think that it's important to note that the
25 drawings still show BHMP, whether it's at the grade next to

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1 the porch stairs, or whether it's down at the area way.

2 VICE CHAIR HART: Can you -- and BHMP is building
3 height -- building height measuring point.

4 MR. RUEDA: I apologize.

5 VICE CHAIR HART: No. That's okay. I just -- we
6 have a transcriber. So, we kind -- sometimes when we use
7 like acronyms, it's like, I don't know what that is.

8 MR. RUEDA: Okay.

9 VICE CHAIR HART: But, it's easier to do that.

10 MR. RUEDA: But the bottom line is, is that where
11 the Zoning Administrator has approved the building height
12 measuring point to be counted, it's actually from finish
13 grade and not from the existing grade.

14 It's a small point. And why, I guess, I wanted
15 to focus more upstairs.

16 And I'm going to go back to my original prepared
17 statement. Just so I can make sure that I --

18 CHAIRPERSON HILL: Yeah, go ahead. Because again,
19 I'm just trying to tick off what exactly the things are that
20 we're -- I mean, I know there's been a lot of -- there's a
21 lot of testimony in the record that we've read through.

22 But again, kind of clearly understanding the
23 argument as to the different pieces as to where the Zoning
24 Administrator erred. It's helpful for the Board so they can
25 focus on those things.

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1 MR. RUEDA: Okay. Well so I'll summarize briefly
2 then that the grade, the grade, you know, the grade is
3 questioned because there's so many different ways that it's
4 been represented in the documents.

5 There were questions that rema -- in terms of the
6 dimensions they provide from the first floor to the grade,
7 how the rear yard was before shown as flat.

8 And you know, and the fact is, is that most of the
9 dimensions that we were able to pull off of the architectural
10 drawings were not supported by the surveyor's information
11 that was also included as part of the submission to DCRA.

12 The areaway conflicts exist as recently as May 22
13 for the -- for the revised permit drawings that were
14 submitted at the end of May.

15 There's a new structural drawing that shows the
16 areaway fully compliant with Mr. -- excuse me. Yeah, Mr.
17 LeGrant's -- the Zoning Administrator's determination for it,
18 the measuring point, to be at the cellar level, the basement
19 level, excuse me, and not at the grade at the base of the
20 stairs.

21 So, I'm not suggesting that I'm willing to argue
22 where that's going to be. I think at the end it's easy
23 enough to show where they built it.

24 And if it's wrong, it's wrong. But the fact is,
25 that we still have questions at the areaway. How it's

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1 represented by the Applicant in the approved set of drawings.

2 Because if you look at the architect's drawings,
3 it shows it one way that complies with one interpretation.
4 And if you look in the structural drawings, it's shown a
5 different way.

6 Let me focus -- well, let me point out one more
7 thing too. Is that the --

8 CHAIRPERSON HILL: Just to clarify, these are the
9 approved set of drawings, correct?

10 MR. RUEDA: Which ones?

11 CHAIRPERSON HILL: The ones that we're looking at
12 right now.

13 MR. RUEDA: That has been revised. But I can't
14 tell you that it's changed very much.

15 I do have somewhere --

16 MS. LORD-SORENSEN: Excuse me, Chairman Hill.
17 Just to clarify with respect to Exhibit 25A.

18 The red markings were added by either Mr. Rueda
19 or the Appellant. These red markings are not by DCRA.

20 CHAIRPERSON HILL: Okay. That's fine.

21 MR. RUEDA: That's true. All of the markings on
22 that are part of the analysis that I made.

23 CHAIRPERSON HILL: Okay. So again, as far as the
24 approved set of drawings, you're saying that minor changes
25 have been made to this design?

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1 MR. RUEDA: Minor changes have been made because
2 it's no longer referred to as a mechanical mezzanine. It's
3 now referred to as an upper-level storage story.

4 And there's other minor things that honestly don't
5 effectively change the property. The representation of grade
6 has changed.

7 And --

8 CHAIRPERSON HILL: Okay. All right.

9 MR. RUEDA: So forth.

10 CHAIRPERSON HILL: Thank you Mr. Rueda. You can
11 continue.

12 MR. RUEDA: So, the fourth item in the appeal was
13 regarding the non-conforming structure. Which was non-
14 conforming for lot occupancy.

15 And the revised drawings continue to show a
16 noncompliant structure that was demolished. Close to 25
17 percent of it's footprint.

18 And then plans to be rebuilt with an addition
19 that's two stories tall. And that creates new non-
20 conformities with FAR.

21 And then the fifth compliance issue that we
22 brought up was regarding the solar panels that were showed
23 to bring about compliance with GAR. Those have been removed
24 from the drawings.

25 And they show compliance a different way. Which

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1 is fine.

2 We were able to review the Application drawings
3 that were submitted on the 31st. And while changes were made
4 to the documents, our five concerns remain.

5 In June DCRA worked with the Applicant to develop
6 a compliant project that would allow construction of a 2.62
7 FAR envelope that was approved in the original permit.

8 However, what was ultimately approved in July had
9 one notable change. Which is, as I mentioned, the upper-
10 level storage area.

11 We feel that as it's drawn, it should not be
12 allowed. Please look closely at the rationale that the
13 Zoning Administrator provides for accepting this top story
14 so that it can be discounted from GFA.

15 The DCRA bent over backwards to allow
16 consideration of the 650 square feet of the top story so it
17 could be excluded by describing the height of the story to
18 be below six foot, six inches.

19 At the end of the day, you should know that the
20 approved drawings do not conform to the Zoning
21 Administrator's odd rationale. Because the top story is
22 drawn with structural headroom of seven, zero. And not six
23 foot, five as is shown in the drawings.

24 Let me explain further. This is a fully finished
25 level. It's accessible by stairs.

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1 It's open to the floor below. It has windows on
2 three of four sides. And there's a balcony that's meant to
3 be accessed by the occupants.

4 It's just not legitimate to call this a storage
5 level. Especially if you consider the balcony has been
6 approved for access by the Zoning Reviewer.

7 And furthermore, that DCRA required the Applicant
8 to remove from the storage level that was in the documents
9 that they presented, a washer, dryer, and utility sink that
10 had been included. This is transcribed in the reviewer
11 comment summary that I provided in Exhibit D.

12 The atypical upper level story required a code
13 modification by the building -- by the Chief Building
14 Official to allow storage with a ceiling height less than the
15 code required seven foot, zero. The ceiling height is
16 therefore shown as six foot, five.

17 However, the code mod does not provide the same
18 relief for required egress and travel distances to and from
19 the balcony on this level. And I understand that you don't
20 rule on this.

21 But to be clear, without this approval, zoning
22 would not have been able to approve the proposed building
23 with the bizarre rationale that Mr. LeGrant proposes in
24 DCRA's prehearing statement.

25 And the changes -- and this changes -- this

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1 rationale changes the definition of GFA that's described in
2 Subtitle B of the Regulations.

3 CHAIRPERSON HILL: Could you repeat that again,
4 please?

5 MR. RUEDA: The rationale that Mr. Le -- that the
6 Zoning Administrator provides in the prehearing statement,
7 changes the definition of how you calculate GFA. What counts
8 as GFA as it's described in Subtitle B of the Regulations.

9 And I can read from it.

10 CHAIRPERSON HILL: No. That's okay.

11 MR. RUEDA: Thank you. First, this rationale
12 reimagines the GFA definition to allow exclusion of any
13 square footage that depicts a storage area.

14 Because storage area does not fall into any other
15 category included in the GFA definition. If this were true,
16 we would see countless areas, countless area from closets and
17 portions of buildings dedicated to storage being excluded
18 from GFA across the city.

19 All we have to do is read the actual words of the
20 definition provided in Subtitle B to see that storage area
21 is more importantly not defined as excluded from GFA.

22 Second, the Zoning Administrator further
23 postulates that because the revised architect section
24 reflects the height of storage to be six foot, five, that it
25 can be discounted from GFA by conflating language described

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1 in two other very specific references in the definition,
2 where structural headroom applies as a limiting factor.

3 The storage area is simply not one of them.
4 There's no basis in the Regulations to discount storage area
5 from GFA, regardless of its clear structural headroom.

6 The questionable logic of this interpretation
7 would allow relief of .39 FAR at this top level. Excuse me.

8 Adding this area -- adding this area to the Zoning
9 Administrator's calculus of 1.72 for the remainder of the
10 building would result in a total FAR of 2.11. Well over the
11 1.8 limit, even without considering the questions about the
12 grade that we mentioned before.

13 I'm closing. As mentioned and problematic to this
14 argument put forth by DCRA is that the approved project does
15 meet the terms of the new definition proposed by the Zoning
16 Administrator.

17 The six foot, five height referenced in the
18 approved documents measures to the finished ceiling height.
19 But the measure of the structural headroom is seven foot,
20 zero from the floor when you count from the floor to the 14-
21 inch TJI Joist above.

22 And this is documented in the revised section that
23 Mr. Sullivan provided to Mr. Boese recently after the permit
24 was approved. This fails to meet even the rationale offered
25 by the Zoning Administrator for exclusion of GFA at the

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1 storage level.

2 Obviously this shouldn't be interpreted to mean
3 that we think the dimension can simply be revised to achieve
4 exclusion of this floor area. If that were true, area under
5 stairs with structural headroom less than six foot, six,
6 would also be excluded from GFA. That doesn't happen.

7 And finally, regarding this upper storage level,
8 the project being presented to you has gained zoning approval
9 that if approved by this Board will set an unfortunate
10 precedent through this improvised interpretation. And it is
11 not supported by the definition in Subtitle B of the
12 Regulations.

13 And in closing, the revised permit, like the one
14 that preceded it, does not comply with the Zoning
15 Regulations. And incorrectly approves non-conforming
16 structure to be expanded to add new non-conformities for
17 excess FAR.

18 And the Board should not accept the ZA's, the
19 Zoning Administrator's assertions related to the exclusion
20 of storage areas. Or that any area in the building with
21 structural headroom below six foot, six can be similarly
22 discounted from gross floor area.

23 That's just not what the definition says. Thank
24 you.

25 CHAIRPERSON HILL: Okay, great. Thank you

1 gentlemen. Does the Board have any questions for the
2 Appellant?

3 VICE CHAIR HART: It's a lot to take in. I mean,
4 even reading through it I was just like, okay. You know,
5 trying to get through all of it.

6 And you kind of were bringing up the -- the
7 building height issue. But then you're -- it sounded like
8 you were kind of not bringing it up.

9 But you were just -- you just wanted to focus on
10 some other things. You're still saying that it's an issue,
11 but there are some other issues that you think are more
12 important?

13 MR. RUEDA: So, in essence, yes. I think that --
14 and we could argue about where the actual grade is. We won't
15 know until they finalize the project.

16 What I do know, and I can show you, if I could use
17 this computer, is that the areaway shown in the two permits,
18 different -- differently on both the architectural and
19 structural drawings.

20 And the Zoning Administrator doesn't look at the
21 structural drawings, unless I'm mistaken. The top two
22 drawings show the areaway as represented in the original
23 approved permit.

24 Which shows an existing areaway to be repaired
25 with a door and a window that don't exist into this lower

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1 level basement area. And the structural drawing marked
2 S0011, drawn on 10/11/2017, shows a completely new areaway
3 that from my understanding of the Zoning Administrator's
4 rationale, would measure the building height from the bottom
5 of that areaway.

6 And thus why we question it. But then in the
7 revised permit drawings, you see presented on the right, on
8 the left, you see that the architect now shows that as new
9 work.

10 But then on 5/22, prior to submission, the
11 structural drawings show a completely revised areaway with
12 block walls fully contained. That also would change the
13 height of the building.

14 And it's semantic. But it is exactly relevant to
15 how the Zoning Administrator interprets building height.

16 And coincidentally, whether the bottom story is
17 a cellar or basement. Because it would radically alter the
18 grade plane measurement.

19 VICE CHAIR HART: And you're also saying that the
20 FAR is con -- I was going to say contingent, but not
21 contingent.

22 If the FAR -- the FAR is -- is being calculated
23 incorrectly because they're not including the fourth level,
24 which they're calling something else other than actual, you
25 know, kind of square footage.

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1 MR. RUEDA: I think that the argument is that the
2 project over FAR can be interpreted at the top level. You
3 know, the conversion of this basement into a cellar will bear
4 the test of time.

5 What do they actually put onsite? Because as it
6 was -- as it existed, it was a basement. You know, the rear
7 driveway was about nine feet lower than the first floor.

8 And the front areaway was whatever it was. So,
9 you know, actually there was no areaway, sorry. But the
10 front grade was, you know.

11 And those, the information that we looked at just
12 to even ask the questions and see if what they were doing was
13 okay, was all over the map. You know, we couldn't really
14 follow it.

15 If I went to the structural drawing, I found one
16 thing. The architectural drawing, another. And then the
17 surveyor had completely different information for dimension.

18 So, the questions were offered earnestly as, can
19 you go further and explain, you know, how this complies? We
20 don't see it.

21 You have a mechanical mezzanine that doesn't --
22 that wasn't even included in their calculations for GFA. So,
23 that's not part of the reg -- that's not -- in any measure,
24 that's not part of the definition of allowed exclusions.

25 And then also by the way, the mezzanine was 60

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1 percent of the floor below. Not 30. So, you know, obviously
2 DCRA, you know, couldn't opine differently.

3 They just had to say look, you've got to find a
4 new way of describing this top story. Because we can't
5 exclude this under the Zoning Code.

6 VICE CHAIR HART: Understood. Thank you.

7 MEMBER JOHN: Mr. Chairman?

8 CHAIRPERSON HILL: Sure. Of course.

9 MEMBER JOHN: Mr. Guillermo? Guillermo?

10 MR. RUEDA: Guillermo is my first name. You're
11 welcome to use it.

12 MEMBER JOHN: Oh. Yeah, okay.

13 CHAIRPERSON HILL: It's Rueda.

14 MEMBER JOHN: Oh, Rueda. I'm terrible at names.
15 I apologize.

16 MR. RUEDA: That's not a problem.

17 MEMBER JOHN: So, are you saying that an attic
18 that is less than six feet, six inches, should be included
19 in the calculations for GFA?

20 MR. RUEDA: I'm not saying that.

21 MEMBER JOHN: Okay. So --

22 MR. RUEDA: This is not -- this is not described
23 as an attic.

24 MEMBER JOHN: Well, so does it have to be
25 described as an attic? Let's say the drawings are accurate,

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1 and they can be measured.

2 And we can confirm that the space is 6.5 inches.
3 And it's at the top of the building.

4 MR. RUEDA: Yes.

5 MEMBER JOHN: Is that -- is it fair to say that's
6 excluded from GFA? Even if the name might be wrong?

7 MR. RUEDA: It's not excluded under the -- the way
8 the building was drawn. Because they only show six foot,
9 five to the finish ceiling.

10 They don't show it to the, you know, to the
11 structure.

12 MEMBER JOHN: Really.

13 MR. RUEDA: Okay, so -- so if it actually met that
14 term, then we would have a discussion about that. But, I
15 would submit to you that what they're showing, if you look
16 at the drawings, --

17 MEMBER JOHN: Um-hum. Okay.

18 MR. RUEDA: Is a story that's open to the story
19 below. Okay? Because it's got -- let me show you something.

20 MEMBER JOHN: Can you use a pointer to clarify
21 that?

22 MR. RUEDA: Absolutely.

23 MEMBER JOHN: And can you explain why if it's open
24 to the floor below it would make a difference? Because I
25 believe there is language that says whether or not the floor

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1 has actually been laid.

2 So, please explain to me how that works.

3 MR. RUEDA: Right. So again, if we're talking
4 about attic space, right, then as I understand the
5 provisions, you have to count that area whether or not
6 there's a floor. Right?

7 So, if they were to show structural floor joists
8 with no flooring, --

9 MEMBER JOHN: Right.

10 MR. RUEDA: But they had structural headroom
11 greater than six, six, then yes. They would still count
12 that. Even if there was a finished floor there.

13 In this case, that's not even a question. What
14 they've shown is completely finished. Right?

15 They have -- They have shown -- look at the
16 elevation. They've shown windows on three of the four sides.

17 They show a balcony that the reviewer states can
18 still be accessed by the occupant. So this level, it's not
19 planned for storage. It's planned for occupancy.

20 They even had a laundry room with a utility sink
21 up there at one point. Which was properly removed by the
22 Zoning Administrator or whoever commented in the documents.

23 And you can see that in sub -- in Exhibit D.

24 MEMBER JOHN: I understand. But are you saying
25 that you can never have windows in storage space?

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1 MR. RUEDA: So, we're talking -- if we're talking
2 about a theoretical discussion about the Zoning Regulations,
3 then could there be windows in storage space? Sure.

4 Could there be a balcony too? If you're not going
5 to act -- they're lowering the ceiling and telling you that
6 people will not be occupying this level.

7 That we want to spend our money to finish this
8 upper level and have a nice staircase. Let me show you on
9 the plan.

10 A nice staircase that takes you all the way up
11 from the third floor to the fourth floor, and depending on
12 how you measure, the fifth floor. Right?

13 So you have this nice staircase open into that
14 space that is going to be what? Full of boxes? I just can't
15 believe that.

16 But let me show you how --

17 VICE CHAIR HART: Mr. Rueda, before you get to it,
18 --

19 MR. RUEDA: Sure.

20 VICE CHAIR HART: Are either of these images in
21 the record?

22 MR. RUEDA: Which images?

23 VICE CHAIR HART: The one that you're showing
24 right now. And the one that you are about to show.

25 MR. RUEDA: This one is not in the record.

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1 VICE CHAIR HART: The reason I'm saying is because
2 we're the --

3 MR. RUEDA: I'm sorry, Mr. -- I'm sorry Mr. -- I
4 was going to say Barros. Sorry, Mr. Sullivan.

5 VICE CHAIR HART: Yes.

6 MR. RUEDA: Actually I think he did include it in
7 his --

8 VICE CHAIR HART: Plan set.

9 MR. RUEDA: Did you?

10 VICE CHAIR HART: I just want to know where it is
11 so that we're -- so that we're kind of --

12 MR. RUEDA: I thought he had included the whole
13 set. Which is why I didn't bother.

14 VICE CHAIR HART: Now we have 22C has plans and
15 a section in it. Exhibit 22C. And again, the reason I'm
16 asking this is because it's helpful for us to know what we're
17 kind of looking at.

18 And if you're looking at images that -- we webcast
19 these meetings, they might be able to see that. But it's
20 still hard for folks to kind of follow it if we're saying,
21 oh, it's Exhibit whatever, if we don't have the exhibit.

22 MR. RUEDA: So I don't have -- I don't have the
23 building plans. I do have the area plans.

24 And -- yeah, and I had to add the fourth floor
25 plan. Because it wasn't represented in the area plans. And

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1 so --

2 VICE CHAIR HART: Yeah.

3 MR. RUEDA: And so the red --

4 VICE CHAIR HART: Okay, so again, these are your
5 plans that you're -- that you're --

6 MR. RUEDA: So this plan was submitted for the
7 record. This is -- these are the area plans that I marked
8 up as part --

9 VICE CHAIR HART: Well, what I'm saying is that
10 if you've marked them up, then they are -- they are things
11 that you need to submit for, you know, that are kind of on
12 your behalf.

13 So that you -- so we understand what we're looking
14 at.

15 MR. RUEDA: So this was submitted, unless I'm
16 mistaken, this was submitted on our behalf. It was Exhibit
17 --

18 VICE CHAIR HART: I'm not trying to be -- being
19 bad about it.

20 MR. RUEDA: No, no, no. I'm --

21 VICE CHAIR HART: I just want to make sure that
22 we're -- we're --

23 MR. RUEDA: This was submitted by us. Because we
24 were trying to show the -- all of the levels in the area that
25 they, you know, that they counted.

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1 CHAIRPERSON HILL: But you don't know which
2 Exhibit it is?

3 MR. RUEDA: I will tell you.

4 VICE CHAIR HART: I see it now.

5 MR. RUEDA: It's Exhibit 20B.

6 VICE CHAIR HART: 25B?

7 MR. RUEDA: 25B.

8 VICE CHAIR HART: Okay. Thank you.

9 MR. RUEDA: I'm sorry that I don't know that off
10 hand.

11 VICE CHAIR HART: It's not a problem.

12 CHAIRPERSON HILL: Okay. I'm going to -- does
13 anybody have any more questions right now for the Appellant?
14 Because I think there's a lot we're going to have to get
15 through.

16 But, are we okay to move on? Does DCRA have any
17 cross for the Appellant?

18 MS. LORD-SORENSEN: No. I do not.

19 CHAIRPERSON HILL: Okay. Mr. Sullivan, do you
20 have any cross for the Appellant?

21 MR. SULLIVAN: Yes. Just one or two questions.
22 Mr. Rueda, are you still claiming that the building height
23 measurement point at the ground is at the bottom of the
24 areaway?

25 MR. RUEDA: I'm claiming that I don't know where

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1 it needs to be placed. Because there's conflicting
2 information between the two plans shown in architect's
3 drawings and structural drawings.

4 MR. SULLIVAN: But in your prehearing statement
5 that you filed last week, I think you said that it was a
6 little under ten feet. The depth of the areaway.

7 MR. RUEDA: So, it projected, from the building
8 face, ten feet. Which is greater than the five feet that the
9 Zoning Administrator requires for calculating the BHMP down
10 at the basement level.

11 MR. SULLIVAN: And what's included in that ten
12 feet?

13 MR. RUEDA: Okay. I can definitely show you this.
14 This was not included -- this was not uploaded into the
15 record.

16 MR. SULLIVAN: Does it include the stairs?

17 MR. RUEDA: So, if you look at the drawing on the
18 -- that -- the drawings that were submitted, as I understand
19 it in the revised Application, they're on the bottom.

20 Right, so you have A11 and S11 represented on the
21 bottom of this Exhibit. It's not in the record. It's up on
22 the screen.

23 On the left you --

24 MR. SULLIVAN: That's not right.

25 MR. RUEDA: Sorry?

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1 MR. SULLIVAN: It's not right.

2 MR. RUEDA: So --

3 CHAIRPERSON HILL: Mr. Rueda, also can you add
4 this into the record for us?

5 MR. RUEDA: Absolutely.

6 CHAIRPERSON HILL: Okay.

7 MR. RUEDA: On the left you have the architect's
8 drawing. And you would measure the areaway as the Zoning
9 Administrator has.

10 Which is to say that there's a dimension there of
11 four foot, four and a half, I believe. So, the building
12 height measuring point would be at grade, which is basically
13 mid -- the midpoint between the two levels.

14 Just for lack of a better. Just to summarize.
15 But if you look at the drawing on the right, which is the
16 structural engineer's representation of the same areaway, he
17 shows block walls and a metal stair.

18 And because the wall -- because the stair is
19 contained within the areaway, and the wall of the areaway is
20 like I said, projecting almost ten feet from the face of the
21 building, then you measure the building height measuring
22 point down at that level.

23 It's why I didn't really want to bother arguing
24 about it until it was actually built. Right? Because once
25 it's built, then there's no question about where the BHMP is

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1 taken from.

2 CHAIRPERSON HILL: Okay.

3 MR. RUEDA: But I do offer it as, you know, sort
4 of grist for why they --

5 CHAIRPERSON HILL: Okay.

6 MR. RUEDA: Even question this.

7 CHAIRPERSON HILL: Mr. Sullivan?

8 MR. SULLIVAN: So, do you include the stairs
9 when you say that the areaways more than five feet, are you
10 including the stairs in that?

11 MR. RUEDA: On drawing I do. And, on the
12 architect's drawing, I don't. And I think that's consistent
13 with the Zoning Administrator's interpretation that he
14 presented as part of the revisions to these measuring points
15 and calculations in proposed Text Amendment 17-18 which I
16 believe is getting ready to be set down.

17 MR. SULLIVAN: One question for Mr. Boese. It was
18 stated that you've had concerns and you've had questions for
19 a long time and you've asked questions. Are you aware of the
20 -- do you know the property owners here?

21 MR. BOESE: I do not, no.

22 MR. SULLIVAN: Okay. Have -- did you ever reach
23 out to them to discuss your concerns with them?

24 MR. BOESE: This case was brought to us with a
25 short turnaround for the ANC to take action or lose our

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1 window to appeal. So, there was not that opportunity.

2 I will say that, unfortunately, the Commissioner
3 for this single-member district is not as active as I would
4 like and sometimes, as Chair, you have to take on problems
5 that are brought to you instead of allowing them to fester.

6 So, I honestly I wish this had been brought to me
7 sooner.

8 MR. SULLIVAN: Thank you.

9 I don't have any other further questions.

10 CHAIRPERSON HILL: Okay. All right, so, let's
11 see, going to go ahead and turn to DCRA.

12 I'm going to also put 20 minutes on the clock
13 which is how much I had put on for the Applicant. And, you
14 can begin whenever you like.

15 MR. BOESE: Sure, of course.

16 MR. RUEDA: How should I submit -- let me -- how
17 should I submit the --

18 CHAIRPERSON HILL: You can just submit it into the
19 record after the hearing. I'm going to allow it but, I don't
20 really think -- I don't know whether we're going to have a
21 discussion at the end of this or not. I doubt it.

22 So, we'll be able to probably take a look at it
23 because there is a tremendous amount of information already
24 that we're kind of going through.

25 But, I may get out voted like I did the last time

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1 and y'all be smarter than I am and figure it all out real
2 quick.

3 Chairman Boese, I know how difficult it is to be
4 the Chair. I mean, you know, it's a heavy burden, you know
5 the --

6 MR. BOESE: It's herding cats.

7 CHAIRPERSON HILL: All those people around you
8 just not doing what they need to do, you know, talking
9 amongst themselves over there.

10 MR. BOESE: Maybe we should talk separately some
11 time.

12 (Laughter.)

13 MS. LORD-SORENSEN: So, again, good afternoon,
14 Chairman Hill, the members of the Board.

15 We are here today because Appellant, ANC-1A, Kent
16 Boese believes that the Zoning Administrator erred in issuing
17 Building Permit B17-12178 to the owner of 1477 Gerard Street,
18 Northwest here in the District.

19 The permit allows the owner to convert a semi-
20 detached single-family home into a four-unit dwelling.

21 Since Appellant's initial April 2018 filing, the
22 property owner submitted revised plans for DCRA review.

23 Revised Permit B18-09616 was issued on July 16,
24 2018. And, DCRA asserts that the revised plans clarify the
25 drawing so as to show compliance with the applicable zoning

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1 regulations.

2 And, I am now going to ask the Zoning
3 Administrator a series of questions in response to the
4 arguments raised by the Appellant.

5 So, the -- good afternoon, Zoning Administrator.

6 MR. LeGRANT: Good afternoon.

7 MS. LORD-SORENSEN: The Appellant argues that the
8 grade and surrounding conditions for the project at 1477
9 Gerard Street is not properly documented on the plans.

10 And, I am going to show you -- so I put on the
11 screen A0032 which --

12 CHAIRPERSON HILL: Yes, Ms. Sorensen, where is it
13 in the exhibits?

14 MEMBER HART: Exhibit 26.

15 CHAIRPERSON HILL: Is that what it is? Because
16 I got one of them, I think.

17 MEMBER HART: Twenty-six.

18 CHAIRPERSON HILL: I think I have the right one.

19 MEMBER HART: Twenty-six A.

20 MS. LORD-SORENSEN: It's under 26A, but then, if
21 you flip to Exhibit 2, that's what I have up on the screen,
22 Architectural Plan A0032.

23 CHAIRPERSON HILL: Okay, thank you.

24 MS. LORD-SORENSEN: Okay.

25 So, Zoning Administrator, looking at Architectural

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1 Plan A0032, could you please identify to the Board whether
2 or not the grade for this particular property is depicted on
3 the DCRA approved plans?

4 MR. LeGRANT: Yes, thank you.

5 So, again, this a section drawing from the revised
6 permit that shows the relationship for the building to the
7 grade around it.

8 As you can see at the rear of the structure, this
9 is going back in the rear yard now toward the alley, there
10 is an area that's sort of a lawn-like gray triangle. And,
11 this represents what the difference between the existing --
12 and it's labeled "Existing Driveway Slope" that was -- is the
13 pre-existing.

14 And then, the finished grade which flattens that
15 out. So, they'll be filled in to change the grade from the
16 existing to the finished grade. It fills in that sloped
17 driveway to be flat to -- toward and adjacent to the alley.

18 MS. LORD-SORENSEN: Thank you.

19 Appellant also argues how the Building Height
20 Measurement Point was calculated for this particular
21 property.

22 So, first, could you please briefly explain what
23 is the Building Height Measurement Point? How is that
24 calculated?

25 MR. LeGRANT: Sure, absolutely.

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1 So, the Building Height Measuring Point, as the
2 Board may know, is the point in which building height is
3 measured from -- it's the beginning or starting point on the
4 ground that is the reference point to be able to establish
5 the height of the building.

6 And, it's relative in two key aspects. The
7 overall height of the building which the building height has
8 to be within the allowable maximum building height.

9 And then, it's also relevant for the calculation
10 of, in this case, the lower level. The lower level of the
11 building in this case is a cellar.

12 And, as the Board may be aware, a cellar is -- if
13 it's that level is deemed as cellar, then it is not counting
14 as a story, nor is its area used in calculating gross floor
15 area.

16 It's excluded by definition from being gross floor
17 are and its, therefore, does not -- the area of the cellar
18 is not contributed to the FAR.

19 MS. LORD-SORENSEN: Okay. So, looking again at
20 Architectural Plan A0032, could you please identify to the
21 Board how the lowest level was determined to be a cellar?

22 MR. LeGRANT: Yes. So, the building -- I mean,
23 the zoning regulations specify in situations where the grade
24 varies that there's a -- and you have to apply a test called
25 the Grade Plane Method to see if portions of that lower level

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1 are deemed a portion as a basement and, therefore, chargeable
2 as GFA, gross floor area versus a cellar -- a cellar area
3 which is excluded.

4 So, the -- once we've established the Building
5 Height Measuring Point, we measure that in reference to the
6 floor above.

7 That dimension, I believe it's five feet maximum,
8 if it's more than five feet, then the area is counted. If
9 it's less than five feet, that is the cellar or the lowest
10 level is sunk into the ground, then it is excluded from the
11 GFA calculation.

12 MS. LORD-SORENSEN: Okay. Where is the starting
13 point in this particular architectural plan to determine
14 whether or not the ceiling height is more or less than five
15 feet?

16 MR. LeGRANT: Yes. So, in the drawing that you
17 referenced, again, A0032, the revised permit, very small tiny
18 type, it's hard to see, but it says BMP which is the --

19 MS. LORD-SORENSEN: So, it's that horizontal red
20 line?

21 MR. LeGRANT: Yes, yes. So, the BMP, little
22 letters, is Building Measuring Point or Building Height
23 Measuring Point, those terms are synonymous, establish this
24 as shown in this drawing, a dashed red line across.

25 MS. LORD-SORENSEN: Okay. And then, you said you

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1 measured it to what point?

2 MR. LeGRANT: Through the top of the floor above.
3 The floor above is shown as the hashed blue and -- or in this
4 drawing a color, so it's the gray hashed area.

5 MS. LORD-SORENSEN: And, what is the height
6 between the red horizontal line that's intersecting the
7 lowest level and the floor above?

8 MR. LeGRANT: Four foot, seven inches.

9 MS. LORD-SORENSEN: Okay. Mr. Rueda had mentioned
10 a few moments ago about the new areaway at the front of the
11 property.

12 MR. LeGRANT: Yes.

13 MS. LORD-SORENSEN: And, I believe he testified
14 that the new areaway should be included in the BHMP or
15 Building Height Measurement Point. What is your position on
16 that?

17 MR. LeGRANT: Okay, so, when you have an adjacent
18 excavated lower area next to a building, we have -- my office
19 has classified it one of two ways.

20 An areaway which is basically an access point in
21 which stairs are going down from the existing grade to an
22 open area, usually like the lower vestibule, that it contains
23 a stair landing to a door to allow access into that level of
24 the building.

25 I have long by practice establish and, as Mr.

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1 Rueda mentioned, it's been now proposed to be codified in
2 Zoning Commission Case 17-18 which will be for the Commission
3 next Monday, the final action.

4 Regardless of the Commission's action on that
5 pending, my longstanding practice has been, oh, if it's an
6 areaway, you're limited in size so as to be deemed an
7 exception to grade.

8 That is, if you qualify as an areaway, then the
9 grade level sort of or around it and that's held up by the
10 retaining walls, is the referent grade for the Building
11 Height Measuring Point.

12 So, this exception to grade is an areaway has a
13 limitation which is it can be no more than five feet
14 perpendicular from the face of the building so as not to
15 become what I would call a sunken patio.

16 If they become larger than this five foot
17 perpendicular from the face of the building dimension, then
18 that changes the grade.

19 You'd go down to the bottom of that feature and
20 use that as the referent grade for figuring out the Building
21 Height Measuring Point.

22 This case, the revised drawing show an areaway of
23 --

24 MS. LORD-SORENSEN: I'll put it up for you.

25 MR. LeGRANT: And, you pull up that plan.

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1 But, it's less than five feet. So, it qualifies
2 as an exception to grade. We will not use that bottom level
3 of the areaway because it's a qualified exception to grade.

4 There's not then going to the Building Height
5 Measuring Point calculation for figuring out the building
6 height or deeming the lowest level category.

7 MS. LORD-SORENSEN: Okay. So, I would like to
8 direct the Board's attention to Architectural Plan 0011 which
9 is what the Zoning Administrator was referring to.

10 And, again, that's under Exhibit 26A, Exhibit 3.

11 And, if you look off to the far right of this
12 particular screen to the section marked "English Basement."

13 And, based on the DCRA approved plans, Zoning
14 Administrator, what is the I guess the projection for this
15 particular areaway?

16 MR. LeGRANT: Yes, I'm trying to read the little
17 tiny number there.

18 MS. LORD-SORENSEN: Sorry, let me increase the
19 size, on second.

20 MR. LeGRANT: Four feet, four and half inches.
21 So, as -- when we compare it to the test, I noted is it five
22 feet or greater? No. Then, it does qualify as an areaway
23 and as an allowable exception to grade compliant with the
24 zoning regulations.

25 MS. LORD-SORENSEN: Okay. So, based on where

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1 grade is located, I'm going back to Architectural Drawing
2 A0032 -- wait, let me just take a step back.

3 What is the maximum height allowable for this
4 particular RA-2 Zone?

5 MR. LeGRANT: The RA-2 Zone height limit is 50
6 feet.

7 MS. LORD-SORENSEN: And, based on these approved
8 plans, what is the height of the proposed construction?

9 MR. LeGRANT: The height is dimension on the
10 drawing is 46.29 feet.

11 MS. LORD-SORENSEN: Now, when you calculate
12 building height, the BHMP, do you normally include the
13 parapet wall?

14 MR. LeGRANT: We do not.

15 MS. LORD-SORENSEN: Okay. Could you tell, based
16 on this particular drawing if the 46 feet 29 inch height that
17 you testified a few moments ago includes the parapet wall?

18 MR. LeGRANT: Yes, it does.

19 MS. LORD-SORENSEN: Okay. So, does this
20 particular -- is this Building Height Measuring Point -- is
21 this building height in compliance with the zoning
22 regulations?

23 MR. LeGRANT: Yes. Okay, no, I'm sorry. I have
24 to amend what I just said.

25 MS. LORD-SORENSEN: Okay.

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1 MR. LeGRANT: In this particular zone, you do
2 measure to the parapet -- top of the parapet wall. But, so
3 that becomes the 50-foot test.

4 And, the top of this parapet wall as shown in the
5 dimension, is less than 50 feet. So, it's deemed compliant.

6 MS. LORD-SORENSEN: Thank you.

7 And, you touched on this briefly a few moments
8 ago, but just to directly address one of the Appellant's
9 arguments, was the lowest level of this particular property,
10 again, looking at Architectural Plan A0032, was it included
11 in the gross floor area?

12 MR. LeGRANT: It was --

13 CHAIRPERSON HILL: Can you repeat that question,
14 again? I'm sorry.

15 MS. LORD-SORENSEN: Sure.

16 Was the lowest level of this particular structure
17 included in the gross floor area?

18 MR. LeGRANT: It was not. As I --

19 MS. LORD-SORENSEN: And, why not?

20 MR. LeGRANT: Because it is a noted -- because it
21 qualified as a cellar as per the definition of the zoning
22 regulations. It, therefore, does not rise to the level of
23 being deemed an area that is chargeable gross floor area.

24 It's instead a cellar which is, by definition,
25 excluded from gross floor area calculations. It does not

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1 contribute to the FAR of the building.

2 MS. LORD-SORENSEN: And, a few moments ago, you
3 testified that the height, the determining factor that deemed
4 the lowest level a cellar was based on the height of four
5 feet seven, correct?

6 MR. LeGRANT: Yes.

7 MS. LORD-SORENSEN: So, if that height was five
8 feet or more, then it would be considered a basement?

9 MR. LeGRANT: Right. If that lowest level starts
10 coming out of the ground greater than the five foot
11 dimension, then it cross the line no longer being a cellar,
12 it becomes a basement and, therefore, is, (a) counted as a
13 story, and (b) the area of which is chargeable as gross floor
14 area toward the FAR.

15 MS. LORD-SORENSEN: Okay. What is the FAR -- the
16 floor area ratio for this particular zone?

17 MR. LeGRANT: The maximum is 1.8.

18 MS. LORD-SORENSEN: Okay. And, did your office
19 calculate the FAR for this property?

20 MR. LeGRANT: We did.

21 MS. LORD-SORENSEN: And, what was the FAR?

22 MR. LeGRANT: 1.72.

23 MS. LORD-SORENSEN: Okay. So, okay, going back
24 again to Architectural Plan A0032, looking at the upper most
25 section of the proposed structure, was this area included in

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1 the FAR?

2 MR. LeGRANT: It is not.

3 MS. LORD-SORENSEN: And, why wasn't it included
4 in the FAR?

5 MR. LeGRANT: Okay, so, the zoning regulations,
6 the definition of gross floor area say that areas that are
7 six foot six or greater that have vertical distance are
8 included that are enclosed -- is within a building with --
9 enclosed with a roof and walls are to be included as gross
10 floor area.

11 It also, the definition goes on and say areas less
12 than that, and lists attics and cellars and so forth, are not
13 deemed gross floor area.

14 So, in this case, the revised drawing showed a
15 vertical clearance of six foot five inches, therefore, it
16 fell out of the category of being included as gross floor
17 area, therefore, is not included in the FAR calculation.

18 MS. LORD-SORENSEN: Okay. So, which floors, we
19 have the lowest level, we have the first floor, second floor,
20 third floor and the uppermost level depicted on this
21 particular plan. Which floors were factored into the FAR for
22 this project?

23 MR. LeGRANT: Yes. So, right, one can say there's
24 one, two, three, four, five different levels and the question
25 is how they're classified.

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1 The lowest level is a cellar, not included. And,
2 the next three levels, the first, second and third floors of
3 this building is pre-existing two-story building and which
4 a third floor was added is included within the top level in
5 which there is a term of attic thrown out.

6 It's not labeled that way in the plans, it could
7 be my opinion classifies an attic, it is a -- that upper most
8 level because of the dimension discussion that we just had
9 does not rise to the threshold of being six foot six or
10 greater. It's excluded from gross floor area calculations,
11 therefore, the upper most level is not included in FAR
12 calculations.

13 MS. LORD-SORENSEN: Okay. I believe Appellant had
14 argued that the upper most level is a mezzanine. Is this
15 area a mezzanine?

16 MR. LeGRANT: No.

17 MS. LORD-SORENSEN: And, why not?

18 MR. LeGRANT: The mezzanine is an area that is --
19 would -- if it was a mezzanine, it would be counted as gross
20 floor area.

21 And, as the Appellant noted, there's -- once it
22 crosses that threshold, then it's -- it has its own
23 limitations of one-third of the area of the floor below and
24 so on and so forth.

25 Because it doesn't pass that first test of being

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1 gross floor area, even though there's areas that are open to
2 the floor below and would not, in my mind, qualify as a
3 mezzanine, because, again, it does not contain gross floor
4 area.

5 MS. LORD-SORENSEN: Okay. And, moving on,
6 Appellant claims that the existing lot occupancy for the
7 project is listed as nonconforming at 64 percent and the
8 measurement from the documents is 66 percent.

9 He further asserts that the demolition has removed
10 about 11 feet at the rear of the nonconforming footprint.

11 So, what is the lot occupancy in an RA-2 Zone?

12 MR. LeGRANT: The maximum lot occupancy in an RA-2
13 is 60 percent.

14 MS. LORD-SORENSEN: Okay. And, how, in general,
15 how is the lot occupancy calculated?

16 MR. LeGRANT: Lot occupancy is that portion of the
17 lot that's covered by the building footprint or building area
18 as defined in the zoning regulations.

19 This particular case, yes, there was different
20 varying figures given by the Applicant. So, when my staff
21 and I reviewed it, we concluded that the actual pre-existing
22 lot occupancy is 65 percent.

23 Now, that is an existing nonconforming condition.
24 As such, the zoning regulations allow continuation of a
25 nonconforming condition but with other restrictions,

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1 especially for the upper story addition.

2 MS. LORD-SORENSEN: Okay.

3 CHAIRPERSON HILL: Ms. Lord-Sorensen, I'm sorry,
4 I know that I kind of -- we're running a little bit low on
5 time. And, also, I know that we wanted to take a break for
6 a second.

7 But, no, no, do you -- we are going to have a
8 bunch of question, I'm sure, for the Zoning Administrator.
9 But I -- do you need a little more --

10 I mean, we wanted to start to wrap up is what I'm
11 trying to get at.

12 MS. LORD-SORENSEN: Certainly. I just have a few
13 more questions.

14 CHAIRPERSON HILL: Okay.

15 MS. LORD-SORENSEN: Appellant asserted that the
16 demolition somehow impacted the fact that the property is
17 nonconforming. What is your position on that?

18 MR. LeGRANT: Okay, so longstanding stance in my
19 office is, if you raise a building, you would lose the
20 nonconforming rights.

21 If, however, you demolish a portion of the
22 building and then they're restoring that same nonconforming
23 feature, in this case, the nonconforming lot occupancy, that
24 is a modernization or repair.

25 That is permitted and a very, in this case and

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1 other cases, it's an allowable protection of the
2 nonconforming rights as long as it does not expand on that
3 level.

4 And, in this case, that was 65 percent existing
5 and proposed 65 percent continuing that nonconforming lot
6 occupancy condition.

7 MS. LORD-SORENSEN: Thank you.

8 So just probably two or three more questions. The
9 last -- well, second to the last question or so, the green
10 are ratio requirements, do you know what the green area ratio
11 requirement is for an RA-2 Zone?

12 MR. LeGRANT: You have to have a minimum of .4.

13 MS. LORD-SORENSEN: Okay. I'd like to direct the
14 Board's attention to Exhibit 26A, Exhibit 5, Architectural
15 Drawing L603.

16 Zoning Administrator, based on the approved plans,
17 what is the gross area -- excuse me, the green area ratio?

18 MR. LeGRANT: There is .407 which exceeds the
19 minimum requirement.

20 MS. LORD-SORENSEN: Okay. And, last, but not
21 least, Appellant asserts that it was noncompliant because
22 there was no application for solar panels and that the green
23 roof areas called out to be supported by 2x8 conventional
24 lumber.

25 I'd like to direct your attention to Architectural

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1 Plan S0013 which is Exhibit 6.

2 And, what is your position on this?

3 MR. LeGRANT: Yes. So, it was referred to on DCRA
4 structural discipline. This question was raised is whether
5 the structural members of the roof were sufficient to be able
6 to support the green roof.

7 My office nor am I structural engineers, so we
8 relied on the structural discipline. They found that the
9 structural framing was sufficient to support the green roof
10 and approved it as part of the building permit approval of
11 the revised permit.

12 MS. LORD-SORENSEN: Okay. And, so, the Zoning
13 Division works closely with the structural group, correct?

14 MR. LeGRANT: Correct.

15 MS. LORD-SORENSEN: Okay. So, going back to a
16 point that Mr. Rueda raised, if the structural plans differ
17 from -- differ or conflict, for example, with the
18 architectural plans, how do you remedy the situation?

19 MR. LeGRANT: Okay. The zoning approved plans
20 will govern if there's a conflict. Yes, there's the
21 structural or the mechanical, the electrical, end of the day,
22 the building permit's issued. A C of O has to be obtained
23 that has to, at the inspection stage, conform with the zoning
24 approval.

25 There's a separate zoning inspection that has to

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1 document compliance with the zoning approved plans.

2 MS. LORD-SORENSEN: No further questions.

3 CHAIRPERSON HILL: Okay. All right, we're going
4 to come back and when we come back, we're going to have
5 questions from the Board to the Zoning Administrator.

6 And then, we'll also take a cross from both
7 Appellant and the building owner.

8 Thank you. Five minutes.

9 (Whereupon, the above-entitled matter went off the
10 record at 5:03 p.m. and resumed at 5:13 p.m.)

11 CHAIRPERSON HILL: All right, Mr. Moy, let's go
12 ahead and --

13 MR. MOY: I believe you're at the cross-exam
14 point.

15 CHAIRPERSON HILL: Okay, great. So, just I think
16 the Board -- I have some questions for the Zoning
17 Administrator and I would assume that the Board does as well.
18 And, just to let everybody know what's going on here, there
19 is a possibility that we're going to have to have a hard stop
20 at 6:00.

21 And so, I think that there is already more
22 information than I think that we'd be able to deliberate upon
23 tonight. And so, probably, regardless, we are going to have
24 to take time to look at everything and then come back and for
25 a decision.

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1 But, we might end up coming back even for a
2 continued hearing in order to just continue to ask questions.

3 So, we'll see where we get to. I just want to let
4 everybody know.

5 So, Mr. LeGrant, I guess what my -- I understand
6 that the Building Height Measurement, I understand where
7 you're getting it from or I should say that I understand how
8 you're measuring the height of the building.

9 I just have a couple of questions, like the
10 height, depending on where you're taking your measurements
11 from, which I understand where you're taking your
12 measurements from, the height -- there's nothing that
13 concerns you with the height?

14 MR. LeGRANT: Well, correct. There's -- I am
15 comfortable with the approved planned depiction of the
16 building height both in terms of the overall building mass,
17 that the overall height of the building as well as the
18 treatment of the lowest level.

19 CHAIRPERSON HILL: Okay. And, there's been a lot
20 of discussion while I've been here serving on this Board in
21 terms as what qualifies as a basement and what qualifies as
22 a cellar.

23 And so, I feel comfortable understanding that
24 determination.

25 I suppose, in this area now and what the ANC is

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1 kind of arguing in terms of the appeal is more along the
2 lines of, you know, whatever you want to call the attic,
3 storage space and so -- and how that counts against the FAR.
4 Right? Or, you know, or GFAR.

5 And so, what I understand from the discussion here
6 is that if it's under six, six, it does not count as -- it
7 does not count against FAR?

8 MR. LeGRANT: That's correct. And, as per the
9 definition of gross floor area which includes areas of six,
10 six or greater, when it's less than six, six, and in this
11 subject case, six foot five, it does not qualify as gross
12 floor area, therefore, it's not included in the FAR
13 calculation.

14 CHAIRPERSON HILL: Okay. And, how you determine
15 whether or not, just as with cellars and basements, you've
16 given us a lot of information as to how you -- and how that's
17 measured. Right?

18 How does one measure whether or not it's
19 considered an attic, you know, whether it's under the six,
20 six?

21 MR. LeGRANT: Yes. Well, as my counsel who
22 referred to the discussion of the plan sheet which was the
23 section, the building section again, A0032, which has a
24 depiction of the dimension between the floor -- the floor
25 level and the ceiling indicated the dimension six foot five

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1 inches.

2 That is what my office, that dimension is clearly
3 called out. That's what my office reviewed in it's
4 evaluation and analysis to come to its conclusion.

5 CHAIRPERSON HILL: Okay. And, I appreciate the
6 opportunity to just kind of cut right to the chase in some
7 of these discussions that we're having which is to say, you
8 know, whether or not that's occupied or not is not whether
9 or not it counts against GFR or FAR, right?

10 You're just -- it is more -- it's a regulation
11 that states if it's under six, six, it counts as an attic
12 and, therefore, it does not count against FAR, correct?

13 MR. LeGRANT: That's correct.

14 CHAIRPERSON HILL: Okay. So, whether or not
15 people are up there, whether or not, you know, it's occupied
16 by people does not matter in terms of the regulations?

17 MR. LeGRANT: I would agree, yes.

18 CHAIRPERSON HILL: Okay. And, again, that might
19 get to more about what the discussion is in terms of what the
20 ANCs are starting to -- they have concerns about as was the
21 community as to what's going on around them.

22 So, that's where I understand where we are.

23 Okay, does the Board have any questions for the
24 Zoning Administrator?

25 MEMBER JOHN: Yes, Mr. Chairman. So, can we go

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1 back to the how you calculate the height of that fourth
2 level. So, is the calculation taken from the floor joist to
3 the top of the -- to the other floor joist?

4 So, if it's an unfinished space, there wouldn't
5 be a floor and there wouldn't be a ceiling, finished ceiling.
6 So, do you calculate from finished level to finished floor
7 to finished ceiling? Because that could be an inch or two.

8 MR. LeGRANT: Okay. So, as depicted in the
9 drawing with the six foot five dimension shows from the floor
10 on up and it is called as a ceiling.

11 Now, I know there is some discussion about, well,
12 that's -- is that the ceiling? Is that the structural
13 elements of the ceiling?

14 I view it as the structural elements of the
15 ceiling. That is the limitation, that's what the zoning
16 regulations say. That's how much space they can have is the
17 six foot five. It cannot have greater than that.

18 MEMBER JOHN: And so, my follow-up question is,
19 does it matter if there are stairs --

20 MR. LeGRANT: No, no.

21 MEMBER JOHN: And, does it matter if there's a
22 balcony?

23 MR. LeGRANT: No, no.

24 MEMBER JOHN: Does that affect whether or not it's
25 included?

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1 MR. LeGRANT: It does not.

2 MEMBER JOHN: Okay, that's it.

3 Thank you.

4 CHAIRPERSON HILL: Just real quick because we keep
5 going. Mr. LeGrant, have you seen a lot of this before?

6 MR. LeGRANT: I have not seen a lot of situations.
7 This situation is, I believe the Board was aware, the
8 original permit that was approved in error by DCRA had a
9 greater dimension.

10 It was brought to our attention. We issued --

11 CHAIRPERSON HILL: Had a greater dimension? You
12 mean on the top floor?

13 MR. LeGRANT: Yes, I think it was six foot nine.

14 CHAIRPERSON HILL: Okay.

15 MR. LeGRANT: When it was brought to our
16 attention, as is the case, we took enforcement action in the
17 form of a Notice of Revocation of the Building Permit.

18 This prompted the building property owner to come
19 in to see if they could rectify it.

20 They submitted a revised permit, which my office
21 reviewed and found the revised permit to be compliant. So,
22 they were able to address the issue, take a little exception
23 that the DCRA guided these people to help them know, here's
24 the standard.

25 The Applicant has to come in with plans that are

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1 complaint then we do our review.

2 CHAIRPERSON HILL: Did the building lower also?

3 MR. LeGRANT: No, it did not.

4 CHAIRPERSON HILL: Okay. Mr. Miller?

5 MEMBER MILLER: Yes, just following up again on
6 that line of questioning. I realize you're not the building
7 code official and we're not the Office of Administrative
8 Hearing.

9 But, how do you reconcile or you just don't
10 consider it if it's accurate that the building code requires
11 a storage area to have a seven foot before the ceiling seven
12 feet?

13 MR. LeGRANT: Right, right. So, as I may have
14 noted, the -- it has to comply with the zoning regulations.
15 Before the permit is issued, it also has to be reviewed by
16 the Structural Discipline of DCRA to ensure compliance with
17 the building code.

18 In this particular case, my understanding, my
19 counsel reached out to the Structural Discipline to see, oh,
20 what's allowable under the building code?

21 I believe the Appellant is correct. If the normal
22 standard is seven feet, however, the Applicant was able to
23 successfully obtain a building mod -- code modification that
24 had to be approved by the building official to allow the
25 lower, lesser dimension.

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1 And, as such, the Structural Discipline then was
2 able to sign off and the building permit was then issued.

3 MEMBER MILLER: So, the Appellant -- the property
4 owner did achieve a modification for this height?

5 MR. LeGRANT: That's my understanding. Yes.

6 MEMBER MILLER: Okay, thank you.

7 MEMBER HART: Mr. LeGrant, you were talking about
8 the areaway and the way in which you calculate the building
9 height from the areaway.

10 MR. LeGRANT: Yes.

11 MEMBER HART: And, if the areaway was five feet
12 or more perpendicular measurement from the edge of the
13 building, then you would then consider -- that would -- the
14 bottom of that areaway would then be used for the calculation
15 of height?

16 I'm just -- I wasn't asking a question on that
17 part. The question was if the areaway is -- because
18 currently, the areaway is, I don't know, eight feet. If it
19 is like the entire length of the -- of that front, does that
20 -- would that then -- but less than five feet --

21 MR. LeGRANT: Okay.

22 MEMBER HART: You know, you see what I'm saying?

23 MR. LeGRANT: Yes, sure.

24 MEMBER HART: I mean, is a there -- what I'm --
25 the question is, is there a minimum kind of size for that

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1 areaway so that it would then be or not be considered the
2 place of entry?

3 MR. LeGRANT: Because the zoning regulations don't
4 presently speak to this, it's been a practice of my office
5 that an areaway is a pedestrian access typically included the
6 -- it's a landing that leads both to an interior door, and
7 in some cases.

8 And then, in some cases, exterior stairs to the
9 grade outside. That landing has to be the standard that,
10 again, discussed will -- may be codified by the Zoning
11 Commission in its action as the Case 17-18.

12 This five foot perpendicular face of the building.

13 Now, if people come in and if it was the entire
14 length of that facade, I would say, wait a second, tell me --
15 show me the path to travel that the individual going down the
16 stairs is getting to the door.

17 In some cases, it might be more than a -- the
18 landing here that's depicted. This landing includes, I
19 think, an AC unit as well.

20 So, I've had to exercise some discretion about the
21 size, if as long as it's kept five feet, if it's going to the
22 full width of the building. I have, in some instances,
23 rejected applicants in other cases that have a very generous
24 nonfunctional -- it's not functioning anymore as a pedestrian
25 walkway, it's they're trying to maybe squeeze in a more

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1 generous space to use.

2 So, that is a judgment call on the part of my
3 office. Some of this that we've proposed to the Office of
4 Planning and my office proposed to the Zoning Commission to
5 codify and make it clearer for applicants and this as going
6 forward.

7 MEMBER HART: And, thank you for that response.
8 And, is there a kind of a minimum size for an areaway? Like,
9 if they needed a landing to get down to the, you know, to the
10 bottom level that I'm not going to call a basement, so is
11 there a particular size that you would --

12 MR. LeGRANT: Yes. So, the building code would
13 speak to -- there's a stair width. There's a doorway width.
14 And I believe the landing dimensions that are minimums under
15 the building code. I would look to the structural
16 discipline, the DCRA, to specify those minimums.

17 MEMBER HART: Thank you, again.

18 And, my last question is, with regard to the
19 alley. So, you had said that the alley that the exit, this
20 is a good -- thank you very much for the -- for showing this.

21 So, on the screen now is Exhibit 26A.

22 MR. LeGRANT: Yes.

23 MEMBER HART: Is it 26B, I think? A? 26A and
24 it's the -- I think the third or fourth page in, fourth page
25 in. Yes, exhibit -- well, yes, I'm just using pages because

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1 it's a little easier for us to -- so, in the back of this
2 building, there is this area that is -- you said it's been
3 filled in and that it's basically, they're filling it in to
4 the grade of the alley. And, is that typically done?

5 I mean, it's, you know, this is a -- the existing
6 grade is -- was a particular location. It was slope that was
7 going down to the building. If built -- or they are
8 proposing to build up that alley and then the -- you said
9 something about it being at the -- you were kind of okay with
10 it because it was at the same grade as the alley itself.

11 MR. LeGRANT: Well, two things, I see, depending
12 on the project, all sorts of variations of the rear yard
13 grade in relation to the alley.

14 Sometimes it goes up, sometimes it goes down.
15 Sometimes like in here, it's flat.

16 I did not mean to in -- to say that oh, it's --
17 now that it's flat to the alley that that is meaningful from
18 a zoning perspective. It's meaningful with the grade,
19 regardless of where the alley was, the grade then, as it
20 comes up against the building, then all that becomes
21 important for calculating the classification of that lower
22 level, the grade plane method and a class -- and, ultimately,
23 how that's treated for gross floor area or GFAR calculation.

24 MEMBER HART: Okay, thank you.

25 CHAIRPERSON HILL: Okay, I'm sorry. Could you go

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1 up to the top of that diagram again there with the attic?
2 I just want to look at that measurement again. It was the
3 six, five. Okay.

4 All right, okay, anyone else for the Zoning
5 Administrator? As of right now at least?

6 (No response)

7 CHAIRPERSON HILL: Okay. Does the Applicant have
8 any cross for the Zoning Administrator?

9 MR. BOESE: Sure.

10 CHAIRPERSON HILL: I'm sorry, Appellant?

11 MR. BOESE: I have a few questions, thank you.
12 Just quickly, why was the revised permit prepared?

13 MR. LeGRANT: Once the Notice of Revocation of the
14 original permit was issued and the Applicant, in response,
15 after coming in to our office, prepared a revised
16 application.

17 MR. BOESE: Okay. Has Zoning Case 17-18 been set
18 down? And, if so, does that affect your review?

19 MR. LeGRANT: It has not been finalized. The
20 Commission did have a set down for the -- and they conducted
21 a hearing. The 17-18 rules are not yet in effect as of --

22 But as I noted, it, in part, it proposes to codify
23 several practices of my office.

24 MR. BOESE: Thank you.

25 Understanding that, as been mentioned by Mr.

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1 Miller, you don't have direct oversight of the building code,
2 but you did state that the building -- those requirements
3 would have to be complied with prior to the issuance of a
4 permit, correct?

5 MR. LeGRANT: That's correct.

6 MR. BOESE: So, my question becomes, from the
7 balcony area to the stairway leading down, would that be
8 defined as occupiable space for a corridor?

9 MR. LeGRANT: So, I'm sorry, I want to be clear,
10 you're talking about the exterior balcony?

11 MR. BOESE: Okay. I was just -- I'm just looking
12 for the way one would walk to use that and walk back to get
13 from it. I presume that no one's going to build a balcony
14 just for decoration.

15 And so, my question actually gets to the point of
16 what would be the clearance and the headroom of that space
17 to get through that corridor?

18 MEMBER HART: Are we talking about the fourth
19 level?

20 MR. BOESE: Yes.

21 MEMBER HART: Okay.

22 MR. BOESE: Yes. Sorry for the confusion.

23 MEMBER HART: Okay.

24 MR. LeGRANT: Yes. Yes, they would have to walk
25 to the what's now called the attic space with the six foot

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1 five clearance to access that balcony.

2 MR. BOESE: Okay, thank you. And, so, if the
3 building code said -- would you consider that a corridor or
4 how would you define that space to walk to and fro?

5 MR. LeGRANT: Well, a corridor is not a zoning
6 term. I believe maybe perhaps the building code has some
7 classification as to how that is -- that space is to be
8 treated as a corridor. I do not -- I cannot speak to the
9 building code aspects.

10 MR. BOESE: The reason I bring it up is because
11 that level's been determined or has been labeled as a storage
12 room which has a ceiling height not to be less than seven
13 feet, which you've indicated there's been agreement that that
14 doesn't have to be, that it can be lower.

15 But it also says that occupiable spaces, habitable
16 spaces and corridors shall have a ceiling height of not less
17 than seven feet, six inches, which is much different than
18 seven feet.

19 And so, I'm just wondering if that had been taking
20 into consideration?

21 MR. LeGRANT: Again, that's a building code
22 matter. I would have to defer to my -- the Structural
23 Discipline and the Permit Operations Division at DCRA that
24 administers the building code.

25 MR. BOESE: Another question I have is, do these

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1 labels, what we call these spaces matter? I mean, it seems
2 to matter when we're talking about a basement versus a
3 cellar. It's not just something -- a word we use, there is
4 actually seems to be requirements behind it.

5 And so, I'm just wondering if you could briefly
6 explain the difference between a mezzanine versus an attic
7 versus a storage level?

8 MR. LeGRANT: Well, first of all, your question --
9 the terms that are referred to on plans are relevant if they
10 speak to a zoning definition or some regulation, zoning
11 regulations, some aspect of the zoning regulations.

12 So, storage is not a term that is a define --
13 there's not a definition of storage in the zoning
14 regulations.

15 There is a definition in mezzanine, which I think
16 I've testified a little bit about today. If it is -- if an
17 area does -- is gross floor area, then there's a mezzanine
18 allowance in certain zones to not be counted as story as long
19 as long as it's not more than one-third of the area of the
20 floor below.

21 MR. BOESE: I'm also curious, in your experience,
22 how many other scenarios such as this one have you
23 encountered? Is this prevalent? Is this something that's
24 new? Is this -- how would you clarify this solution for a
25 top level?

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1 MR. LeGRANT: I would say it's not prevalent, but
2 there has been other instances. I can think of offhand of
3 my ten years as Zoning Administrator, maybe four or five
4 other instances in which applicants have proposed attic areas
5 with the vertical dimension of less than six, six so as not
6 to be classified as gross floor area.

7 MR. BOESE: Do you recall if those four or five
8 instances you're referencing, have they also had finished
9 floors and balconies and windows?

10 MR. LeGRANT: I don't recall the -- I really don't
11 recall if that about the balconies and windows.

12 I will say, after that's somewhat speculation, but
13 I will say the definition of gross floor area includes an
14 attic as referenced to the language of attic that includes
15 if it has a finished floor.

16 So, there are attics that have finished floor and
17 it's embodied in the definition and my office has approved
18 those in other instances.

19 MR. BOESE: And, I believe it might have been Ms.
20 John, and if I'm wrong, I apologize, that may have asked the
21 question, or it could have been Mr. Hart, what is the
22 dimension from floor joist to floor joist on that level?

23 MR. LeGRANT: And, I believe I answered the
24 question, as I understand the drawing, the six foot five
25 dimension from the floor below to what is the ceiling that

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1 is depicted.

2 MR. BOESE: Again, I don't think that does answer
3 the question which is why I'm asking. The drawing, as I
4 understand it, and perhaps you can add clarification, said
5 it's a dropped ceiling. So, I'm asking the question from
6 floor joist to floor joist, not finished floor to finished
7 ceiling.

8 MS. LORD-SORENSEN: Objection, asked and answered.
9 The Zoning Administrator has already answered the question.
10 Please move on.

11 CHAIRPERSON HILL: Hold on second. Wait a second.
12 I get to decide whether or not we move on or not. So, hold
13 on a minute.

14 I know I thought we were leaving at six, but I
15 didn't know we were leaving now.

16 So, the question -- but I appreciate you doing
17 your job for the Zoning Administrator.

18 What was your question again? So, again, I
19 understand the Zoning Administrator's -- you're trying to
20 understand whether or not the drop ceiling is part of the
21 measurement.

22 And I guess what I'm getting from the Zoning
23 Administrator's answer was that it's still from, and this is
24 more of a technicality is why this is going to go on even
25 longer, is that you're measuring it from --

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1 Mr. LeGrant, can you explain again where you're
2 measuring it from?

3 MR. LeGRANT: Yes. I relied on the drawing, the
4 depiction of from the floor level up to the top, and I'll say
5 the ceiling, there's a six foot five dimension as to the
6 components of that ceiling assembly, it's labeled, I believe,
7 as insulation. It's mentioned that the insulation's within
8 that.

9 CHAIRPERSON HILL: Okay, so now I'm curious. I'm
10 going to keep following on just for this.

11 So, that can't change? Meaning that that is what
12 -- if they're proposing to build that, that's what will be
13 built?

14 MR. LeGRANT: In order to be compliant with the
15 approved plans at the inspection stage, and the inspector
16 will go out and verify that that dimension is in fact the
17 constructed -- is constructed as per the approved plans.

18 CHAIRPERSON HILL: Got it, okay. Thank you.

19 MR. BOESE: Thank you. Okay, do you mind if I --

20 CHAIRPERSON HILL: How many are you going to have
21 Mr. --

22 (Off-microphone comments.)

23 CHAIRPERSON HILL: Oh, goodness gracious, okay.
24 All right, more like ten, right? So, let's just stick with
25 five, okay?

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1 And then, yes, okay. Go on. We'll let you do it
2 just so we don't have to go through the Commissioner.

3 MR. RUEDA: Mr. LeGrant, can you confirm -- all
4 right, you've limited me to five, so just a second.

5 I'm going to move down to grade. You've asserted
6 that the grade measurement depicted on the drawings shows a
7 flat site condition. Can you refer to our Exhibit C? Are
8 you going to have to pull it up or do they have it?

9 CHAIRPERSON HILL: That's all right, we can pull
10 it up ourselves. Your Exhibit C?

11 MR. RUEDA: I have to ask questions, right?

12 MEMBER HART: Yes, Mr. Rueda, it's really about
13 cross examination of what they have testified to.

14 MR. RUEDA: I mean, they've made a lot of
15 assertions, quite frankly, that are, you know, some of them
16 are based on our analysis.

17 MR. SULLIVAN: Objection as to the question.

18 CHAIRPERSON HILL: That's okay. Hang on, I'm
19 getting a little bit --

20 MR. RUEDA: But, I'm just trying to say, so I'm
21 trying to --

22 CHAIRPERSON HILL: Mr. Rueda, Mr. Rueda.

23 MR. RUEDA: I'm sorry.

24 CHAIRPERSON HILL: That's okay, I mean it's been
25 a long day for us up here. It's been a shorter day for you

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1 guys because you've been sitting most of it.

2 So, give us a chance and this is just merely for
3 cross examination based upon the testimony. You've had your
4 opportunity to give your testimony, this is an opportunity --
5 this is not an opportunity to give further testimony.

6 So, you're just basically saying you've heard the
7 testimony of the Zoning Administrator and so it's just merely
8 asking clarifying questions or cross examination questions
9 of that testimony.

10 If he hasn't said anything during his testimony,
11 then it's not open for cross examination.

12 MR. RUEDA: He did say that it was flat from the
13 alley.

14 CHAIRPERSON HILL: We're, in general, pretty
15 lenient with stuff, so go ahead and ask your questions
16 because we're just trying to get to -- we're trying to gather
17 information ourselves.

18 I mean, I already have a pretty good understanding
19 about how this whole this is actually going down. And so,
20 I'm just trying to -- you -- so go ahead and ask your
21 questions.

22 MR. RUEDA: Can you affirm whether the BHMP was
23 taken from existing grade or from finished grade?

24 MR. LeGRANT: The depiction of the -- in the plans
25 show, as I interpreted it as existing grade at the front of

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1 the BHMP is.

2 MR. RUEDA: Right. Okay, but, can you confirm
3 whether or not that's finished grade or existing grade?

4 MR. LeGRANT: I said existing.

5 MR. RUEDA: You said existing? So, four foot
6 seven, the dimension that you mentioned in your testimony is
7 what you consider to be existing grade?

8 MR. LeGRANT: The four foot seven is from the
9 building -- from the existing grade level to the floor of the
10 -- above which is the four foot seven dimension.

11 MR. RUEDA: So, if you -- yes, I'm not a lawyer
12 so I don't know how to ask cross examining questions.

13 CHAIRPERSON HILL: That's all right, I'm not a
14 lawyer either. I'm going to do my best for both of us.

15 MR. RUEDA: The exhibit that on the screen,
16 Exhibit C shows the survey that was conducted of existing
17 conditions. Would you revise that assessment if you were
18 shown that the first floor is shown at one height that's
19 calculable from the existing grade measurements presented?

20 If you looked at this, where would you determine
21 the existing grade to be? Or the BHMP, excuse me.

22 CHAIRPERSON HILL: Hold on, give him a second.

23 MR. LeGRANT: This particular graphic, I have not
24 reviewed to date. I rely on the approved plans that are
25 presented to me, the depiction of the grade. The Applicant

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1 property owner must be held to the depiction that he makes.

2 CHAIRPERSON HILL: Okay. Mr. Rueda, what -- I
3 mean, I think the grade issue is just, you know, that's been
4 beaten down now for a while. So --

5 MR. RUEDA: I just wanted to make sure because --
6 okay, I understand.

7 CHAIRPERSON HILL: Well, you can disagree, but go
8 ahead.

9 MR. RUEDA: I mean, I disagree, if you're asking
10 me because I do this --

11 CHAIRPERSON HILL: I'm not asking you. I'm saying
12 you can disagree, that's all I'm saying.

13 MR. RUEDA: All right. Well, okay.

14 CHAIRPERSON HILL: Why don't we do this, Mr.
15 Rueda, and the -- your Appellant, you will have a chance for
16 rebuttal. This isn't the end of your opportunity to speak.

17 And so, I mean, what I find, and just to let you
18 know, Mr. Rueda, is that, you know, this is in how you get
19 down this long drill, but okay, never mind.

20 So, okay, so the purpose was, again, for cross
21 examination so that we can hear from the people providing
22 testimony things that might be clarifying to help us get to
23 where you're trying to get us. Right?

24 And, so, the more it gets more confusing from the
25 cross examination, the not -- the less likely it is to

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1 provide clarity.

2 So, I'm going to go ahead and move on and we can
3 come back to rebuttal where you can further provide clarity
4 on the testimony that was given to us.

5 I don't think we're going to get to it today.
6 Okay? So, but rebuttal will come when we come back for a
7 continued hearing.

8 And, you'll have an opportunity to review this
9 hearing which will give you even further opportunity.

10 I'm going to turn to the --

11 MR. RUEDA: I appreciate it, thank you.

12 CHAIRPERSON HILL: Mr. Rueda, you're welcome. I'm
13 going to turn to the property owner. I'm going to put down
14 20 minutes again for you and you can begin whenever you like.

15 MR. SULLIVAN: Thank you, Mr. Chair and members
16 of the Board.

17 My name is Marty Sullivan with the law firm of
18 Sullivan and Barros on behalf of the property owner. I
19 represent Mr. And Mrs. Le, they are owners and residents of
20 the subject property. They have lived in this building for
21 23 years.

22 As their children are grown and they enter
23 retirement, they have decided to undertake this project
24 creating three apartments below them and reserving the upper
25 unit for their continued residence.

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1 A lot of what's being said by the Appellant
2 relates to subjective, sometimes irrelevant factors, talking
3 about other projects, what other developers do or what
4 they've done after they've gotten the permit approved. It's
5 not relevant here, of course.

6 And, they've referenced other situations and
7 talked about potential precedent. What they haven't talked
8 about is the effect of this, of what they deem to be a
9 problem here.

10 Nothing's ever going to change here regardless of
11 what -- from the outside, as the community sees it about
12 this. It can still be four units, it can still be this
13 height. It's under the maximum building height.

14 We're talking about whether the height -- we're
15 talking about the character of the ceiling and we're talking
16 about what's inside the room, I guess.

17 The Appellant, of course, has the burden of proof
18 and they need to clearly articulate an error by the Zoning
19 Administrator.

20 And, they're here with statements like we have a
21 lot of questions and we have a lot of concerns. That's not
22 identifying or articulating a specific error.

23 And, the couple instances where they've gotten
24 close to articulating error, I think has been safely refuted.

25 A big concern is precedent. How about precedent

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1 in the other direction?

2 What they're saying is, here, take away the
3 objective standard of the height of an attic and put in place
4 a new standard that's based on, maybe, you know, a couple
5 hundred factors.

6 What kind of carpet you have in there, whether --
7 what kind of paint, what kind of furniture you have in your
8 attic, what you do in your attic. Right now, it's based on
9 height.

10 This Applicant came to DCRA. They have thousands
11 of regulations to comply with, building code and zoning.
12 They get a building permit because there's so many
13 regulations that sometimes, even DCRA misses one or two.

14 And then, a few months into the project while
15 construction's underway, that permit -- they get a stop work
16 order, a very damaging stop work order.

17 They come back to DCRA and they say, what do we
18 need to do to comply? And DCRA says, well, here's the rule
19 for attics, you missed it. You were six, nine, you have to
20 be below six, six.

21 Okay, they revised their plans. They changed the
22 labels on a few other things that were requested. They get
23 rid of a penthouse that wasn't compliant. And, now, they're
24 in compliance. And, the Appellant calls that evasion or
25 getting around the rules. Everybody else considers that

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1 compliance.

2 In effect, when they say that, they're saying we
3 do comply, they just don't like the fact -- they don't like
4 the rule, really. They'd like to change the rule. There
5 should be some other way to characterize attic space.

6 A comparison would be non-GFA seller space which
7 can be fully habitable as the Board knows, because they've
8 gone through an appeal with this and it's been clarified by
9 the Zoning Commission recently.

10 You could have bedrooms, you can have kitchens,
11 you can have fully habitable occupied space. So, there's no
12 connection between how you use a space and whether or not it
13 counts in GFA, it relates to the physical measurement of
14 that.

15 One fact issue I'd like to present, I have the
16 project architect and I think the Board might like some
17 clarification on the structural headroom issue and the height
18 and what exactly is -- represents the ceiling of the fourth
19 floor space.

20 Dave, could you introduce yourself?

21 MR. TRACZ: Absolutely.

22 David Tracz, I'm a partner at 3877 Architecture.

23 MR. SULLIVAN: Could you explain, describe the
24 structural character of the ceiling of the top floor?

25 MR. TRACZ: Our intent is to frame the ceiling,

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1 a wood frame ceiling and then drywall attached to it.

2 MR. SULLIVAN: So, it's not a drop ceiling?

3 MR. TRACZ: It is not an ACT ceiling like what's
4 above us.

5 MR. SULLIVAN: Thank you. That's all I have.

6 CHAIRPERSON HILL: Okay. Is that it?

7 MR. SULLIVAN: That's it.

8 CHAIRPERSON HILL: Okay, great. So, I will do --
9 well, do we have any questions for the property owner?

10 (No response)

11 CHAIRPERSON HILL: Okay, okay. All right, does
12 the Appellant have any questions for the property owner?

13 MR. BOESE: Just one simple one. If the top floor
14 is being presented as an attic, why isn't it called an attic?
15 Again, presuming that these definitions and these spaces
16 matter.

17 MR. TRACZ: We're happy to change that. I think
18 it was just a matter of semantics.

19 MR. BOESE: Okay.

20 CHAIRPERSON HILL: Okay. So, I don't know, I'm
21 trying to think, because like rebuttal, I've done cross,
22 right?

23 I mean, I'm kind of stuck and even kind of -- and
24 I'm kind of throwing this stuff about for the Board a little
25 bit in terms of discussion.

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1 I mean, I'm going to think maybe that we'll go
2 ahead and come back in order to have the Appellant have a
3 chance for rebuttal.

4 And, Mr. Rueda, once again, the -- I didn't mean
5 to fluster you at all in terms of, you know, I want to hear
6 clearly what it is you guys are trying to have us listen to.

7 And, for whatever it's worth, I'll be happy to
8 kind of talk through some of this with you guys right now.
9 I mean, I find this a little -- I find it very interesting.

10 This is the first time that this has happened with
11 us, okay, that we've seen this. Okay?

12 And so, and I don't think it's that clear cut
13 either in terms of like what the property owner might be
14 doing, whatever they can do.

15 I mean, we've gone through -- I've gone through
16 years and years now having the whole basement cellar thing.
17 Okay? And, I think that that has been at least done enough
18 that I'm comfortable with my understanding of it and that,
19 you know, what defines a cellar and whether or not that
20 cellar can be occupiable.

21 And so, now, I -- this is the first time that I've
22 seen it with the attic to where you're here and it's, you
23 know, is the attic occupiable and how does that get defined?

24 Now, from the perspective of the Appellant, you
25 know, your burden of proof is, again, has this Zoning

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1 Administrator erred? And, if so, how has he erred?

2 I guess, you know, where I -- and I'm just kind
3 of explaining myself now just so even I remember it after the
4 holiday break is that, you know, has the Zoning Administrator
5 erred in the way these things have been done.

6 And, I guess what I continue now to struggle with
7 is the envelop of the building is the envelop of the
8 building. How that attic is counting against FAR or not is
9 something that we are now looking, you know, understanding
10 the regulation as to how that measurement is taking place.

11 And, as far as, you know, what happens, and, you
12 know, the -- as the architect's there, no. You know, you
13 come in, you get your measurements. You get the people come
14 in, they get their Certificate of Occupancy and then who
15 knows what happens to the ceiling? Okay?

16 So, but that's not really I think what is the
17 argument I supposed is what I'm trying to also just kind of
18 struggle with here.

19 I mean, and so, for what it's worth, that's what
20 I'm saying.

21 So, does the Board have any comments or thoughts
22 to leave everybody with before the holiday?

23 MEMBER HART: Yes, it's our summer break, it's the
24 -- there's no holiday coming up right now.

25 CHAIRPERSON HILL: It feels like a holiday to me,

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1 buddy. It is a holiday.

2 MEMBER HART: Okay, you know the transcript
3 doesn't actually, you know, do caps when you talk louder,
4 just saying.

5 So, I'm sorry, a little punchy.

6 So, I guess my -- the reason that I am kind of
7 looking for just some time to kind of go through this is
8 because I want to make sure that we're kind of getting it
9 right.

10 There was a lot of -- there was testimony that was
11 provided to us. There's, you know, the information that's
12 in the record that we're kind of working through.

13 I am more comfortable about what it is that is
14 being kind of -- the issues that are there. I'm -- I want
15 to make sure they're not missing something in that I --
16 that's why I'm kind of wanting to step through this fairly
17 succinctly or organize it in a way so that it kind of says,
18 okay, you know, we got to this decision.

19 And, in many ways, these decisions are kind of
20 based on each other. Or many of them are. You know, you've
21 got to figure out where the measuring point is for the
22 building. And, that kind of also dictates -- so, where the
23 measuring point is will dictate how tall the building is.

24 It'll also indicate what the -- if it's a basement
25 or a cellar and that'll dictate whether or not the FAR is

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1 included in it or not.

2 So, all these things are kind of interrelated to
3 each other -- with each other.

4 The -- and so, that's the kind of part I want to
5 make sure that I'm understanding. And, I am just not there
6 right now. And, it's just hard for me to get there with --
7 I just feel like I have a lot of numbers that were thrown at
8 me and I want to make sure that I'm kind of looking at it
9 correctly and being able to say, okay, yes, I'm kind of
10 confident in, you know, this decision whatever that decision
11 is.

12 But, I do appreciate the time that you all have
13 given us and the information that you've given us. I
14 appreciate it because I know that it's time and effort that
15 it takes you all to kind of get there.

16 And, you all, Mr. Boese and Mr. Rueda, you've done
17 a good job with explaining it. It's just, again, us kind of
18 getting through, okay, so, what did the Zoning Administrator
19 say and what is the testimony that we got from the ANC and
20 Mr. Rueda.

21 And so, you know, I'm -- I don't have a this is
22 where I am with it. It's more I'm still working through it.

23 And, many times with appeals, there tends to be
24 a lot of information that we're taking in and so we want to
25 make sure that we're kind of taking in, thinking about that

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1 and then being able to make a determination after reviewing
2 the testimony again and thinking about the written documents.

3 And, I'll tell you, I usually always find more
4 information through the testimony than I do necessarily
5 through the -- just through the written documents that are
6 supplied.

7 So, it's always helpful to hear intonations and
8 inflection and emphasis so that we get where kind of, you
9 know, what it is that's being presented to us.

10 So, those are my thoughts.

11 MEMBER WHITE: Mr. Chair, I mean, there's a lot
12 of information on the record. You guys asked some really
13 great questions and basically, you know, I think we are
14 looking at whether or not the Zoning Administrator erred as
15 it relates to height, FAR, lot occupancy, the green area
16 ratio requirements.

17 So, I'd like to go back and look at the arguments
18 of the property owner, DCRA as well as the Appellant and kind
19 of pull the facts together to see whether or not I can come
20 to the conclusion that BZA made any type of error.

21 But, I'm not prepared to make a decision today.
22 I'd like to study the information and go through it a little
23 bit more thoroughly. And, I think the record's full.

24 CHAIRPERSON HILL: Okay. I'm going to let -- but
25 I have a couple quick questions.

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1 Mr. Sullivan, what's there now? The building
2 there now?

3 MR. SULLIVAN: It's a single-family.

4 CHAIRPERSON HILL: Okay. But, I mean it's a --
5 it's not this height or anything? It's -- what's the height
6 of the building now?

7 MR. SULLIVAN: We're not certain of that now.

8 CHAIRPERSON HILL: Okay, but it looks to similar
9 to one of these here. I mean, they're just --

10 MR. SULLIVAN: It's the one on the end, on the
11 left side. Actually, that's how it was, it's now demolished.
12 The porch is gone and the back portion of the building.

13 CHAIRPERSON HILL: And, when you say the one the
14 end, if you're looking at the picture, the to the left?

15 MR. SULLIVAN: The one to the left.

16 CHAIRPERSON HILL: Okay. So, that's what's there
17 now, except for, right, some -- they are starting to do some
18 work.

19 And so, actually, this is kind of helpful. So,
20 the height of the building that will be there -- the by right
21 height is what those other two properties are in the middle,
22 correct, Commissioner Boese?

23 MR. BOESE: I would presume so, they did not --
24 those are not done through a BZA process. So, those were
25 constructed as by right projects.

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1 CHAIRPERSON HILL: Okay.

2 MR. RUEDA: 1471.

3 CHAIRPERSON HILL: Is that the gray one?

4 MR. RUEDA: The white one.

5 CHAIRPERSON HILL: Okay.

6 MR. RUEDA: Was permitted with a six foot, five
7 and three-quarter inch mechanical mezzanine.

8 CHAIRPERSON HILL: Okay.

9 MR. RUEDA: It was revised to that because they
10 had originally excluded it from FAR. That roof -- I don't
11 know why I'm telling you this -- but the roof was actually
12 raised three feet from that measurement.

13 So, I don't know what the measurement is there,
14 but it was compliant in the drawings.

15 CHAIRPERSON HILL: Okay.

16 MR. RUEDA: So, it's hard to know if they cross
17 with the three feet they added.

18 CHAIRPERSON HILL: Okay. All right. Okay, and
19 then so, Commissioner, the discussion that's going on with
20 your ANC and the community are a large part of it.

21 Is what is being -- how much occupiable space, I'm
22 just kind of asking, how much occupiable space is happening
23 inside of these properties? Right?

24 Because, the height is whatever the height's going
25 to be and that's understood by the ANC, correct?

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1 MR. BOESE: Yes, and we understand that this is
2 not an RF-1 Zone, that this is RA-2. So, one would expect
3 more density.

4 The discussion from the meeting was merely along
5 the lines of, especially with, I believe, it was 1471 getting
6 caught in this purgatory of not having a C of O because it --
7 what was built does not conform with what was permitted.

8 That just becomes a blight in the community.
9 Vacant buildings don't do us any good.

10 And so, the concern for us is really that these
11 things, if they are by right projects, that they are truly
12 by right projects and not attempts --

13 I mean, we know a lot of families are trying to
14 convert their homes. We also know there's a lot of
15 development that isn't necessarily honest. And, we're trying
16 to get ahead of this by digging into it and making sure that
17 these things are occupiable and are compliant.

18 CHAIRPERSON HILL: Yes, I know.

19 MR. BOESE: You know what I mean.

20 CHAIRPERSON HILL: I mean -- no, no, I do know
21 what you mean. I just like how people start to shake their
22 head or all these words, when loaded words get thrown around
23 as to what's honest or not. I mean --

24 MR. BOESE: So --

25 CHAIRPERSON HILL: I was just trying to understand

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1 in terms of whether the ANC understood the by right height
2 that was going on.

3 MR. BOESE: Yes.

4 CHAIRPERSON HILL: And, your answer tends -- is
5 yes, right?

6 MR. BOESE: Yes, we understood --

7 CHAIRPERSON HILL: Okay.

8 MR. BOESE: We understand the zoning for this
9 block.

10 CHAIRPERSON HILL: Okay.

11 MR. BOESE: And, we understand that the houses are
12 going to be much taller when they have additions.

13 CHAIRPERSON HILL: Okay, all right.

14 Mr. Miller or Ms. John, did you have anything to
15 add?

16 MEMBER JOHN: No, Mr. Chairman, except that I
17 agree, we should probably continue the hearing. Now, would
18 this be a limited hearing?

19 CHAIRPERSON HILL: I think we're just going to
20 have a continued hearing like we're in the middle of this
21 still. So, you know, so we're going to come back, we're
22 going to do rebuttal and then we're going to have
23 conclusions.

24 And then, we'll probably have additional questions
25 I would suppose. And so, I guess I'm looking to Mr. Moy as

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1 to what's going to happen to us.

2 Or, Mr. Miller, you like you're about to say
3 something.

4 MEMBER MILLER: I just wanted to put my two cents
5 in.

6 CHAIRPERSON HILL: Okay.

7 MEMBER MILLER: So, I remember it in September.
8 So, I appreciate all the comments of my colleagues and of the
9 ANC Appellant, the property owner and DCRA.

10 And I think I would like to see whether it's -- I
11 would like to see the either from the property owner or DCRA
12 the documentation that the building code modification has
13 been approved or the ceiling height of the fourth floor area,
14 whether it's a storage area, attic, whatever it is.

15 I'd also like to see if there are -- if a similar
16 code modification has been applied for or obtained yet for
17 the ceiling -- floor to ceiling height for the fourth floor
18 area that's going to be used the occupants, presumably to get
19 to the balcony.

20 And, I guess I want a little bit more information
21 -- and this is -- I know they're not necessarily relevant to
22 the appeal, the zoning issues on appeal, but helpful to my
23 understanding of what's going on.

24 And, I appreciate Mr. Sullivan's comments about
25 a building owner trying to comply getting advice from DCRA

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1 as to how to comply by making certain revisions.

2 But, I think I wanted to know what the originally
3 intended use -- what was the intended use of that fourth
4 floor area and what the currently intended use is, even
5 though I know it's the height and but it relates to whether
6 it's going to be occupied or occupied legitimately or not.

7 Someone's going to have to walk to get to the
8 balcony unless they're not going to -- they're not going to
9 build the balcony or --

10 Okay, that's said, that's my sum of a couple
11 things.

12 CHAIRPERSON HILL: Okay. So, Mr. Sullivan, can
13 you repeat what you think Mr. Miller just asked you guys for?

14 MR. SULLIVAN: The documentation of the building
15 code modification and a description of the intended use of
16 the fourth floor area, particularly in regard to access to
17 the balcony, too.

18 CHAIRPERSON HILL: Okay. And, Mr. LeGrant? I
19 think you were being requested of something from Mr. Miller
20 or no?

21 MEMBER MILLER: If it comes from one or the other,
22 I don't care.

23 MR. LeGRANT: Yes, well, we can certainly --

24 MEMBER MILLER: You might if you have it. You had
25 a conversation. I don't know if you -- if you have a check

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1 off or something?

2 MR. LeGRANT: Well, we -- I will go back through
3 the Structural Discipline to ask for documentation of the
4 building code modification and we will get that to the Board.

5 MEMBER MILLER: And, both for the issue of the --
6 for a storage area and for the issue of accessing the
7 balcony.

8 MR. LeGRANT: We will raise the question.

9 MEMBER MILLER: Okay, thank you.

10 MR. LeGRANT: Yes.

11 CHAIRPERSON HILL: Mr. Rueda?

12 MR. RUEDA: Thank you. That was part of our
13 testimony at one point, so I do have the code modification
14 that I can upload to the record. There's only and it's only
15 for modifying the storage height. It's not --

16 CHAIRPERSON HILL: Well, why don't -- it sounds
17 like we're going to get it from them. So, just go ahead and
18 let it -- it might get confusing, that's all. Just go ahead
19 and we'll get it from either DCRA or the building owner.

20 And then you'll have an opportunity to see it and
21 then respond to it also if -- at the continued hearing. But
22 that means -- when can you guys get that and put it in the
23 record?

24 MR. RUEDA: To clarify, though, he asked for two
25 and there's only one. The second one we believe the

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1 requirement for egress, travel, right, for the travel
2 distance and for the height of the space. That's the other
3 -- that's the second leg of this code mod, as I understood
4 Mr. Miller which is essentially what we were --

5 MEMBER MILLER: The height related to the storage
6 area and the height related to accessing the space.

7 MR. RUEDA: There should be two and there's only
8 one.

9 CHAIRPERSON HILL: Okay, now I'm confused. So,
10 Mr. Miller -- and I just want to make sure, Mr. Miller, are
11 you -- do you understand or do you think that you're going
12 to get what you want from the Zoning Administrator or the
13 property owner based upon your question?

14 MEMBER MILLER: Yes.

15 CHAIRPERSON HILL: Okay, all right. I mean, Mr.
16 RUEDA, I'm just trying to -- okay.

17 And so, okay, so then, when can we get that from
18 either one? Now I'm confused as to who's going to supply it
19 so I apologize. I confused that perhaps.

20 MR. SULLIVAN: We can coordinate.

21 CHAIRPERSON HILL: Okay, fine. So, you guys will
22 both get whatever Mr. Miller has asked for. When can you get
23 it to us?

24 MR. SULLIVAN: Probably very quickly, but I
25 imagine we have a couple months to do that. So, maybe I'll

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1 just say a week and a half of something.

2 CHAIRPERSON HILL: Well, we'll see. Okay. So,
3 that's fine. So it's going to happen in August at some point.

4 So, now, and Mr. Sullivan let his hand show, I
5 didn't realize that we had a couple of months.

6 MR. SULLIVAN: Seven weeks.

7 CHAIRPERSON HILL: Mr. Moy, when or how could this
8 happen again?

9 MR. MOY: All right, there's a couple of options,
10 Mr. Chairman. The soonest -- the earliest would be the next
11 hearing on September 12th. But, I just want to remind the
12 Board there are three cases for decision and then we have
13 eight plus one.

14 In other words, eight applications and one appeal
15 on September 12th.

16 And, after that, on the 19th of September, we have
17 two appeals and I've been trying to limit the number of case
18 applications for that day.

19 CHAIRPERSON HILL: Can I resign?

20 MR. MOY: No, not -- no, that's not workable.

21 So, the 19th.

22 CHAIRPERSON HILL: I'm sorry, is my mic on? I'm
23 sorry?

24 MR. MOY: So and then, on the 26th of September,
25 it's four plus one, in other words, four applications, two

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1 appeals. That's on the 26th of September. Right?

2 I didn't think you wanted to go into October, but
3 if you did, it would be October 3rd, but we've got about a
4 dozen applications on that day.

5 CHAIRPERSON HILL: Okay. So, just let me try to
6 figure this out. So, what is it doing to the permitting and
7 everything in terms of the appeal?

8 MR. SULLIVAN: We're -- they're building.

9 CHAIRPERSON HILL: Okay. So, it's just --

10 MR. SULLIVAN: There's a permit and they're --

11 CHAIRPERSON HILL: Right. And, if you get, then
12 you have to tear it down and do whatever you have to do.

13 MR. SULLIVAN: Yes.

14 CHAIRPERSON HILL: Okay. So, October 6th, you
15 said, was the first time that we're not completely whatever?

16 MR. MOY: October --

17 CHAIRPERSON HILL: I think it was the 3rd, was the
18 -- well, I don't want to keep them all the way to --

19 MR. MOY: Well, it's the --

20 MS. LORD-SORENSEN: I'm unavailable October 3rd.

21 CHAIRPERSON HILL: Okay.

22 MR. MOY: Okay, so, we're in the double ten, in
23 other words, October 10th where we would have five cases and
24 one appeal. So, nothing's perfect, none of this is going to
25 be perfect.

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1 CHAIRPERSON HILL: No, no, I'm sorry. If some of
2 us didn't have to go right now, I'd be happy to keep going.

3 MR. MOY: So, yes, so you can either schedule this
4 really late or take care of it, you know, in the early part
5 of September.

6 CHAIRPERSON HILL: All right, what does the Board
7 think?

8 MEMBER JOHN: I would think earlier, Mr. Chairman.

9 CHAIRPERSON HILL: What's that first one? What's
10 that first one, again, the September?

11 MR. MOY: September 12th.

12 CHAIRPERSON HILL: September 12th? You've got two
13 appeals that day?

14 MR. MOY: One.

15 CHAIRPERSON HILL: One appeal?

16 MR. MOY: Yes, that's great.

17 CHAIRPERSON HILL: Let's do it that day.

18 MR. MOY: That's great, yes.

19 CHAIRPERSON HILL: Because we'll forget everything
20 by the time it comes up. I mean, 10/10, we might as well
21 start again.

22 MR. MOY: I agree.

23 MR. RUEDA: I might have a conflict with what
24 jury, you know, jury duty does to me.

25 CHAIRPERSON HILL: Okay.

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1 MR. RUEDA: It's one with the --

2 CHAIRPERSON HILL: No, no, yes.

3 MR. RUEDA: They wanted me on call, that's all.

4 CHAIRPERSON HILL: Sure, okay. So, I guess we'll
5 see what happens then. Okay.

6 All right, and then maybe we can push you to the
7 end of the day then also as well if you've got jury duty in
8 the morning. You'll find out what's happening perhaps.

9 And, maybe, Commissioner, you can let us know as
10 that kind of is going forward.

11 So, all right, well, thank you all very much for
12 your patience. Also, and how we're trying to get through
13 this.

14 We'll see you the first hearing that we return.

15 MR. MOY: Yes, September 12th and you kind of left
16 open ended when the property owner --

17 CHAIRPERSON HILL: Yes, just get us something in
18 a couple weeks if you could because then we can at least look
19 at it over, you know, before we come back. Okay?

20 All right, okay, thank you all very much.

21 Mr. Moy, is there anything else for the Board?

22 MR. MOY: Not from the staff, sir.

23 CHAIRPERSON HILL: Okay, we stand adjourned.

24 (Whereupon, the above-entitled matter went off the
25 record at 5:12 p.m.)

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C E R T I F I C A T E

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In the matter of: Public Hearing

Before: DC BZA

Date: 07-25-18

Place: Washington, DC

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