

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

OCTOBER 31, 2018

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

MICHAEL TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.
MAXIMILIAN TONDRO, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
STEPHEN MORDFIN
ANNE FOTHERGILL
JONATHAN KIRSCHENBAUM
BRANDICE ELLIOTT
ELISA VITALE
MATT JESICK

The transcript constitutes the minutes from
the Public Hearing held on October 31, 2018.

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

(10:18 a.m.)

1
2
3 CHAIRMAN HILL: We're going to go ahead and do
4 this right now. And so, Mr. Kinney, I'm going to put --
5 can you say your last name for me one more time?

6 MR. AJIBOYE: Ajiboye.

7 CHAIRMAN HILL: Ajiboye. Ajiboye. Okay. So,
8 Mr. Ajiboye, if you could go ahead, and I'm going to put
9 15 minutes on the clock there. It's just so I know where
10 we are. And you can go ahead and -- Commissioner Woods,
11 if you don't mind turning off your microphone. If there's
12 more than one on at a time, it kind of feeds back.

13 And you can begin when you like. I guess
14 obviously you know what you need to tell us, in terms of
15 whether or not we can approve this. You know what the
16 standards are necessary to approve the area variance that
17 you're trying to get here.

18 And so, I'd kind of focus in primarily on that.
19 I guess at the end, if you want to kind of speak to, you
20 know, some of the water concerns that the Commissioner has
21 brought up, and kind of your thoughts on that.

22 And then, Commissioner Woods, just so you know,
23 I mean, as a member of the ANC, you are an automatic
24 party, and so, you know, you'll have an opportunity to ask
25 Mr. Kinney questions again about his presentation and what

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1 he's trying to do.

2 And then, we're going to try to move through
3 this as efficiently as possible. So, you can begin
4 whenever you'd like, sir.

5 VICE CHAIR HART: Just one point of
6 clarification. We did just vote to deny the postponement
7 request.

8 CHAIRMAN HILL: You're very P's and Q's here
9 today. Are we going to -- yeah, so we're voting to deny
10 -- I believe by consensus, Mr. Moy, we're going to vote to
11 deny the request to postpone the present-- the
12 application. Thank you. That's right, it's Halloween.

13 MS. WOODS: So what does that mean?

14 CHAIRMAN HILL: So that means we're going to --
15 I'm sorry, you have to speak into a microphone.

16 MS. WOODS: What does that mean?

17 CHAIRMAN HILL: So, what we're going to do
18 today is, we're going to hear the hearing -- okay? --
19 we're going to hear the presentation. Because we're all
20 prepared, in terms of listening to the hearing, and then
21 we're not going to make a decision today.

22 So then, we're going to have Mr. Kinney present
23 to you -- the ANC, that is -- on, I guess, November 9th,
24 at least as far as whatever issues you believe he needs to
25 still present concerning the water, whatever it is the ANC

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1 might -- because I don't think -- we don't have an actual
2 report from you guys yet, and during this presentation, I
3 believe, Mr. Kinney will kind of tell us about his
4 outreach to the property owners and the ANC, and kind of
5 what you've done.

6 And so, we can get a report from you then --
7 the ANC, that is -- after the hearing. And then we -- and
8 at the end, that's probably enough for me. Like, I don't
9 think we have to have a continued hearing.

10 But we can see what the Board has to say after
11 the presentation here today, as to whether it's a
12 continued hearing, or we just wait for information from
13 the ANC, and then make a decision. Okay? All right, sir,
14 you can begin whenever you'd like.

15 MR. AJIBOYE: Thank you again, Chairman Hill,
16 Commissioners. Good morning. The reason why I'm here
17 today is to request for a variance relief of the Subtitle
18 307. I have a 2,500 square foot lot, a 25 foot width, and
19 the requirement is I have to have an eight-foot side yard.

20 If I have an eight-foot side yard on both
21 sides, it leaves me with a nine-foot that I can't do
22 anything with. Very impractical to put anything on it.
23 So, I'm asking for a variance relief to grant a four-foot
24 side yard on both sides. That will still leave us with a
25 17-foot, which would be something that I can building

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1 something very affordable on.

2 I have reached out to the ANC four different
3 times. The first time was in August in the executive
4 meeting, I presented. Commissioner Wood was absent. They
5 gave me her number, I reached out to her, she was on
6 vacation, she came back, she called me, we started.

7 We have actually met at the lot, what, about
8 twice, or three times. She lives very close to the lot.
9 We would schedule an appointment on the Saturday. We met
10 there, we talked to the neighbors, we knock on doors.

11 I also went to the public hearing on the 2nd --
12 in September -- the second Tuesday in September -- made a
13 presentation, I was told by Commissioner Holmes that
14 because I don't have to be here until October, I should
15 come back in October to make a presentation, because you
16 have other cases.

17 I went back again in October, made a
18 presentation. They loved the house, they loved the idea,
19 they are not opposed to it. But they have an issue with
20 this water in the alley. It's not actually water. When
21 it rains, the -- because the place has been clogged, I
22 believe, the water doesn't drain properly.

23 It doesn't affect my lot. Whatever is
24 happening there is on the 15-foot alley. The 2,500 square
25 foot lot that we have has no water issue. It is a gentle

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1 sloping lot that goes from the front gently to the back.

2 I have no knocks on any doors, I have the
3 support of the neighbor to the left, the neighbor to the
4 right, the neighbors behind me, the neighbors in front of
5 me, and I have the support of DDOT and the support of the
6 Office of Planning. I have actually tried to work with
7 Commissioner Woods, if there is anything that can be done.

8 And the other issue that I want to raise here
9 is that the -- imbued in this lot, it met the three-part
10 test of the variance. Because of the exception in that
11 situation, it resulted in practical difficulty for us to
12 be able to build.

13 And also, there's no substantial detriment to
14 the public good, that -- building that lot. And there's
15 no substantial harm to the zoning regulations by allowing
16 us to have a four-foot variance.

17 It has been supported by the Office of
18 Planning, and also -- the majority of the neighbors. I
19 have letters of support from the neighbors, that they
20 welcome the idea of me coming in there to build this lot.

21 It's a vacant lot. Without building it, it's
22 going to create more havoc, more problem for the
23 neighbors, and they really want me to build it.

24 CHAIRMAN HILL: Okay. All right. Does the
25 Board have any questions for Mr. Ajiboye?

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1 VICE CHAIR HART: Yes, I actually did. This
2 was -- I know that you provided some information -- some
3 letters into the record from the next-door neighbors. The
4 Commissioner earlier said that she had a difficult time
5 trying to reach the property owners. So, it made me
6 wonder, are you -- the people that you have letters from,
7 they are -- are they the property owners, or are they the
8 renters in -- I'm just curious.

9 MR. AJIBOYE: Thank you, Commissioner Hart.
10 Commissioner Woods and I have been to the neighbors, like
11 I said, several times. One of the neighbors who she
12 mentioned, we've been there twice. I met the husband. He
13 signed the letter of support. The wife was not at home.
14 He called me back and said, you need to talk to my wife.

15 I said, yes, I don't want you to be kicked out.
16 I went back, spoke to the wife, spoke to the children.
17 They are both very good-speaking kids. They explained to
18 their mom, they explained to their dad, they don't have
19 any objection. And yes, they are the homeowners.

20 And Commissioner Woods and I went there, we met
21 with the kids, we met with the wife, I believe. And she
22 has no objection. They actually want it to be built. And
23 I have the letter of support, and they are not renters.
24 They are actually homeowners.

25 CHAIRMAN HILL: Anyone else?

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1 VICE CHAIR HART: Thank you very much.

2 MEMBER WHITE: Yes, just a couple of quick
3 questions, Mr. Ajiboye.

4 MR. AJIBOYE: Thank you.

5 MEMBER WHITE: So, without the variance relief,
6 the width of the property would be nine feet.

7 MR. AJIBOYE: Yes, Commissioner White.

8 MEMBER WHITE: And with the variance relief,
9 the width of the property will be what?

10 MR. AJIBOYE: Seventeen feet.

11 MEMBER WHITE: Seventeen feet.

12 MR. AJIBOYE: Yes,

13 MEMBER WHITE: Okay. And when you spoke to the
14 neighbor that needed translation, did they have concerns
15 about drainage?

16 MR. AJIBOYE: No. Well, let me back up.

17 MEMBER WHITE: Uh-huh.

18 MR. AJIBOYE: The neighbors on the side that
19 needs translation, they have a deck at the back of the
20 house. And again, when this issue happens, if it rains
21 for about two days, the water at the back of their house
22 probably doesn't go away.

23 So they are very excited to actually see
24 somebody to come there to build, to see what it is that
25 can be done to help them. This thing is not something

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1 that happen when we purchase the lot. This is something
2 that's probably happening before we even came in there.

3 And if there is something we can do to help
4 neighbors, we will do that. I just don't feel that we
5 have to be tied and bind that, you know, if one side
6 doesn't come in five years, then you're not going to build
7 in five years. So, that is why I'm objecting to the
8 postponement entirely.

9 MEMBER WHITE: Okay.

10 COMMISSIONER TURNBULL: Thank you, Mr. Chair.
11 Mr. Ajiboye, I think -- I appreciate -- I really don't see
12 any major issues with what you're trying to do, from the
13 standpoint of building a house. I guess that, since the
14 issue of the-- one of the things that I don't see in your
15 drawings is any kind of a landscape plan or a civil
16 drawing that sort of shows how the house sits, and how the
17 grade around your house meets your neighbors.

18 I think, for me, at some point I guess I would
19 like to see -- and I don't want to put any burden of extra
20 expense on you for going back to your architect to get
21 another drawing -- but I think we're -- at least I would
22 like to see a drawing that shows your -- the layout of the
23 land around your house and how it meets the adjacent
24 neighbors.

25 And just to verify that none of the land is

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1 draining off onto their property. And it should be a
2 fairly easy drawing for someone to do. But I think that
3 would satisfy probably the ANC, too, to make sure that any
4 water that's on your property is not draining off into
5 anyone else's property.

6 So, some kind of a civil architectural
7 landscape drawing that would show how your property sits
8 on the -- and relates to your neighbors.

9 MR. AJIBOYE: Thank you, Commissioner Bull.
10 That is well-taken. I will definitely take that into
11 consideration. I'll make sure I have it in before I come
12 back again.

13 COMMISSIONER TURNBULL: Yeah. If you could
14 have some submitted for the record if we're going to just
15 have a meeting next time. Thank you.

16 MR. AJIBOYE: Thank you very much.

17 CHAIRMAN HILL: Okay, let's see. So,
18 Commissioner Woods, do you have any questions of Mr.
19 Ajiboye?

20 MS. WOODS: Well, I think --

21 CHAIRMAN HILL: You have to turn your
22 microphone on. That's all right.

23 MS. WOODS: I'm sorry. With Mr. Kinney, we've
24 all -- we've talked on and off about the drainage
25 situation, how the house will be set, and I think

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1 Commissioner Turnbull hit it on the head, because his
2 house will be on a hill.

3 And when it rains, that water will go down --
4 there's no drainage -- going either to what we call the
5 alley, or the bushes, back there. And the -- it's just
6 going to be a water problem, and you will not know what
7 that water problem will be unless it happens. And that's
8 why we wanted WASA to give us some indication of what
9 could be.

10 Now, Mr. Kinney says the water or the drainage
11 will not affect his property. And maybe it won't, because
12 it'll go to the other properties. The water will come off
13 of his property and drain over to each house -- to the
14 homes on each side.

15 We never saw anything from the Office of
16 Planning, so I'm not sure what that's about. The
17 neighbors, as a matter of fact, the one neighbor that's
18 language-challenged, I am very sure that they weren't
19 quite understanding what was going on.

20 The neighbors on the right side, one owner
21 agreed and the other owner didn't, because they said if
22 you build, then something's going to happen, because as
23 long as you start digging and you don't clear that alley
24 way -- which you can't, it's not a paved alley way, it's
25 paper and woods back there.

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1 So you wouldn't see if that was an alley. You
2 would just think there were bushes back there. So,
3 they're not sure what they're getting. And that's why
4 they wanted WASA to investigate.

5 The neighbor across the street says no. Too
6 many times people come into this neighborhood and build,
7 and say this is going to happen, and nothing is done. And
8 we've talked about that. We've talked about that.

9 So, our concern is that we have no problems
10 with him doing the house. Take care of the water problem,
11 that's all -- the drainage and everything else.

12 CHAIRMAN HILL: Okay. Does the Board have any
13 questions for the Commissioner?

14 VICE CHAIR HART: Yes. Commissioner Woods, how
15 long would you say that the water issue has been --

16 MS. WOODS: On that street?

17 VICE CHAIR HART: Well, just -- yeah, in the
18 street and in this particular area --

19 MS. WOODS: Well, that area was --

20 VICE CHAIR HART: -- and where do you say that
21 the water is ponding? Are you saying that it's ponding on
22 the alley? On the alley side?

23 MS. WOODS: Well, if it rains, it goes down the
24 hill and it settles in the drainage or the area behind the
25 -- both houses that are -- and where he would build. So,

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1 if he digs some more, it's going to create some more
2 problems, unless that area is taken care of.

3 VICE CHAIR HART: And did you say there is a
4 drain that is clogged that is behind the alley?

5 MS. WOODS: This is what Mr. Kinney said, that
6 it's a drain -- it's a clogged drain that's there.

7 VICE CHAIR HART: So, Mr. Ajiboye, are you
8 saying that there is a drain that is directly behind your
9 house? Or there's one on that alley?

10 MR. AJIBOYE: Thank you, Commissioner. I'm not
11 an engineer. I don't know what is happening in the alley.
12 I know -- we don't come here and say I know what is going
13 on. First off, the issue that Commissioner Woods is
14 referring to, in talking to the neighbors, this is
15 something that's been happening for years. For years.

16 And I actually tried to reach out when they
17 told me. I reach out to DCRA, I reach out to WASA. They
18 say, you know what, we don't know -- you don't have a
19 house here -- you know, we can help you. And I told her
20 that whatever it is that is happening here has nothing to
21 do with this specific lot that we are trying to build.

22 My lot is gently sloping. Whether it's built
23 or not, these neighbors surrounding that place is still
24 going to be having the issue that they're having.

25 VICE CHAIR HART: No, no. I understood that.

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1 I was just trying to figure out whether or not there was
2 an actual drain that was behind your property, or it's
3 just where the water will naturally flow because it's
4 going downhill.

5 MR. AJIBOYE: Well, I don't know if there's any
6 -- I know there's no drain on my property, and I --

7 VICE CHAIR HART: Okay, that's all I wanted to
8 know. Thank you.

9 MR. AJIBOYE: There's nothing on my property.

10 CHAIRMAN HILL: Okay. All right, I'm going to
11 turn to the Office of Planning.

12 MS. BROWN-ROBERTS: Thank you, Mr. Chairman and
13 members of the Commission. Let's see, the applicant had
14 originally asked for one side yard for eight-foot -- for
15 one eight-foot side yard, and we asked him to address the
16 house so that he has eight-foot -- for that he has four
17 feet on both sides of the house, which would be similar to
18 the two adjacent properties.

19 Regarding the variance, the property was -- or
20 is -- a record lot which was created prior to the current
21 regulation, and does not meet the existing lot area, not
22 with -- within the R-2 zone.

23 Providing the required eight-foot side yard
24 would leave him with only a nine-foot-wide house, which we
25 believe would result in interiors which would be further

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1 reduced by the thickness and internal stairs. And
2 therefore, we think that he has a practical difficulty in
3 meeting the regulations, as a side yard would severely
4 limit the living space within the houses.

5 Regarding the substantial detriment to the
6 public good, we believe that granting the relief for the
7 side yard would allow the development of an infill lot
8 within a fully developed neighborhood, as the adjacent
9 houses also have the substandard four-foot side yards.

10 Regarding the light and air into the
11 properties, because of how the property -- the house would
12 be laid out on the site, we do not believe that their
13 adjacent shadows from the building would be substantially,
14 than if they had a conforming building.

15 Also, regarding the privacy, one of the houses
16 would be set back similar to the proposed house, and then
17 the other is set back further. And because the windows on
18 those houses would be staggered, we don't believe that
19 there would be any direct site lines into the existing
20 houses.

21 We believe that granting the requested variance
22 would allow an infill lot to be developed, would be
23 similar to existing residences within the square and
24 within the neighborhood.

25 The side yards are intended to protect

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1 neighborhood properties, as related above, and we believe
2 that with the reduction, that it would not have an undue
3 impact on the properties adjacent to the site, and
4 therefore, we recommend approval of the variance for the
5 side yards.

6 Regarding the water issues, as I said, we were
7 just informed of that issue. And so, I'm not able to
8 address it at this time. However -- but we also want to
9 note that things with WASA and the drainage are usually
10 issues that are assessed at the time of permitting also.
11 So, with that, I'm available for questions.

12 CHAIRMAN HILL: All right, does the Board have
13 any questions for the Office of Planning? I've got a
14 quick question. The -- in terms of the water, like what
15 would the Office of Planning have gotten from WASA that
16 would have changed their opinion. I'm just trying to
17 understand. You're saying that you just heard of this for
18 the first time now.

19 MS. BROWN-ROBERTS: Right.

20 CHAIRMAN HILL: Like, what would you have
21 necessarily heard that would have had any impact on the
22 analysis?

23 MS. BROWN-ROBERTS: I think what WASA is going
24 to be looking at are more detailed engineering plans, to
25 see -- you know, as Mr. Turnbull had asked about, you

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1 know, the landscaping -- to see about the drainage from --
2 that may have had some -- may give some inkling into the
3 drainage for the site.

4 But I think, from looking at the plans that
5 were submitted to us, I think that WASA is going to need
6 some additional engineering drawings to see what would be
7 the impact from the proposed house.

8 CHAIRMAN HILL: And that's something that
9 you're saying would be addressed at permitting.

10 MS. BROWN-ROBERTS: Right. Yes.

11 CHAIRMAN HILL: And so, at that time, if there
12 was an issue with the water, the property owner developing
13 the property would have to deal with it at that time --

14 MS. BROWN-ROBERTS: Exactly. Right.

15 CHAIRMAN HILL: -- in order to get the permits.

16 MS. BROWN-ROBERTS: Permit. Right.

17 CHAIRMAN HILL: Okay. All right. Does anyone
18 have any -- I'm sorry. Did anybody have any questions
19 with the Office of Planning? Okay, does the Applicant
20 have any questions for the Office of Planning?

21 MR. AJIBOYE: No.

22 CHAIRMAN HILL: Okay. Does the Commissioner
23 have any questions for the Office of Planning?
24 Commissioner, you have to turn the mike on. That's all
25 right.

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1 MS. WOODS: I just need clarification. Are you
2 saying that WASA -- well, let me couch that a different
3 way. Has a permit been granted? And did WASA not
4 investigate before they granted the permit?

5 MS. BROWN-ROBERTS: No permit can be granted
6 because the variance -- the BZA has not ruled on that, so
7 no permit could be granted.

8 MS. WOODS: Okay.

9 CHAIRMAN HILL: But as I understand it, again,
10 as -- for the Office of Planning, I mean, if we granted
11 this -- if we were to approve this, then it would go to
12 permitting, and then WASA would take a look at it and then
13 have to figure out whether or not they would sign off on
14 it. They would have to address any issues in order to get
15 the permit.

16 MS. WOODS: I understand.

17 CHAIRMAN HILL: Correct.

18 MS. BROWN-ROBERTS: That's correct.

19 CHAIRMAN HILL: Okay. I'm right for once.
20 Okay, that's good. All right, so do you have any more
21 questions, Commissioner?

22 MS. WOODS: No, that's it.

23 CHAIRMAN HILL: Okay. Is there anyone here
24 wishing to speak in support? Is there anyone wishing to
25 speak in opposition? Okay. Mr. Ajiboye, do you have --

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1 I'm getting closer. Mr. Ajiboye, do you have anything
2 you'd like to say in conclusion?

3 MR. AJIBOYE: Yes. Chairman, again, in moving
4 forward, the support of the building, except the concern
5 that he has -- and I will say it's a concern, it's not a
6 big issue -- if the Commissioner wants to vote on it
7 today, that will be fine. And if not, I can go ahead and
8 make my presentation again on the 9th, and, you know, if
9 you can put me on the calendar in November, I can
10 definitely come back for the meeting.

11 CHAIRMAN HILL: Okay. Okay. Commissioner
12 Woods, you have anything you'd like to add at the end?

13 MS. WOODS: The only thing I'd like to add and
14 I'd like to say to Mr. Kinney, I'm sorry that you don't
15 see that it's a concern. But it's a concern for the
16 community. And that community where we live, where we
17 oftentimes get neglected by other things, it is a concern
18 of the people who live in that area. And I'm sorry that
19 you take that position. That's all.

20 CHAIRMAN HILL: Mr. Ajiboye -- no, that's okay.
21 I'm done. So -- all right. So, what I think -- what I've
22 understood from this -- and I'll let the Board speak -- so
23 what I think we'd like to see is, Mr. Ajiboye, if you
24 could give a landscape plan or some kind of civil drawing,
25 submit that to the record, and then go ahead and take a

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1 look at the ANC -- I mean, Commissioner Woods, what I
2 understand at this point in terms of the process, like if
3 this were to get approved -- and again, you know, from my
4 standpoint I'm just letting you know where I am -- I think
5 they're meeting the variance test.

6 So, if this were to get approved, he would
7 still have to go through permitting. In other words, if
8 there were a water issue, he would not be getting his
9 permit. All right? So, this is just the first step. So,
10 that's something you can take back to the ANC, as far as I
11 understand the process.

12 But we will wait until he's had a chance to go
13 back to the ANC on November 9th. You were interested in
14 -- I'm sorry, November 8th -- is that what you said? You
15 need to speak into the microphone now. I've asked --

16 PARTICIPANT: It was November 8th.

17 CHAIRMAN HILL: Okay, thank you. And so, if
18 you can get him on the agenda, Commissioner, that'd be
19 great, all right? Or at least discuss this, and if you
20 could submit something to us for the record as to what the
21 ANC's position is, that would be helpful.

22 And so, Mr. Moy, if you could help -- unless
23 the Board has anything else they need, I don't need a
24 continued hearing on this. I think that, you know, just
25 the information that we would get from the applicant, as

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1 well as the ANC, would be sufficient to come to a
2 decision.

3 Unless the Board thinks differently, then I
4 would ask Mr. Moy as to the timeline, as to when things
5 could be submitted, so that we could get back here for a
6 decision.

7 COMMISSIONER TURNBULL: Mr. Chair, I just
8 wanted to ask one thing. Mr. Ajiboye, you're providing
9 one parking space on the property.

10 MR. AJIBOYE: Yes, Commissioner.

11 COMMISSIONER TURNBULL: And it looked like I
12 saw a drawing that showed a concrete pad or something at
13 the back?

14 MR. AJIBOYE: Yes.

15 COMMISSIONER TURNBULL: All right. If you
16 could -- I mean, obviously, that's probably going to show
17 up on your new landscape civil drawing.

18 MR. AJIBOYE: Okay.

19 COMMISSIONER TURNBULL: So, just to clarify
20 that.

21 MR. AJIBOYE: All right.

22 COMMISSIONER TURNBULL: Okay.

23 MR. AJIBOYE: Thank you.

24 CHAIRMAN HILL: Mr. Moy, I'm waiting for you.

25 SECRETARY MOY: Oh, I'm sorry. That wasn't a

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1 trick, sir.

2 CHAIRMAN HILL: Is this going to be a theme for
3 you? Is this going to be a theme?

4 SECRETARY MOY: I'm sorry. Assuming that ANC
5 is meeting on Monday the -- or rather, Thursday the 8th,
6 if the ANC could submit its report or letter to the BZA,
7 let's say by Monday the 12th -- that's a holiday?

8 CHAIRMAN HILL: You need to speak into the
9 microphone. I'm sorry.

10 SECRETARY MOY: I'm sorry.

11 CHAIRMAN HILL: That's all right.

12 MS. WOODS: That's a holiday.

13 CHAIRMAN HILL: That's a holiday? What holiday
14 is that?

15 SECRETARY MOY: Veterans Day.

16 CHAIRMAN HILL: Veterans Day. Oh, okay.

17 SECRETARY MOY: Okay, so how about Tuesday the
18 13th?

19 MS. WOODS: That's fine.

20 CHAIRMAN HILL: Are we not off that Wednesday,
21 Mr. Moy?

22 SECRETARY MOY: I missed it this year.
23 Remember? We -- I thought we had talked about that.

24 CHAIRMAN HILL: Oh, we did.

25 SECRETARY MOY: I said that I promise for next

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1 year.

2 CHAIRMAN HILL: Next year. Okay. I'll still
3 be here.

4 SECRETARY MOY: That's a standing promise. And
5 if the applicant can submit its new drawings as the
6 Board's requested, by -- I would imagine you would need it
7 for the ANC meeting, so -- I would suspect -- so if you
8 could submit that to the record by November -- let's say
9 Friday, November 2nd. Is that doable.

10 CHAIRMAN HILL: That'd be this Friday.

11 SECRETARY MOY: Or do you want Monday, the
12 12th?

13 CHAIRMAN HILL: Well, Monday the 5th, rather.

14 MR. AJIBOYE: Yeah, the 2nd would be too soon.
15 I have to deal with my architect.

16 SECRETARY MOY: Okay, well --

17 MR. AJIBOYE: Before that I could get -- I will
18 probably say by --

19 SECRETARY MOY: Tuesday?

20 MR. AJIBOYE: Tuesday. That would be --

21 SECRETARY MOY: The 6th?

22 MR. AJIBOYE: Yeah.

23 CHAIRMAN HILL: That's Election Day.

24 MR. AJIBOYE: Oh yeah.

25 CHAIRMAN HILL: Everybody go vote.

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1 MR. AJIBOYE: I will go.

2 SECRETARY MOY: Okay, that's Tuesday --

3 CHAIRMAN HILL: Dear God, please go vote.

4 SECRETARY MOY: Okay, so that's Tuesday,
5 November the 6th for the applicant's filing. And the
6 Board doesn't need a supplemental report from Office of
7 Planning?

8 CHAIRMAN HILL: I don't need one. I think
9 we're okay.

10 SECRETARY MOY: Okay, so we're good. So, then,
11 the Board then, with that timeline, could address -- make
12 its decision on Wednesday the 14th. Mr. Chairman, that's
13 a heavy day, by the way.

14 CHAIRMAN HILL: We're just doing a decision.

15 SECRETARY MOY: Okay.

16 CHAIRMAN HILL: We're just doing a decision. I
17 think we're okay with --

18 SECRETARY MOY: Okay.

19 CHAIRMAN HILL: -- just a decision. Right?

20 SECRETARY MOY: I'm good.

21 CHAIRMAN HILL: Okay. All right. So, okay, so
22 -- all right, thank you all very much. And you have the
23 dates and everything? Any questions on the dates? No?

24 MR. AJIBOYE: No. Thank you very much,
25 Chairman.

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1 CHAIRMAN HILL: Okay, great. Thank you. All
2 right, we're going to go back to the top of the agenda,
3 Mr. Moy. Give me one second.

4 (Pause.)

5 All right, Mr. Moy.

6 SECRETARY MOY: Thank you, Mr. Chairman. So,
7 if we can have parties to the table to Case Application
8 number 19804, of 716 Upshur LLC, capture and advertised
9 for special exception relief under the Residential
10 Conversion provisions of Subtitle U, Section 320.2, to
11 construct a three-story rear addition, and convert the
12 existing principal dwelling unit to a three-unit apartment
13 house.

14 This is an RF-1 zone at 716 Upshur Street, NW,
15 Square 3135, Lot 91. As the Board is aware, this was last
16 heard at its September 19th public hearing. Participating
17 is Chairman Hill, Vice-Chair Hart, Ms. White, Ms. John and
18 Mr. Michael Turnbull.

19 CHAIRMAN HILL: Okay, great. Good morning,
20 again. If you could please introduce yourselves for the
21 record, from my right to left.

22 MR. TEASS: Good morning. My name is Will
23 Teass, a Principal with Teass/Warren Architects, here
24 representing the applicant.

25 MS. VORA: Good morning. My name is Amit Vora,

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1 the applicant, 716 Upshur.

2 MR. JONES: Yes. Good morning, as well. My
3 name is Timothy A. Jones, and I am the Advisory
4 Neighborhood Commissioner for single-member District
5 4-COA, which encompasses 716 Upshur Street, NW.

6 CHAIRMAN HILL: All right. Welcome, Mr.
7 Commissioner. Mr. -- is it Vora? Is that what you said?
8 Could you spell that for me, please?

9 MS. VORA: Sure. It's V as in Victor, O-R-A.

10 CHAIRMAN HILL: All right, thank you. All
11 right, Mr. Teass, so I guess you're going to be presenting
12 to us?

13 MR. TEASS: Yes, if I could take the Board
14 through the supplemental filing that we presented.

15 CHAIRMAN HILL: Yeah. If you could, I guess,
16 again, what we're here for -- right? -- is all the
17 supplemental filings and information that we asked for.
18 And then, we're going to have -- we're only here to speak
19 about the supplemental information, in terms of what we've
20 asked for, and kind of work from there.

21 But if you could -- right? -- walk us through
22 what's happened since the last hearing, including any
23 outreach that you might have done with the neighbors of
24 the ANC.

25 MR. TEASS: Absolutely. So, at our last

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1 hearing the Board made several specific requests. One of
2 those requests was for a shadow study. Second request was
3 for reexamining the design of a rear addition.

4 Particularly, there was a stair that was
5 causing some concern. There was also a question about the
6 extent of the roof deck and the impact of the roof deck on
7 the privacy of the neighbors. And then, I think the Board
8 also requested that we take this back to the ANC, which
9 we've done.

10 So, to take you through the presentation fairly
11 quickly, we broke this into three what we called concepts.
12 Concept A --

13 CHAIRMAN HILL: Excuse me, Mr. Teass. Mr. Moy,
14 can you put 15 minutes up on the clock, just so I know
15 where we are? Thanks. Go ahead, sir. Thank you.

16 MR. TEASS: Concept A is the plans and
17 elevations and sections that were presented at the
18 original hearing, and we presented that a basis of
19 comparison. We looked at a Concept B, which starts on
20 page 10, and this is one of the two design iterations that
21 we undertook, in terms of minimizing the impact of light
22 and air on the adjacent neighbor. So, the subject
23 property here is depicted in green, and on either side
24 there's the subject properties of both adjacent neighbors.

25 The central idea for the first option, or

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1 Option B, is that we actually pulled the addition at the
2 second and the third floor back. That dimension is now
3 about 13 feet from--

4 CHAIRMAN HILL: Mr. Teass, can you slow down
5 just a little bit?

6 MR. TEASS: Sure.

7 CHAIRMAN HILL: Can you-- I think you can point
8 on that thing now -- just to what your -- there's a
9 pointer there -- as to how you pulled back, or what --

10 MR. TEASS: Sure. So, there's an area here
11 that previously -- this is the original option. And so,
12 we're proposing a 26-foot addition from the rear wall of
13 the adjacent structure to the west, to the furthest extent
14 of the addition.

15 Our proposed addition here, we're pulling back
16 the second and the third floors to 13 feet back from the
17 adjacent west neighbor. There is still a portion of the
18 site at the ground floor in the cellar-level that would
19 extend the full 26 feet, and the idea here was that by
20 reducing the impact -- reducing the extent of the addition
21 at the upper levels, we would be reducing the impact of
22 light and air onto both adjacent neighbors.

23 We would still have access from the upper-level
24 unit down via the switchback stair. That stair was moved
25 from the east side to the west side, and that stair was

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1 redesigned to be a switchback stair, as opposed to a
2 straight-run stair.

3 CHAIRMAN HILL: Why -- what was your -- why did
4 you move it from the west to the east?

5 MR. TEASS: I think there was the concern of
6 the neighbor to the east. I had testified, I think, at
7 the hearing, he was concerned about that, as were some of
8 the Board members.

9 CHAIRMAN HILL: Okay. And is there a roof deck
10 now, where you pulled it back?

11 MR. TEASS: Correct. There is an outdoor space
12 that would be located on top of the second floor, and I
13 think it's easier to see here in the section where the --
14 previously, the full addition went all the way to the rear
15 wall here.

16 We've pulled that addition back on the second
17 and the third floor, and that space could be used as an
18 outdoor deck for the upper-level unit, if needed. And
19 then there are stairs that would take you down to grade.

20 CHAIRMAN HILL: Okay. And I will ask the
21 Office of Planning. I'm just curious about that
22 additional deck now, with -- when we get to you guys, just
23 what your thoughts are on that deck. Okay, please
24 continue, Mr. Teass.

25 MR. TEASS: And so, we also looked at an

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1 iteration that looked at minimizing the property and
2 adhering to the ten-foot rule. And so here, Concept C is
3 a design iteration that limits the addition of the -- the
4 proposed addition to ten feet from the west adjacent wall,
5 so the distance from the wall here to the rear wall would
6 be ten feet.

7 It's our understanding that if we would be
8 permitted to do decks and stairs, that could go beyond
9 that ten feet. And so, in this case we're showing that
10 ten-foot addition, and we're showing that you have a deck
11 at the second floor and at the ground floor.

12 And I think, again, referring to the building
13 section here on page 19, where the dimension -- the dash
14 line here represents the wall of the adjacent neighbor to
15 the west. The addition would come out ten feet and
16 continue all the way down to grade -- apologies -- and
17 that we would have a deck at the ground floor and at the
18 second floor.

19 We would still be seeking relief from the
20 conversion requirement, but we would no longer need the
21 waiver from the ten-foot rule, as we understand it.

22 CHAIRMAN HILL: And just to be clear, Mr.
23 Teass, what I was trying to -- or why I believe you
24 presented the last option is because we were asking for
25 what was -- I don't know whether we were asking for what

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1 necessarily was a -- wait -- you're asking for the
2 conversion, so you wouldn't -- that wouldn't necessarily
3 be part of a matter of right, but still, you submitted the
4 ten-foot -- so you didn't need -- we wanted to see what it
5 was without the ten-foot waiver.

6 MR. TEASS: Correct.

7 CHAIRMAN HILL: That's why you submitted this
8 --

9 MR. TEASS: Correct.

10 CHAIRMAN HILL: -- you're not necessarily
11 requesting this design. You're showing us this because we
12 asked for this.

13 MR. TEASS: That's correct, and I think it was,
14 in terms of the shadow studies -- which start on page 25
15 -- I think it's -- so what you're looking at here is those
16 three options. So, Column A is the original design
17 option, Column B is the one where a portion of the rear
18 addition has been pulled back, and then Column -- the
19 third column here is Concept C, where you've got the ten-
20 foot addition.

21 And so, I think the top row is taken at ten in
22 the morning, and what you're seeing is there's some shadow
23 cast on the west property, but not on the east. The
24 property faces primarily south. And then, the bottom row
25 here really speaks at, in a spring or fall equinox

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1 condition, the extent by which shadow is cast on the
2 eastern property owner here.

3 You know, there's still some shadow that's
4 cast, although a little bit less at this section, but then
5 even -- you know, we would argue that the -- both the, you
6 know, quote, unquote, matter-of-right zoning envelope,
7 whether this was two or three units, you would -- if it
8 was just two units, you could still do the ten-foot
9 addition, that there would be some shadow cast on that --
10 the neighbor to the east.

11 CHAIRMAN HILL: Right. And just to clarify
12 again, what you're saying by the matter-of-right, is if
13 you did two units, then you would be able to keep that
14 envelope in Concept C, and so that's where the shadow is.

15 MR. TEASS: That's correct. And I think it was
16 important for us to sort of show the three different
17 conditions.

18 CHAIRMAN HILL: All right, that being, again --
19 now I'm remembering what we asked for -- in terms of the
20 matter-of-right was, again, that is the envelope of the
21 matter-of-right in Concept C.

22 MR. TEASS: That is correct.

23 CHAIRMAN HILL: Okay. All right, in terms of
24 the outreach now?

25 MR. TEASS: So, we did -- we've made attempts

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1 to speak with a neighbor on the east side. I think,
2 ultimately, they are not supportive of the application in
3 its current state, both for the issues of the additional
4 units, as well as any addition.

5 We did return to the ANC a few weeks ago, and
6 to paraphrase what -- my understanding what took place, so
7 I did attend and presented -- was that a motion to oppose
8 the project was introduced, but that motion did not pass.
9 There was a split vote. I think three people for, three
10 people against, and two abstentions, and so that there was
11 no action taken by the ANC on the revised options. And
12 so, we presented these three different ideas to them, but
13 they did not take any action on those.

14 CHAIRMAN HILL: Okay. All right, does the
15 Board have any questions for the applicant?

16 COMMISSIONER TURNBULL: I just have maybe a
17 couple. Option B has what, three units?

18 MR. TEASS: Correct. All three options would
19 be three units.

20 COMMISSIONER TURNBULL: They're all three.
21 Okay.

22 MR. TEASS: Correct.

23 COMMISSIONER TURNBULL: So you don't lose
24 units. You just shrink the size down a bit.

25 MR. TEASS: Correct. And the idea with B, in

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1 particular, was that the -- because the lowest level unit
2 in the cellar and the ground floor unit are single-floor
3 units, that the, you know, the expanding -- pushing beyond
4 that ten-foot really allowed them to have more generous
5 living area --

6 COMMISSIONER TURNBULL: Right.

7 MR. TEASS: -- whereas the upper level had --
8 was too level.

9 COMMISSIONER TURNBULL: And on B -- B still has
10 a wider deck. You didn't do an Option B with a smaller
11 deck. Or is that really C?

12 MR. TEASS: In terms of the upper roof deck?

13 COMMISSIONER TURNBULL: Yeah.

14 MR. TEASS: I'm sorry, I neglected to go over
15 that. Both Options B and C have reduced the size of the
16 roof deck. You can see it here. This was the original
17 roof deck --

18 COMMISSIONER TURNBULL: Right.

19 MR. TEASS: Extending beyond the rear wall, the
20 adjacent neighbors, and we pulled that roof deck back from
21 that edge on both B and C.

22 COMMISSIONER TURNBULL: And on -- the
23 difference on the next deck --the intermediate deck --
24 that was like -- how many feet is that? That's --

25 MR. TEASS: So there's -- we were talking --

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1 flip back to the section for a moment. So, on the -- on
2 Option B we were showing the 13 feet from the --

3 COMMISSIONER TURNBULL: Yes.

4 MR. TEASS: -- rear wall here, and then another
5 nine feet, or almost ten feet, to the extent of the deck.
6 And then, we have a design feature of the bay on the back
7 that's another three feet.

8 COMMISSIONER TURNBULL: Okay.

9 MR. TEASS: So, in sum total, we're still back
10 at the 26 feet that we were originally, and we simply
11 program that space on the second level as a roof deck for
12 the upper-level unit.

13 COMMISSIONER TURNBULL: Okay. So you didn't
14 look at a 13½ foot extension with a smaller deck.

15 MR. TEASS: We did not.

16 COMMISSIONER TURNBULL: Okay. All right.

17 MEMBER WHITE: So, do you have a similar type
18 diagram for Option C that you're -- this is Option B,
19 correct?

20 MR. TEASS: Yes, ma'am. I can advance to page
21 19, which is the building section at Concept C. And so,
22 what you're seeing here is that rear wall that was
23 previously here in Concept B has been pulled back to the
24 ten-foot rule. But we still have the opportunity, as I
25 understand it, to create a deck at the second floor and at

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1 the ground level.

2 MEMBER WHITE: Did you get feedback from the
3 ANC on that particular op? I can ask the Commissioner
4 later, but I just wondered what kind of feedback you got
5 on Option B and C, if any.

6 MR. TEASS: We presented all three. We didn't
7 really get a lot of feedback on any of the different
8 options.

9 MEMBER WHITE: So, the main issue was the
10 number of units.

11 MR. TEASS: I would -- yes, I would --

12 MEMBER WHITE: One of the issues.

13 MR. TEASS: The major issue here is the number
14 of dwelling units and the conversion.

15 MEMBER WHITE: Mm hmm. Okay.

16 VICE CHAIR HART: And, Mr. Teass, you also said
17 that the neighbor to the east is -- was still in
18 opposition to all of the options that you've presented.

19 MR. TEASS: Yes. And I would now perhaps turn
20 over to Mr. Vora, who I think had some conversations with
21 her after our last hearing, and prior to today.

22 VICE CHAIR HART: That'd be helpful if you
23 could.

24 MS. VORA: Yes, she was -- any option that was
25 presented she was opposed to it, with the number of units

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1 or step-back extension.

2 VICE CHAIR HART: You mean and/or, because one
3 of them has no --

4 MS. VORA: That is correct. Any iteration of
5 Option A, B or C was opposed.

6 COMMISSIONER TURNBULL: C is a significant
7 reduction. I'm surprised, but she didn't feel that even C
8 was enough, or -- she didn't want anything.

9 MS. VORA: That is correct.

10 COMMISSIONER TURNBULL: Okay. All right, thank
11 you.

12 CHAIRMAN HILL: Mr. Teass, just -- that had the
13 two units over to the east, how far back does that one go,
14 if you look on your diagram there?

15 MR. TEASS: So I -- I think it was 2 over --
16 there's -- so two over -- you're talking about the -- I'm
17 sorry --

18 CHAIRMAN HILL: Is that one -- that's two
19 units, right? Yeah. Or two --

20 MR. TEASS: This structure, I don't know if
21 it's two units or not.

22 CHAIRMAN HILL: I'm just trying to understand
23 what is that that's going that far back?

24 MR. TEASS: My understanding is that it's a
25 single-family home, but I don't know that for a fact, that

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1 this is --

2 CHAIRMAN HILL: Okay. And you don't know how
3 far back that --

4 MR. TEASS: -- it is two units. I think it's a
5 basement and --

6 CHAIRMAN HILL: And you don't know how far back
7 that goes.

8 MR. TEASS: That goes back -- we actually --
9 part of the rationale on Concept B in determining, you
10 know -- we looked at -- we kind of invented a type -- a
11 methodology to say, we've got the existing rear wall here,
12 the longest addition is about 21-and-a-half -- or 21-foot
13 two, which would take you all the way to here.

14 And the shortest addition was about five-and-a-
15 half feet, and so we set that 13-foot as an average of the
16 two, because there is sort of a varied type -- facade
17 facing the rear of these structures.

18 CHAIRMAN HILL: Okay. Does the Board have any
19 more questions for the applicant?

20 MEMBER JOHN: Yes, Mr. Teass. Did you consider
21 Option D with a shorter deck?

22 MR. TEASS: We did not, to be blunt.

23 MEMBER JOHN: Thank you.

24 CHAIRMAN HILL: Okay, is that it? Okay.

25 Commissioner Jones, do you have any questions for the

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1 applicant?

2 MR. JONES: You said that a neighbor to the
3 east, I believe. Would that be Mrs. Francis? Did she
4 explicitly state why she was in opposition to any of the
5 plans?

6 MR. TEASS: I would defer the question to Mr.
7 Vora --

8 MR. JONES: That's fine.

9 MR. TEASS: -- who had the conversation with
10 her.

11 MS. VORA: She did not want three units and did
12 not want past ten feet.

13 MR. JONES: Okay.

14 CHAIRMAN HILL: She didn't want three units and
15 she didn't want past ten feet. Mr. Jones, any more
16 questions?

17 MR. JONES: And that was the pros and cons?
18 Either this was an explicitly expressed -- explained to
19 Ms. Francis, which I believe is the neighbor to the east.
20 Was that explained in detail to Ms. Francis, I believe,
21 was the -- is the neighbor that you are referring to.

22 MR. TEASS: Yeah. So, we had, in addition to
23 submitting this to the Board, we also made sure to submit
24 this to Ms. Francis, specifically, as an email attachment.
25 She had requested, after, I think it was either the BZA

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1 hearing -- I think our last BZA hearing, she had requested
2 a digital copy of it for her to spend some time looking at
3 it.

4 CHAIRMAN HILL: Okay, she was in opposition.

5 MR. TEASS: Correct.

6 CHAIRMAN HILL: Right. Okay. All right.

7 MR. JONES: You had said prior to this BZA
8 hearing or the previous one? I'm confused as to that.

9 CHAIRMAN HILL: Well, I guess she's in
10 opposition, Commissioner Jones.

11 MR. JONES: Okay. Your --

12 MS. VORA: After the ANC presentation, we sat
13 outside with her and I actually personally went through
14 the diagram with her, with the -- and there was a couple
15 of other neighbors there. That's when this specifically
16 happened, to answer your question.

17 MR. JONES: Okay. I would have no other
18 questioning to you.

19 CHAIRMAN HILL: Okay. Commissioner Jones, so
20 you'll have a little bit of time to present to us, as
21 well, in terms of any of the new information or, you know,
22 I'm going to go ahead and put 15 minutes on the clock, as
23 well. And you're free to begin whenever you like.

24 MR. JONES: Okay. As far as new information I
25 provided the Commission with as an arc of the period in

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1 the Greater Greater Washington Blog that I saw, attempted
2 to place into the file, which talked about millennials
3 starting families, having problems finding affordable
4 housing.

5 And, as indicated in my letter, I believe I
6 stated that the reduction in inventory of single-family
7 housing in a neighborhood that has one of the fastest
8 growing childhood populations in the city, that would
9 exacerbate housing affordability in that neighborhood.

10 And this would not all go well for the rest of
11 the residents in the neighborhood, but have adverse
12 financial effect because we talk about density
13 development, which would, in turn -- clinical record
14 studies have shown that density development will increase
15 housing value, in return, freeze property taxes.

16 And this neighborhood also has a significant
17 number of seniors in it as well, and they would be
18 whiplashed by the increased property taxes, since it has
19 currently no additional exemptions for seniors -- who I am
20 one -- that gives them any kind of protection from an
21 increase in property taxes.

22 CHAIRMAN HILL: Okay. We did get the
23 information. We did have an opportunity to look at that,
24 Commissioner. Does anybody -- does the Board have any
25 questions for the Commissioner?

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1 COMMISSIONER TURNBULL: Commissioner, it would
2 appear -- Commissioner Jones, it would appear that the
3 vote was very --

4 MR. JONES: Contentious, yes.

5 COMMISSIONER TURNBULL: Very contentious.
6 Three for, three against, and two abstain.

7 MR. JONES: Three, three, two.

8 COMMISSIONER TURNBULL: Three, three, two. How
9 do you -- I mean, is it -- how did the -- could you
10 describe a little bit more how the vote went, or describe
11 --

12 MR. JONES: Well, the previous -- there has
13 been outreach to the Chair with Mr. Vora, and put
14 conditions upon support where-- which I was in here
15 through the day in the case with hers earlier today, as
16 for contribution to the Housing Production Trust Fund, and
17 to others, she felt -- the Board stated that they would
18 have any significant -- did not apply to the special
19 exception being sought.

20 So, while I have -- the 332 Randolph Street, if
21 my memory serves me correctly.

22 CHAIRMAN HILL: Okay.

23 (Simultaneous speaking.)

24 MR. JONES: -- the area, as well.

25 COMMISSIONER TURNBULL: All right, thank you.

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1 CHAIRMAN HILL: Sure. Go ahead, Ms. White.
2 Commissioner Jones, could you move the microphone just a
3 little bit closer to you.

4 MR. JONES: Certainly.

5 CHAIRMAN HILL: Thank you.

6 MEMBER WHITE: So, Commissioner, I've been
7 looking at the three options that they provided in the
8 record.

9 MR. JONES: Uh-huh.

10 MEMBER WHITE: B and C, you know, pull the
11 project -- it's not as far back. There's some variations.
12 And I wondered whether or not the neighbor provided any
13 feedback in terms of opinions on whether or not they would
14 have a preference, or if they had to go with one of the
15 options, whether or not they had a preference for one of
16 the three.

17 MR. JONES: Their comment to me was that they
18 -- although they scaled back some during this, that she
19 was still categorically opposed to it. And as she being
20 one of the tails that wags me, I have to stay in support
21 of her.

22 MEMBER WHITE: Right. So, the neighbor that
23 you were speaking of would be adjacent to the --

24 MR. JONES: That is correct.

25 MEMBER WHITE: So, if I'm looking at this

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1 graphic here, it would be the house to the left or the
2 right?

3 MR. JONES: Mrs. Francis is -- let's see, this
4 is 716. I believe Ms. Francis is 714.

5 MEMBER WHITE: Right. All right. So that
6 would be to the left. To the right? Okay. Okay.

7 VICE CHAIR HART: It would be to the right of
8 the proposal. The graphic actually has a callout box on
9 it. So, it says, adjacent neighbor, Petitioner Francis,
10 714 Upshur Street. You see that to the -- where is this
11 thing -- this thing right here. You see it?

12 MEMBER WHITE: Got it.

13 VICE CHAIR HART: That's where you have the
14 address is located. So, it's this property that's here
15 that she lives in. So she would be affected by, you know,
16 shadows, just as the neighbor to the left -- to the west
17 -- would be affected, as well.

18 MEMBER WHITE: Right, but showing that option,
19 she basically -- there would be some blockage. She
20 wouldn't be able to look to the left -- to the right and
21 see backyards. Right?

22 CHAIRMAN HILL: Okay. I have actually a
23 question for OAG, just a little bit. So, if the report
24 that we -- if I'm -- and I have to go back and look again
25 -- but the report that we have is from a vote that was

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1 four to two to two in opposition. And now --

2 MR. JONES: Correction. Three, three to two.

3 CHAIRMAN HILL: No, the one that I thought --
4 the original report was in opposition at four to two to
5 two. The original report. The one that we originally --
6 when you were here the last time.

7 MR. JONES: Uh-huh.

8 CHAIRMAN HILL: And then you went back and took
9 another vote, and now the vote is three to three to two.
10 So, the original report still stands in the record.
11 Correct?

12 MR. JONES: Excuse me, Chair Hill. The -- at
13 the last meeting, the Form 129 was not submitted. I
14 submitted a letter in regards to the vote.

15 VICE CHAIR HART: Yes, so we don't actually
16 have a ANC report that we can -- a previous ANC report
17 that we can give great weight to. We just have the
18 exhibit that is Exhibit number 61, which actually has the
19 form and everything else associated with that.

20 The other one is, as Commissioner Jones says,
21 is a letter that he submitted, which was Exhibit 52, which
22 just -- he describes what the vote is without the
23 appropriate form that we require. We have the appropriate
24 form now, but that is the only one that we have, and
25 that's under Exhibit 61.

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1 CHAIRMAN HILL: Okay, so then, the -- and I'm
2 just clarifying, thank you -- is that the three to three
3 to two vote is what we have in the record.

4 MR. JONES: That is correct.

5 CHAIRMAN HILL: Okay, so nothing -- I mean, we
6 don't -- it was a draw. I mean, so there is nothing that
7 we have necessarily, one way or the other, from the ANC.
8 So, Commissioner Jones, just out of curiosity, in terms of
9 the three to three to two vote -- right? -- were they --
10 was everyone talking about the same -- I mean, there's
11 three designs, right?

12 So, there's the original design that was
13 proposed, then there's Design B, and then there's Design
14 C. Which ones -- which design was the ANC voting on?

15 MR. JONES: The initial concept. We were not
16 -- the vote was not predicated upon design presented, but
17 upon the concept of the version from the two-unit to
18 three-unit.

19 CHAIRMAN HILL: With the original design that
20 had the stairwell going all the way straight back?

21 MR. JONES: That is correct.

22 CHAIRMAN HILL: Okay. Okay. All right, does
23 anybody have any more questions for the Commissioner?
24 Okay. Does the applicant have any questions for the
25 Commissioner?

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1 MR. TEASS: I do. And just in terms of the
2 most recent ANC meeting, I think that you would agree that
3 we presented all three options. Correct? At that
4 meeting?

5 MR. JONES: It would be hard for me to recall
6 at this point.

7 MR. TEASS: I mean, I think the other --

8 CHAIRMAN HILL: It doesn't matter. I mean,
9 their voting -- the three to three to two vote was on the
10 original drawing. That's when that was being stated,
11 which is the biggest project that you have.

12 MR. TEASS: Understand.

13 CHAIRMAN HILL: Okay. So, you have another
14 question?

15 MR. TEASS: No more questions.

16 CHAIRMAN HILL: Okay. I'm going to turn to the
17 Office of Planning, in terms of the supplemental
18 information.

19 MR. MORDFIN: Good morning. I'm Stephen
20 Mordfin, and the Office of Planning reviewed all three of
21 the options that the applicant had submitted as part of
22 their supplemental AB&C. We looked at it for the
23 staircase that there were concerns about, for the shadow
24 studies that were provided by the applicant, and an
25 evaluation of the third floor balcony. Those were the

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1 issues that the Board had brought up last time.

2 Under Concept A, which is the original one,
3 that one extends back the furthest, and has the largest
4 gross floor area of all three, and was reviewed at the
5 last hearing.

6 Content B scales it back some. The -- under
7 Content B, what happens is the rear addition, including
8 the deck, doesn't extend back as far as the longest house
9 that's in that block, but it's approximately even with
10 some of the other houses in that block. It scales back,
11 then the upper floors.

12 So what happens is -- and also is on the shadow
13 studies -- that one -- most of the shadow that's cast by
14 that during the winter equinox, when you get the most
15 shadow, is on the roof of the building to the east, and
16 then some to the other one.

17 The third option, which scales back the
18 furthest and only does a ten-foot addition and doesn't
19 request a waiver of that, the shadow studies are
20 approximately the same. So there really doesn't appear to
21 be much of a difference on the impact of Option B,
22 compared to Option C, the shortest one.

23 The staircase has been revised. It was
24 previously under Option A, or Concept A. It extended back
25 along the east side property line. The applicant has now

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1 moved that to the west side, and it also switches back,
2 reducing the impact on the neighbors, because it is then
3 approximately half the size that it was before.

4 Also, Options B and C, or Concepts B and C, the
5 roof deck no longer, on those two, extends beyond the
6 existing rear wall of the house. So that improves the
7 privacy of any adjoining properties, because it no longer
8 extends beyond what is the existing rear wall, minimizing
9 the impacts of what you can see onto the adjoining
10 properties from the views into their adjoining rear yards.

11 So, in conclusion, we think that concepts B and
12 C both address concerns of the Commission. Concept C
13 makes it much shorter, also reduces the amount of relief
14 that they need, because they no longer need to ask for
15 relief from the ten-foot rule, because that one --

16 CHAIRMAN HILL: Okay, the only question I have
17 for you, Mr. Mordfin, I guess, is the -- oh yeah, in terms
18 of your analysis for the conversion, can you go over that
19 just a little bit again, for us.

20 MR. MORDFIN: Okay. For the conversion --
21 that's pursuant to Subtitle U, 320.2, and there are
22 several sections to that, one is that the maximum height
23 can't exceed 35 feet -- in all three options, it does not
24 exceed 35 feet.

25 B is -- pertains only if there's a fourth

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1 dwelling unit or more, so that one's not applicable. C is
2 that there must be an existing residential building on the
3 property at the time, and there is.

4 D is that there shall be a minimum of 900
5 square feet of land area per dwelling unit, and there is
6 908 and change square feet per dwelling unit proposed if
7 the applicant does three units.

8 F has to do with any additional not adversely
9 affecting the chimney on an --

10 CHAIRMAN HILL: Mr. Mordfin, I'm just going to
11 jump you right to I. That's the only one I'm kind of --

12 MR. MORDFIN: Okay.

13 CHAIRMAN HILL: -- curious about. Sorry.

14 MR. MORDFIN: Okay, so what I states is, you
15 know, the light and air available to neighboring
16 properties. And with the applicant's submission of the
17 shadow studies, we can see how the shadows would or would
18 not affect the adjoining properties.

19 Obviously, C, which is the shortest one,
20 affects it the least. But between B and C, there really
21 is very minimal difference in the two. If you look at the
22 shadow studies that the applicant submitted, on page --
23 it's page 27 of the applicant's last submission -- you can
24 see B is the middle one, and you can see there is very
25 little difference in the effect that shadows would have.

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1 CHAIRMAN HILL: Okay. And in terms of
2 character, scale and pattern of housing along the street
3 or alley?

4 MR. MORDFIN: Well, what happens is there are
5 other houses. This drawing doesn't show all of them, but
6 you see the one on the right, which is the longest one,
7 and the applicant did mark on here, average addition,
8 longest addition, and you can see that B -- which is what
9 this one is -- is approximately the same. It's a little
10 bit longer than two others to the west, and is shorter
11 than the one to the east.

12 So, with respect to character and scale, I
13 think that B is in character with what's existing, and I
14 can see it would also be, because it's shorter. So both B
15 and C would be in character with --

16 CHAIRMAN HILL: Okay.

17 MR. MORDFIN: -- the existing development as
18 seen from the alley.

19 CHAIRMAN HILL: Okay. All right. Does the
20 Board have any questions for the Office of Planning? Does
21 the applicant have any questions for the Office of
22 Planning?

23 MR. TEASS: Not at this time.

24 CHAIRMAN HILL: Commissioner Jones, do you have
25 any questions to the Office of Planning?

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1 MR. JONES: Yes, I do. Under surrounding
2 neighborhood character, you had indicated moderate
3 density, residential. Do you think that the -- if a
4 special exception is granted, would that change the
5 density and the residential character of the neighborhood?

6 MR. MORDFIN: I do not believe that would
7 change the character of the neighborhood.

8 MR. JONES: I expressed density of the
9 neighborhood.

10 MR. MORDFIN: Well, the character of the density
11 would be basically the same. You would be adding two more
12 units to this house, but I don't think that that would be
13 significant to alter the density of the neighborhood,
14 based on 900 square feet per unit.

15 CHAIRMAN HILL: Any more questions, Mr. Jones?

16 MR. JONES: Well, I would like to say that
17 because you're increasing density per square footage of
18 land area contained in the lot. So that would seem like
19 that would be increasing density.

20 CHAIRMAN HILL: I mean, I think the Office of
21 Planning did give you their answer. You can disagree with
22 their answer, but they did give you the answer.

23 MR. JONES: Okay.

24 CHAIRMAN HILL: Do you have any other questions
25 for them?

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1 MR. JONES: No, that was the only question that
2 I had.

3 CHAIRMAN HILL: Okay. All right. Is anyone
4 here wishing to speak in support? Is there anyone here
5 wishing to speak in opposition? Would you come forward,
6 please? Did you guys get sworn in earlier?

7 PARTICIPANT: No.

8 CHAIRMAN HILL: Okay. Why don't you come sit
9 over here and we'll swear you in first. And then you can
10 give a name. Mr. Moy?

11 If you can just raise your right hand and be
12 sworn -- over here by the Secretary to his left, right
13 here.

14 SECRETARY MOY: You can just stand in place.
15 Do you solemnly swear or affirm that the testimony that
16 you're about to present in this proceeding is the truth,
17 the whole truth, and nothing but the truth? Thank you.
18 You may be seated.

19 CHAIRMAN HILL: Good morning.

20 MS. WHITFIELD JOHNSON: Good morning.

21 CHAIRMAN HILL: If you could just please
22 introduce yourselves first for the record.

23 MS. WHITFIELD JOHNSON: My name is Tina
24 Whitfield Johnson. I'm the neighbor -- the adjacent
25 neighbor at 718 Upshur Street.

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1 CHAIRMAN HILL: Sir?

2 MR. JOHNSON: Ernest Johnson, husband of the --
3 at 718 --

4 CHAIRMAN HILL: Okay, great. All right, so,
5 Ms. Whitfield, I'm going to start with you, and you can go
6 ahead and give your testimony. We'll put three minutes on
7 the clock. Basically what -- you weren't here for the
8 first hearing, I don't believe. Correct?

9 MS. WHITFIELD JOHNSON: No.

10 CHAIRMAN HILL: Okay. So, what we had -- we
11 concluded the first portion of the hearing. So now, it's
12 really, if you can, try to focus on the additional
13 information that was provided since that hearing. So -- I
14 mean, there's a lot of information that you can speak
15 about, but we're basically focusing on the supplemental
16 information that was presented since then.

17 However, you are an adjoining neighbor, so go
18 ahead and please -- there's three minutes on the clock, if
19 you'll see to the right and the left. And you can begin
20 whenever you like.

21 MS. WHITFIELD JOHNSON: Okay. I did send in a
22 letter of opposition -- Exhibit 62. And I wanted to
23 clarify my standing regarding the project. It's been
24 misrepresented in the hearings here and in the ANC, that I
25 was in support of the redevelopment of 716, which I have

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1 not been in support of that.

2 I did agree to modifications on my chimney if
3 they were to raise the roof line to a third floor, and I
4 did agree to a rear extension, because there are others on
5 the other row homes. But I never agreed to the feet that
6 they were proposing at that time.

7 Since they have now done Concepts B and C, I
8 would support a rear extension of ten feet. As you can
9 see from the shadow studies, regardless of it being ten or
10 13, it's still going to cast shadows on both neighbors --
11 adjacent neighbors. So, I would think by right, the ten
12 feet is fine.

13 I'm also opposed to the third unit being in the
14 building. As a single-family dwelling, as it is, we can
15 hear -- adjacent neighbors can hear anything going on in
16 the home next door, in terms of movement of the occupants,
17 conversations, and such. So, to add a third unit -- and
18 this is already the situation with it being a single-
19 family dwelling -- is going to increase the noise level.

20 It's also going to increase the number of
21 occupants. And the developer has not been clear in the
22 outreach to the community, in terms of the intended use of
23 the living units as either condominiums or apartments.
24 You can talk to any particular neighbor and get a
25 different story.

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1 I think that's just too much to have that
2 number of occupants sandwiched in between two homes, with
3 having the third living unit. I would prefer it remain a
4 single-dwelling, because, as the Commissioner has -- ANC
5 Commissioner has stated, we are starting to have a
6 shortage of single-family homes in that area, because
7 there are multiple dwelling units being constructed
8 constantly.

9 And I'm also concerned with having a third
10 story -- a third living unit, in terms of an apartment,
11 because we do have one on that row that is a two-living
12 unit, and the second unit is being used for -- not being
13 rented out as a whole unit. It's being rented out by
14 room. So, I'm also concerned with that, as well.

15 CHAIRMAN HILL: Okay. Why don't I let you both
16 talk, and then we'll get to questions from the Board.

17 MS. WHITFIELD JOHNSON: Okay.

18 CHAIRMAN HILL: Mr. Jones? It is Jones?

19 MR. JOHNSON: Johnson.

20 CHAIRMAN HILL: Johnson. Johnson. I'm sorry.
21 Mr. Johnson, you also have the three minutes there, and
22 you can begin whenever you like.

23 MR. JOHNSON: Okay. First of all, I didn't
24 really have the opposition to everything that my wife did.
25 My only opposition was, wasn't quite clear on how many

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1 dwellings within the house. I don't mind two because
2 that's basically what's happening with this particular
3 block.

4 Anything past two, we're looking at parking.
5 And the way that they set up the parking in the back,
6 they've extended the parking into the yard space.

7 Depending on who's there, who's going to be
8 getting in and out? You're going to have to go downstairs
9 and ask your neighbor to move his car so you can pull your
10 car out if you're up against the wall that's up in as far
11 as you're going to be?

12 So that means, no. They're going to be dumping
13 out front, which right now we're fighting for parking,
14 along with all of the new restaurants that have been
15 approved, and that are now opened the next block down the
16 street.

17 We have people parking all through our
18 neighborhoods. And half the time I have to park up at New
19 Hampshire Avenue, or Fifth Street, going further, just to
20 -- and walk back to my house.

21 There's no place to go anymore. I mean -- and
22 new dwellings that were just built at the corner where the
23 church used to be, is what, four units, two units each.
24 They have parking spaces that they sold to them, but most
25 people didn't buy those parking spaces. They're dumping

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1 onto the street now. There is no parking around.

2 Other than that -- and the -- I measured out
3 the 26 feet from my house. That actually is quite a good
4 little distance into that yard. Don't mind Option C.
5 Option C was great as far as me. B kind of -- yeah,
6 that's 50-50.

7 I look at where you have for -- I don't know
8 the address. I believe it's 712 -- Mr. Moore's old house.
9 The last part of the gray area coming out, that's what I
10 believe should be the debt -- excuse me, deck -- off the
11 back of the house, which goes like this off the back.

12 Mr. Warren's house has always been, as long as
13 I've known it for the past 20 some-odd years, so everybody
14 knows the house, and it just is what it is. The other
15 house that goes down six down to six out further, that's
16 Fritz's house.

17 The back of that house was an addition that was
18 built out old wood addition that he's about to have torn
19 down to go back to the original footprint, because it
20 never was, from what I'm understanding, was never quite
21 right in the first place. So, that one doesn't actually
22 show.

23 And the last house that's the longest one, is
24 the narrowest house on the block. It's narrowed in by, I
25 think, five or six feet. That's why it's so long. And

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1 they don't have really a backyard to the house because it
2 dumps right into the alley as soon as you walk basically
3 out the back door and step down.

4 There is no yard there, because the other
5 houses on this side is a big lot and the house takes up
6 everything out to the alley there. And they just have one
7 little fence that they walk out, and it's right next to --
8 I can't remember the name, but it's the neighbor's yard
9 there.

10 But that's basically what's been going on. I
11 know they're developing it, but three units is just a
12 little overkill. So --

13 CHAIRMAN HILL: Okay. Does the Board have any
14 questions for the witnesses?

15 VICE CHAIR HART: So, thank you all for coming.
16 If I heard you correctly, Mr. Johnson, you were saying
17 that you would be -- that you would prefer to have none of
18 the -- prefer not to have the expansion and the deck
19 farther than the longest house that is, I guess, to your
20 --

21 MR. JOHNSON: No. I would prefer, myself,
22 Option C. Option C works for me. But on the plan --
23 which is the ten feet -- you know, out to the ten feet.
24 And you bump up the third story, because that's what I was
25 looking at for our house. Take it out to the maximum

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1 allowed in DC and going up a third level. To me, that's
2 more than -- you know, that's more than enough house.

3 VICE CHAIR HART: Okay.

4 MR. JOHNSON: What I'm opposed to is just three
5 living units within that house, because right now we're
6 already starting to feel the effects of Mr. -- well,
7 excuse me -- 712, with the people who are in and out now.

8 Because, just two weeks ago, I had to end up
9 calling DCPD and having to come through there, just to
10 quiet down all the neighbors that decided to pour out onto
11 the front porch at 4 o'clock in the morning with some very
12 loud conversations and cars, and everything else. People
13 are pulling up double-parking and -- woke me up out of a
14 sound sleep, and I'm somebody, once I'm asleep it's kind
15 of hard to wake me up.

16 So, when I stepped outside the front door, it's
17 -- I'm kind of confrontational. Quiet it down.

18 VICE CHAIR HART: Yeah. Both of you, thank you
19 very much.

20 CHAIRMAN HILL: Okay, well, Mr. Johnson and Ms.
21 Whitfield Johnson, thanks for coming down, and I really do
22 appreciate your testimony. I appreciate your honesty,
23 actually. Mr. Johnson, also, like, you know, that -- in
24 terms of just your frankness as to different options --
25 right -- a B and C, and things such as this.

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1 I guess, what I'm taking from your testimony,
2 again, is that, you know, basically everybody's opposed to
3 the conversion. Like you don't want the third unit, and
4 just so how we -- I'm just kind of clarifying how we go
5 through whether or not that third unit is supposed to be
6 allowed.

7 It's a special exception, meaning it's within
8 the regulations if they can adhere to all these different
9 requirements, meaning if we can get through these
10 standards -- and all of the standards are listed in
11 U-320.2.

12 And so, if the applicant can get through all
13 those -- if we agree that they're fulfilling all those
14 requirements, then we would have to provide the
15 conversion. Right? So, that's just -- I'm just kind of
16 talking that through a little bit.

17 And then, as far as the other -- the ten feet
18 -- I mean, they can do that by right, but they just would
19 get -- if they did two units. So, they weren't here for
20 the conversion at all, they could do the ten feet, and
21 they could do the two units.

22 And I'm continuing to talk through this just a
23 little bit, which is that the difference between B and C,
24 it seems like there's not much difference in terms of the
25 shadowing or -- and this is just -- and you can probably

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1 feed back to this if you like, but like for me, what I was
2 most concerned about was like that stairwell. That
3 stairwell that was -- if you -- with the original drawing,
4 the stairwell went all the way out.

5 And I suppose I would ask you a question -- I
6 can ask you a question. Do you think that that stairwell
7 going all the way out, that would affect privacy a little
8 bit more than the -- and you can both answer -- than the
9 stairwell design -- the zigzag stair that's designed in B
10 and C?

11 MR. JOHNSON: Oh yeah. That's -- coming all
12 the way out in the yard, that's crazy. But also, I'm
13 looking at -- if I read that right, they said that they
14 brought the staircase out in the zigzag, along whatever
15 fence, so you could have a view of the alley? Really?

16 CHAIRMAN HILL: I don't know. I'd have to ask
17 that again. But it was something to get down --

18 MR. JOHNSON: That's the way it reads. It's
19 like, you want to have a view of -- it's an alley.

20 CHAIRMAN HILL: Okay.

21 MR. JOHNSON: And nobody cares what the alley
22 looks like. It's just an egress out of your house to get
23 down to your garage or --

24 CHAIRMAN HILL: Sure. Sure.

25 MR. JOHNSON: -- or your yard. As far as --

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1 the only issue I had was, like I said, people walking up
2 and down the staircase, whether it's on Pat's side or our
3 side, once you're walking down the staircase, if they
4 decide to hang out on the staircase, they're --

5 CHAIRMAN HILL: Right. All right.

6 MR. JOHNSON: -- all up in our yard.

7 CHAIRMAN HILL: Right. Okay. Ms. Whitfield,
8 do you have any comments to that?

9 MS. WHITFIELD JOHNSON: They did change the
10 staircase from the east side to the west side, so it will
11 overlook on my property. And I didn't see the need to do
12 that, other than initial concern about the length of it
13 and the privacy for 714, because they've changed the
14 egress from the main floor of the house to the second
15 floor, which increases the staircase going up higher.

16 CHAIRMAN HILL: Okay.

17 MS. WHITFIELD JOHNSON: And I think if they
18 could do it straight down whereas it was before, keep at
19 the same egress as the rest of the homes on the block, it
20 wouldn't be a concern.

21 CHAIRMAN HILL: Okay. All right. Once again,
22 does the Board have any questions for the witnesses? And
23 just so everybody here in the audience knows, after this
24 we're going to take a break. So, you know, it'll be at
25 least a 15 minute break, so just to let you know. Does

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1 the applicant have any questions for the witnesses?

2 MR. TEASS: Not at this time.

3 CHAIRMAN HILL: Okay. Does the Commissioner
4 have any questions for the witnesses?

5 MR. JONES: No. Not at this time.

6 CHAIRMAN HILL: Okay. All right. Thank you
7 all very much. Ms. White, do you have a question?

8 MEMBER WHITE: Just because, you know, the
9 three-unit issue's been popping up multiple times, did you
10 ever consider just doing two units? And if not -- if you
11 did, you know, I just wondered what that would look like
12 if you decided not to. I just wondered why, because there
13 seems to be a recurring theme about not being comfortable
14 with having three units on that block, and I may even ask
15 OP that question, as well.

16 MR. TEASS: We did not look at a two-unit
17 option at this property.

18 CHAIRMAN HILL: Sure.

19 COMMISSIONER TURNBULL: Yeah, thanks, Mr.
20 Chair. Mr. Teass, when you're redoing this house -- this
21 row house -- a lot of new walls, new construction going
22 on. Do you then fur out the exterior walls -- the walls
23 -- the existing party walls? Does that get -- what do you
24 do on those?

25 MR. TEASS: Typically, we do fur out the party

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1 walls on the subject property side, and it's both -- you
2 know, there's a cavity, and then that cavity is filled
3 with insulation. We find that to be an effective means of
4 preventing sound transmission.

5 COMMISSIONER TURNBULL: I was just going to
6 say, what -- when you do this with -- I'm probably out of
7 -- what kind of a sound rating do you normally try to
8 achieve when you do this?

9 MR. TEASS: There is not a code minimum for
10 that.

11 COMMISSIONER TURNBULL: But I mean, just as a
12 practice.

13 MR. TEASS: I mean, I think you're probably,
14 arguably at an SCC-45 or 50, given the two layers of
15 brick, air space, three-and-a-half inches of insulation,
16 and drywall.

17 COMMISSIONER TURNBULL: So, that's a moderate
18 level. Sort of like a typical residential --

19 MR. TEASS: That would be a code minimum
20 between dwelling units.

21 COMMISSIONER TURNBULL: Okay. So, it's better
22 than what's there now, then.

23 MR. TEASS: Correct. Yeah, I think, in our
24 experience there is occasionally, in masonry wall
25 construction, there are gaps in the mortar, and that tends

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1 to be the avenue. I live in a row house. I have an issue
2 where I hear one of my neighbor's TVs on, and I think --

3 COMMISSIONER TURNBULL: So, I mean, basically,
4 a typical row house is just the --

5 MR. TEASS: Two layers of brick.

6 COMMISSIONER TURNBULL: Two layers of brick,
7 and then --

8 MR. TEASS: And typically, plaster applied to
9 both sides.

10 COMMISSIONER TURNBULL: Plaster applied to
11 both. So, you're furring them out and -- okay. All
12 right, thank you.

13 CHAIRMAN HILL: Ms. White, you had a question
14 for OP?

15 MEMBER WHITE: Yeah. Just a final question for
16 Mr. Mordfin. Can you address why OP feels as though the
17 three-unit would -- the three units in this particular
18 property would meet the criteria, given the character and
19 the nature of the block in its current state?

20 MR. MORDFIN: Well -- and it's also based on
21 the zoning. The zoning on the property is RF-1, which
22 permits, just from basics, it's an 1,800 square foot lot
23 as a minimum, and you can have two dwelling units.

24 If you have an additional 900 square feet,
25 that's when the third unit could be permitted. And that

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1 would still result in 900 square feet per unit, because
2 it's a minimum of 900 per unit.

3 So, that's why we don't feel like this is
4 increasing the density of the RF-1. It's still one unit
5 per 900 square feet. And these are unusually large lots,
6 which is why they're allowed to apply for the additional
7 unit, because they have the 900 square feet. So, that's
8 why we feel that this is consistent with the zoning.

9 MEMBER WHITE: Thank you.

10 CHAIRMAN HILL: Okay. Anyone else? Okay.
11 Does the applicant have anything they'd like to add at the
12 end?

13 MR. TEASS: I'd just like to make a clos- --

14 CHAIRMAN HILL: Oh, actually, I'm going to ask
15 the Commissioner first. I'm sorry. Commissioner Jones,
16 do you have anything you'd like to add at the end?

17 MR. JONES: Well, as indicated in the letter I
18 submitted with the Form 129 in regards to the vote, that
19 the Commissioners in closest proximity to the subject
20 property were all in opposition. So that should reflect
21 the consensus of the neighborhood as a whole.

22 CHAIRMAN HILL: Okay. Mr. Teass, do you have
23 anything to add in conclusion?

24 MR. TEASS: I just wanted to conclude with a
25 couple of remarks. First, I think our strong preference

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1 would be that the Board finds that Concept B, in its
2 current state or with any sort of proposed modifications,
3 would be our preference for what we'd like to come out of
4 today's hearing.

5 I think, to Commissioner White's point about
6 the two units versus three units, I think that one thing
7 that may not have been in the OP analysis, is that we are
8 located approximately a block away from really the heart
9 of Petworth, which is technically an MU-4 zone.

10 And so, we're not sort of ten blocks, 15 blocks
11 away. We're within a one-block walk of a much higher
12 density. And so, you know, in our opinion, I think a
13 three-unit that's walkable to a neighborhood center is an
14 appropriate use and characterization for this particular
15 property.

16 I think that would be more difficult -- you
17 know, the further you go away, you know, unfortunately,
18 the transition from RF-1 to MU-4 is a pretty abrupt one,
19 both in terms of height and density, but more
20 particularly, density, where you can go from, you know, a
21 two-unit building to a ten-unit building in a matter of
22 feet.

23 And so, I think that there's -- unfortunately,
24 the current zoning lacks a sort of intermediate boundary,
25 and I think the way that it's set up now, by allowing

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1 these larger lots to go to a three-unit, is a good middle
2 ground to allow there to be some transition from a
3 crescendo, per se, of density, from two to a much more
4 dense area that's currently a block away.

5 CHAIRMAN HILL: Okay. In -- just so I know, so
6 where Option B is in -- where is it in your -- it's in --
7 can you give me specifically which exhibit and which page
8 it is? It's in Exhibit 58.

9 MR. TEASS: It's Exhibit 58 and it would start
10 on page 10 and continue through page 14.

11 CHAIRMAN HILL: You said 58?

12 MR. TEASS: Correct.

13 CHAIRMAN HILL: Okay. All right, does the
14 Board have any final questions? Okay. All right, I'm
15 going to close the hearing. Is the Board ready to
16 deliberate?

17 PARTICIPANT: Sure.

18 CHAIRMAN HILL: Okay. All right, I can start.
19 I -- my -- I had a variety of concerns when this kind of
20 came to us initially, and some of them are the ten-foot
21 rule and how we get to kind of that waiver, and whether or
22 not we tend to agree with the Office of Planning or not.

23 In terms of the conversion, I actually do agree
24 with the Office of Planning's analysis in terms of the 900
25 square feet, in terms of the -- you know, it is a special

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1 exception within the regulations, and if they meet the
2 criteria, then whether or not we would want a third unit
3 there or not, you know, that's not -- well, at least my
4 opinion -- you know, is whether or not they meet the
5 criteria within the regulations.

6 I do believe they meet the criteria within the
7 regulations of U-320.2 for the conversion. So, I would be
8 in favor of the conversion.

9 In terms of also some of the discussion with
10 single-family homes and such, I mean, you know, now I've
11 been here long enough that determining what a single-
12 family home or what a single-family is or isn't, you get
13 kind of into a mix of, you know, you actually kind of get
14 to now separate whether or not, you know, a single-family
15 has two people or three -- you know, it gets a little bit
16 too into kind of an area where you're blocking people out
17 of a community that they might be able to live in.

18 So, I came back to again, or was again kind of
19 a discussion for the ten-foot waiver, and whether or not,
20 you know, air and privacy, or light and air, and then
21 privacy, in terms of the adjoining neighbors.

22 I did neglect to mention one thing, in terms of
23 if this were to go forward or not, I would have
24 implemented -- and I think we should implement -- a
25 condition in terms of the chimney, with regard to 718

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1 Upshur Street, but I can get to that at the end after I
2 kind of finish my discussion, which is that the ten-foot
3 waiver and how far back one could go -- I mean, I was
4 really concerned about that staircase and how it just kind
5 of long back it went, and that people walking up and down
6 that staircase, the privacy that would be affected of the
7 neighbors.

8 The redesign that the applicant had gone back
9 and looked at in terms of the switchbacks, and I didn't
10 even -- you know, they pushed back the upper floor and
11 just have the first floor there going back to the distance
12 that they had proposed, I thought that was a compromise in
13 terms of the design affecting the light and air of the
14 other neighbors, because it now -- that tops where it
15 wasn't going back as far.

16 So, I would at this point be leaning towards
17 approving the second design that would have been in
18 Exhibit 58, pages 10 through 14. With regard to some of
19 the testimony that was taken by the witnesses, I think
20 that, you know, again, I kind of made my discussion in
21 terms of what I thought the conversion was.

22 And as far as the sound mitigation, I mean, I
23 think actually they would -- at least as far as the
24 neighbors are concerned, I mean I live in a property,
25 again, where I hear the retail below me and I wish I could

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1 do something about that.

2 And so, it seems as though the new construction
3 will have a better impact on at least the one neighbor
4 that came to testify, in terms of sound transfer, and that
5 this would be a better solution. Now, whether or not
6 there would be an additional person -- I'm sorry, an
7 additional unit -- there or not, they probably will have
8 at least a better wall, in terms of sound transmission.

9 So, I think that I would agree with the Office
10 of Planning. The Office of Planning already had been in
11 support of the original design, which had it, I think, you
12 know, having even more of an impact on the neighbors than
13 it does now.

14 With regard to the ANC, I guess I do appreciate
15 that the Commissioner came down, and came down the last
16 time, as well, and kind of testified. I guess, I struggle
17 with the vote and how the ANC kind of voted, in that it
18 was a split vote to the point where I don't even know
19 exactly how to weigh the information. Like the ANC itself
20 isn't split. Like meaning, it's not like you can take
21 like the vote of the people that are closest to the
22 property.

23 I mean, it's just not the way that we kind of
24 analyze the ANC's vote. It's kind of you take it as one
25 vote or not. You can't just kind of split it up by --

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1 then you'd be down to kind of like splitting up SMDs.

2 And so, I had a difficult time in terms of the
3 vote that the ANC had taken, but I understand that as
4 these projects to through, there is, you know, the
5 communities themselves are undergoing change, as well as,
6 you know, kind of figuring out what they hope to see
7 happen and want to see happen moving forward with their
8 communities.

9 And I do appreciate the Commissioner coming
10 down, and I do appreciate the witnesses coming down and
11 sharing us what the community has said. And then again,
12 the conflict that I have is that there was a split vote
13 within the ANC to where they couldn't even decide one way
14 or the other.

15 So, that's where I stand in terms -- I'd be
16 approving -- I'd be in favor of Option B with the
17 condition that prior to the issuance of any building
18 permit authorized by this order, the applicant shall
19 obtain the issuance of a building permit for 718 Upshur
20 Street, NW, to raise the chimney, or otherwise ensure the
21 compliance with the project approved by this order, within
22 the requirements of Subtitle U-320.2(f). So that would be
23 kind of my thoughts, and I'll let my colleagues share.

24 MEMBER WHITE: I'll just give you just brief
25 comments, because I know the architects will probably give

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1 more detail.

2 I did give the neighbors a lot of weight in
3 terms of, you know, their personal feedback, in terms of
4 their experience in living on that block and what this
5 development -- how the development could potentially
6 impact them.

7 And I think, looking at OP's report, as well as
8 the shadow study, as well as the comments from the
9 Commissioner -- from the ANC -- I feel as though, based
10 upon the information in the record, that I could support a
11 residential conversion.

12 I did have concerns about the three units, but
13 I think, just under the regulations, with OP's comments,
14 for this particular application I could support the
15 residential conversion to three units, but I would hope
16 that there would be some modifications during the
17 development period, to make sure that the soundproofing is
18 done to the extent that Mr. Turnbull referenced in his
19 comments.

20 In terms of the options, one of the neighbors
21 did indicate a preference for Option C. That's the option
22 that I think that's the least obtrusive, in terms of the
23 rear part of that particular block.

24 So, Mr. Chair, I would support the application.
25 Maybe we can talk about what option to move forward with,

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1 but at this point I feel that I'm more supportive of the
2 Option C that was submitted by the applicant.

3 And I also agree with your comments with
4 respect to the issues with respect to the chimney, for the
5 adjacent neighbor to make sure that that's addressed
6 properly.

7 COMMISSIONER TURNBULL: Mr. Chair, thank you.
8 I would agree with your -- with the conversion comments
9 that have been made by yourself and Ms. White. And I
10 think OP explained the situation, and I could acquiesce
11 and go along with the conversion, notwithstanding the
12 comments of the neighborhood and the ANC. I think I could
13 go along with that.

14 My feeling is -- it was similar to Ms. White.
15 I really prefer Option C, as it's cut back. I could maybe
16 approve Option B with the additional three feet, but I
17 would rather -- I would like to see the deck from Option
18 C, not Option B. I'd like to see the deck cut back, if
19 that would be the case.

20 If Option B -- if they wanted the extra three
21 feet going beyond the ten-foot right-of-way -- matter-of-
22 right -- I would prefer a shorter deck similar to what
23 they did on C. But notwithstanding that, I would -- right
24 now, I would stand with Ms. White and look at Option C, I
25 think is the least obtrusive. But if something could be

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1 done on B, I might be convinced to go otherwise.

2 VICE CHAIR HART: I think my colleagues have
3 given their opinions and their perspective on which option
4 that they would be supportive of. I actually would be
5 supportive of the conversion as well.

6 I think that the issue regarding the -- that
7 this is a 27 square foot -- 2700 square foot lot, and that
8 each unit is required to have 900 square feet per unit --
9 not the size of the actual unit, but the -- a kind of a
10 theoretical issue, that that would lend this particular
11 property to be allowed to go to three units because of
12 that size of the actual lot itself.

13 Regarding the options, I have been kind of
14 going back and forth in my mind about which option. I
15 actually also preferred Option C. But I understood that,
16 as Mr. Turnbull stated, that the Option B with a shorter
17 deck was preferential for me as well.

18 I'm kind of in between both of them. I don't
19 have a strong preference on either. But Option A is
20 definitely not one that -- the original option I would not
21 be supportive of. So, that's kind of where I stand. And
22 I look at Option B and C because I think they have less of
23 an impact on the -- kind of what happens along the rear of
24 the site. And so I would be, you know, looking to have, I
25 guess, a further discussion about which option to finally

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1 decide on.

2 MEMBER JOHN: Mr. Chairman, I don't have a lot
3 to add. I support what my Board members have said
4 concerning the fact that the applicant met the test for
5 the conversion. And I would support Option B with a
6 shorter deck, because I believe that that option is less
7 intrusive.

8 And the reason I would support Option B also,
9 is that we're only talking about a three-foot difference
10 between what's allowed as a matter of right, and so I
11 can't see where the shadowing -- that three-foot shadowing
12 -- would be so -- would create such an adverse impact on
13 the neighbor to the right, I believe.

14 So, based on what's already been said
15 concerning the conversion, in particular, OP's analysis
16 and discussion of the density issue, I am in favor of, as
17 I said, Option B with a shorter deck.

18 VICE CHAIR HART: One more thing to add, Mr.
19 Chairman. It looks like the deck on Option C is an eight-
20 foot deck and the deck on Option B is a 12-foot -- if I
21 have that right -- 12 foot -- 11? Yeah, almost 13 foot.
22 It's 12-foot, 11-and-a-half inches.

23 So, you know, that's about 13 feet. So, it's a
24 difference between an eight foot deck or a 13 --
25 approximately 13-foot deck.

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1 CHAIRMAN HILL: Okay. So, I guess I would kind
2 of ask Mr. -- I guess -- and just to kind of continue this
3 discussion, I suppose, in terms of where I am between the
4 B and C issue. I mean, C is a matter-of-right kind of
5 envelope. Right? And so, you know, they can do that --
6 anyway -- they can do that anyway.

7 And then, it turned into, again, the analysis
8 that the Office of Planning had provided, in terms of
9 whether or not to approve the ten-foot waiver. And the
10 shadowing between B and C, I didn't think was much of any
11 significance.

12 And therefore, then, even if the units could be
13 larger, then that might go to kind of like if there is
14 kind of the possibility that whatever a -- quote, unquote
15 -- family could be -- you know, a larger unit, it has the
16 ability to come -- have more of a possibility for a
17 family, I suppose.

18 And so, that's why I'm kind of leaning towards
19 that way. So, it seems as though the Board at least is
20 leaning towards, you know, Option B with the Option C's
21 deck, and this is kind of -- I haven't necessarily done
22 this before, so what I would -- I don't know whether Mr.
23 Moy -- whether I need anything different, other than -- I
24 mean, I think it's pretty clear if a motion were made,
25 that the design that's being approved is Exhibit 58, pages

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1 10 through 14, with the eight-foot deck that is in Option
2 C, and/or would -- I need something else from the
3 applicant, or we need something else from the applicant,
4 and then, before I would have to reopen the hearing -- I'm
5 just trying to find out how I do this -- right? -- and
6 then get more information from the applicant.

7 MS. NAGELHOUT: Right now you have three
8 options in front of you. It sounds like the Board is sort
9 of designing a fourth option. If you want the applicant
10 to propose that, you could give the applicant an
11 opportunity to do that, or you would make a decision to
12 approve or not approve one of the three options in front
13 of you now.

14 CHAIRMAN HILL: That doesn't sound fun at all.
15 All right. Okay. So, now had -- now --

16 MS. NAGELHOUT: You can ask for a submission
17 from the applicant, with an opportunity for the ANC to
18 respond, but not reopen the hearing.

19 CHAIRMAN HILL: Okay.

20 MS. NAGELHOUT: And a supplemental report from
21 OP if you want that.

22 CHAIRMAN HILL: I don't think we need a
23 supplemental. So, I'm not reopening the hearing, and I'm
24 asking for information from the applicant.

25 MS. NAGELHOUT: Yes. The applicant has heard

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1 your comments -- the comments of the Board -- on the
2 various options. If they would like to respond to that
3 and submit a revised option, you're giving them that
4 choice.

5 CHAIRMAN HILL: Okay. So, I'm turning to the
6 applicant and asking if the applicant would like to submit
7 a revised version, based upon the comments that they've
8 heard from the Board, which is Option B, Exhibit 58, pages
9 10 through 14, and cutting back the deck to the example
10 that you have in Option C. Would the applicant be
11 interested in submitting that?

12 MR. TEASS: Yes. We'd be happy to submit a
13 clean version of the plans that conforms to those
14 requests.

15 CHAIRMAN HILL: Okay. And so, if that were the
16 case then, the ANC would have an opportunity to then
17 comment on those -- on that submission. And then we'll be
18 back here again for decision. Okay, great.

19 All right. So, when can you get that -- Mr.
20 Moy, are we going to go back with the 14th again and, you
21 know.

22 SECRETARY MOY: Well, the Staff is fine with
23 that. I think we have to defer to the applicant.

24 CHAIRMAN HILL: Actually, can the applicant get
25 us back here next week? So, you would -- it's --

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1 MR. TEASS: Yes.

2 CHAIRMAN HILL: -- one design. Right? Okay,
3 today's Wednesday, okay?

4 MR. TEASS: Yes, we can be back here next week.

5 CHAIRMAN HILL: So, in terms -- and I don't
6 know how much time we're supposed -- required to give to
7 the ANC, Mr. Moy. Can you kind of clarify -- well, how
8 can I get back there?

9 SECRETARY MOY: The Board can set a deadline --

10 CHAIRMAN HILL: Okay.

11 SECRETARY MOY: -- for the ANC to respond.

12 CHAIRMAN HILL: So, I'd like -- I mean, if the
13 ANC is responding back to -- I think they're going to be
14 in the same place that they were -- I mean, basically, you
15 know. But the ANC would have an opportunity to comment on
16 whatever the applicant submits to us.

17 So, if the applicant -- I'm trying to figure
18 out how to get back here next week, Mr. Moy.

19 SECRETARY MOY: Okay. Well, from what I just
20 heard, if Mr. Teass can submit revised plans by this
21 Friday, which would be November 2nd -- is that right? --
22 then, if -- I guess we'll have to turn to the ANC, because
23 it sounds like you're asking the ANC to respond to the
24 revised plans?

25 CHAIRMAN HILL: I'm asking if the ANC would

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1 want to respond to the revised plans. They can -- I don't
2 necessarily know whether there's going to be anything
3 different from the ANC. I mean, basically, what the Board
4 seems to be leaning towards again, is -- and I'm looking
5 at Commissioner Jones -- is that the Option B with a
6 shorter deck from the design of Option C.

7 And so, I would assume that the ANC's position
8 would still be the same way, but I'll let Commissioner
9 Jones submit something to the record in terms of, you
10 know, a letter or an email, as to if there is any thoughts
11 from the ANC concerning that design change.

12 Do you think you'd be able to submit -- would
13 you be interested in submitting anything? Do you think it
14 would make any use, you know? And so, that's what I'm
15 asking you, Commissioner. You need to push the button,
16 sir.

17 MR. JONES: I believe it would make a
18 difference because, as far as full disclosure and
19 transparency, that, you know, anything that the -- action
20 taken by any single commissioner should be vetted with the
21 Commission as a whole. As far as the next meeting, I
22 believe our next meeting is the second Tuesday --
23 Wednesday of November, which I believe would be the --

24 SECRETARY MOY: Seventh --

25 MR. JONES: Seventh --

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1 SECRETARY MOY: -- of November.

2 MR. JONES: Right.

3 CHAIRMAN HILL: Okay. So then, you go back the
4 7th of November to the full ANC. And then we're back here
5 on the 14th again. Okay.

6 SECRETARY MOY: And if the ANC wanted to
7 respond, they could do that in letter to the BZA by, let's
8 say Monday, November 12th. Then the Board can make its
9 decision on the 14th, a Wednesday. Right?

10 MR. JONES: Yeah. That sounds doable.

11 VICE CHAIR HART: Oh, it's a holiday?

12 CHAIRMAN HILL: Well, that's a holiday, yeah.

13 SECRETARY MOY: I believe it's 13th. I believe
14 it's 13th. It'll be Tuesday the 13th.

15 CHAIRMAN HILL: It's still Veterans Day.

16 MR. JONES: So, this office will be closed, so
17 I guess we'll have to push it --

18 CHAIRMAN HILL: No -- yeah, and then the next
19 day --

20 MR. JONES: Oh, 13th.

21 CHAIRMAN HILL: -- which is the -- which day
22 was that again, Mr. Moy?

23 SECRETARY MOY: It would be Tuesday the 13th.

24 CHAIRMAN HILL: So, Mr. Teass, if you get
25 something in the record for us, and then the ANC -- you

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1 don't have to go back to the ANC. The ANC is just going
2 to take a look at whatever it is this one submission is.
3 And then, they will or won't submit something to us by the
4 14th -- I'm sorry --

5 MR. JONES: 13th.

6 CHAIRMAN HILL: -- the 13th -- thank you, sir
7 -- and then, we'll be back here with a decision on the
8 14th.

9 MR. TEASS: Yes.

10 CHAIRMAN HILL: Okay. All right, Mr. Moy, is
11 everybody clear? Okay. I'm sorry, Chairman --
12 Commissioner Turnbull?

13 COMMISSIONER TURNBULL: Thank you, Mr. Chair.
14 I just wonder -- I wonder if the applicant would be
15 willing to submit for the record something to the effect
16 that the party walls would be referred out, insulated, or
17 add something to the effect to address the concerns about
18 the sound.

19 MR. TEASS: We'd be happy to add some notes to
20 the plans that would indicate the construction of the wall
21 on the party wall.

22 COMMISSIONER TURNBULL: That's fine. Thank
23 you.

24 CHAIRMAN HILL: Okay. Great. And then, I got
25 to remember that last condition whenever we get to it.

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1 Okay. All right, thank you all very much. Did somebody
2 just say something? No. All right, thank you all very
3 much, and we're going to take a break, and then we'll come
4 back. Thank you, gentlemen. Thank you, Commissioner.

5 (Whereupon the above-entitled matter went off
6 the record at 12:03 p.m., and resumed at 12:21
7 p.m.)

8 CHAIRMAN HILL: Okay, let's all get back here
9 together. We're going to be moving a couple of things
10 around. And so, we're actually going to do 19840 next,
11 followed by 19846. And if we can before lunch, we're
12 going to get to 19822. So, that is the hope, and so we'll
13 see how that goes.

14 Mr. Moy, I'd like to suggest we have like a
15 little number counter, like the DMV. We can go, now
16 calling 1-7-3-2.

17 SECRETARY MOY: Okay, wishful thinking. All
18 right, let's see -- so, in that case -- here we go. So, I
19 have 12:22. The Board is reconvening. And the next case
20 application for the Board, if I can get parties to the
21 table to 19840, of Julie Qureshi Hummel.

22 Caption: Advertised for Special Exception,
23 Subtitle E, Section 5201. Lot Occupancy Requirements of
24 Subtitle E, Section 304.1, rear yard requirements,
25 Subtitle E, Section 306.1, Non-Conforming Structure

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1 Requirements, Subtitle C, Section 202.2.

2 And under Subtitle C, Section 703.2, from the
3 minimum parking requirements of Subtitle C, Section 701.5.
4 This would enclose a rear porch and construct a second
5 story rear addition to an existing principal dwelling
6 unit, RF-1 zone. This is at 1119 Abbey Place, NE, Square
7 773, Lot 183.

8 CHAIRMAN HILL: Okay, great. Could you please
9 introduce yourselves for the record, from my right to
10 left?

11 MS. HARDWICK: Gay Hardwick, architect.

12 MS. HUMMEL: Julie Qureshi Hummel, applicant.

13 CHAIRMAN HILL: Ms. Hummel, have you been here
14 before? Have you been before us before? No?

15 MS. HUMMEL: No, I have not.

16 CHAIRMAN HILL: All right. Okay. All right,
17 you look familiar. All right. Okay, so, Ms. Hardwick --
18 Hardwick -- I guess you're going to be presenting to us --

19 MS. HARDWICK: Mm hmm.

20 CHAIRMAN HILL: -- I assume. I don't have a
21 lot of questions, actually. And I don't know, unless the
22 Board has any specifics they want to hear about. I mean,
23 there was kind of an issue, or at least one question for
24 the ANC concerning the lot occupancy, and that you were
25 under 60 percent. I suppose -- I'm sorry, 70 percent.

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1 And I suppose if you could speak to that one
2 question during your presentation. But if you could just
3 kind of briefly go over what it is you're trying to do,
4 and how you're meeting the criteria, and we'll see how we
5 get -- is anyone from the ANC here? Okay, so Ms.

6 Hardwick, you can go ahead and begin whenever you like.

7 MS. HARDWICK: Sure. So, --

8 CHAIRMAN HILL: You need to push the button.
9 Okay.

10 MS. HARDWICK: Okay. So, we --

11 CHAIRMAN HILL: And let it go. You don't have
12 to hold it down.

13 MS. HARDWICK: I don't have to hold it.

14 CHAIRMAN HILL: Yeah.

15 MS. HARDWICK: Okay. So, we are proposing
16 adding a two-story addition at the rear of the house.
17 There's a current one-story addition, and we would infill
18 underneath it and add a second story above it.

19 It's going to be slightly smaller than the
20 existing condition right now, in order to meet the 70
21 percent lot coverage. The issue with the lot coverage --
22 there's a rear egress out of the first floor to get back
23 down to the grade.

24 That deck extended, I think it was ten feet,
25 over towards where the door was hitting on the first

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1 floor, which brought us like 70.89 percent over lot
2 coverage. So, the revision that was done after the ANC
3 meeting was shrinking that deck just enough in order to
4 get us back under 70 percent so we would meet the special
5 exception criteria.

6 CHAIRMAN HILL: Okay. All right, great. Thank
7 you. Does the Board have any questions of the applicant?
8 Okay. I'm going to turn to the Office of Planning. Could
9 you both just turn off your microphones? If they're on at
10 the same time, there's feedback. Thank you.

11 MS. FOTHERGILL: Good afternoon. I'm Anne
12 Fothergill with the Office of Planning. And we rest on
13 the record in support of the special exception request,
14 and I'm happy to take any questions.

15 CHAIRMAN HILL: All right, does the Board have
16 any questions for the Office of Planning? Does the
17 applicant have any questions for the Office of Planning?
18 You have to say into the microphone. Sorry.

19 MS. HARDWICK: No.

20 CHAIRMAN HILL: Okay. Is there anyone here
21 wishing to speak in support? Is there anyone here wishing
22 to speak in opposition? Is there anything you'd like to
23 add in conclusion?

24 MS. HARDWICK: No.

25 CHAIRMAN HILL: Okay. All right, I'm going to

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1 go ahead and close the record. Is the Board ready to
2 deliberate? I mean, before we get here, we read through
3 the entire record, and we kind of, you know, have an idea
4 as to what we may or may not have questions about.

5 Other than the one question that I had about
6 the lot coverage, which has been clarified, I would be in
7 agreement with the Office of Planning's report, as well as
8 the comments from the ANC, which was in support 5-0-0, as
9 long as they were under the 70 percent lot coverage, which
10 they actually are.

11 DDOT doesn't have any objection, and there
12 actually are three letters in support. However, again, I
13 would agree with the analysis of the Office of Planning
14 and be voting to approve. Does the Board have anything
15 else they'd like to say? I'm going to go ahead and make a
16 motion to approve Application number 19840, as captioned
17 and read by the Secretary, and ask for a second.

18 COMMISSIONER TURNBULL: Second.

19 CHAIRMAN HILL: Motion has been made and
20 seconded. All those in favor say aye.

21 (Chorus of aye.)

22 CHAIRMAN HILL: All those opposed? Motion
23 passes, Mr. Moy.

24 SECRETARY MOY: Staff would record the vote as
25 five to zero to zero. This is on the motion of Chairman

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1 Hill to approve the application for the request -- for the
2 relief being requested. Seconding the motion, Mr. Michael
3 Turnbull. Also in support, Ms. White, Ms. John and Vice-
4 Chair Hart. Motion carries.

5 CHAIRMAN HILL: Thank you, Mr. Moy. Thank you
6 very much.

7 MS. HARDWICK: Thank you.

8 MS. HUMMEL: Thank you.

9 SECRETARY MOY: Staff would call parties to the
10 table to Case Application number 19846. This is Adam
11 Rubenstein and Susan Weinstein -- Rubinson, I believe --
12 as amended for special exceptions under Subtitle D,
13 Section 306.4 and 5201, from the rear yard requirements,
14 of Subtitle D, Section 306.2, rear yard -- rather, rear
15 addition requirements, Subtitle D, Section 306.3.

16 This would construct a one-story rear addition
17 to an existing principal dwelling unit, R-3 zone. This is
18 at 4821 43rd Street, NW, Square 1672, Lot 9.

19 CHAIRMAN HILL: Okay, great. Thank you, Mr.
20 Moy. Could the applicant please introduce himself?

21 MR. RUBINSON: Yes. I am Adam Rubinson.

22 CHAIRMAN HILL: Okay, Mr. Rubinson. So, I
23 suppose, as with the previous application, I -- after
24 reviewing the record, I didn't have a lot of questions for
25 you. One thing that I did note is that the ANC 3-E had

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1 asked you -- and I guess you had agreed -- to replacement
2 of the impermeable walkway in the applicant's front yard
3 with a permeable surface. Is that correct?

4 MR. RUBINSON: Yes.

5 CHAIRMAN HILL: Okay, so you're in agreement to
6 that. Correct?

7 MR. RUBINSON: Yes.

8 CHAIRMAN HILL: Okay, so that's fine enough for
9 me. So, if you would please go ahead and go through the
10 application, in terms of what you're trying to achieve,
11 briefly, and unless the Board has any specific questions,
12 I'll just leave it at that with the applicant.

13 MR. RUBINSON: Yes, we're proposing to
14 construct a one-story rear enlargement of our home -- a
15 bump out -- with a roof deck and an exterior staircase
16 leading to the rear yard. The addition would extend the
17 building footprint to 16 feet, 6 inches past the furthest
18 rear wall of our adjoining neighbor to the south.

19 The roof deck above the addition would be
20 accessed from an entry way located on the second floor of
21 the house, and from exterior stairs leading to the rear
22 yard. The proposed staircase would extend into the rear
23 yard, and requires a special exception as well to reduce a
24 portion of the rear yard to less than the required 20
25 feet.

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1 CHAIRMAN HILL: Okay, great. Does the Board
2 have any questions for the applicant?

3 MEMBER WHITE: Yeah, just one question. Can
4 you just comment on feedback from the neighbor -- adjacent
5 neighbors?

6 MR. RUBINSON: Yeah. So, what I have in the
7 record is a statement or petition of all the neighbors,
8 including the adjacent neighbors, on all sides. So, in
9 both the right and the left, including what would be
10 considered the most impacted neighbor, as well as, since
11 we don't have a rear alley, there's actually a
12 perpendicular property behind us --

13 MEMBER WHITE: Mm hmm.

14 MR. RUBINSON: So, we have the support of all
15 of them in the record, as well as the leaseholder of the
16 house behind us. So, to answer your questions, all of
17 them not only don't oppose the project, but they're
18 supportive.

19 MEMBER WHITE: And no concerns.

20 MR. RUBINSON: No concerns.

21 MEMBER WHITE: Okay. Thank you.

22 CHAIRMAN HILL: Okay, I'm going to turn to the
23 Office of Planning.

24 COMMISSIONER TURNBULL: Mr. Chair --

25 CHAIRMAN HILL: Oh, sorry. I'm sorry. Mr.

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1 Turnbull.

2 COMMISSIONER TURNBULL: Mr. Rubinson, I wonder
3 if you could just -- Exhibit number 4 shows your plans,
4 elevations and the section. And then, Exhibit number 17
5 is an updated version. And Exhibit number 17 shows no
6 stair. The first one shows a stair, the second one shows
7 no stair. So what's --

8 MR. RUBINSON: If that's -- that would be an
9 error. The stairs are a part of it. So, it might be that
10 those are flipped.

11 COMMISSIONER TURNBULL: Okay. I'm just
12 curious, because it looked like -- as I say, it looked
13 like Exhibit number 17, the later version shows no stairs.
14 So, I didn't know if there was a concern by somebody who
15 had a stair.

16 MR. RUBINSON: No. There was no concern. All
17 of the properties have stairs from their roof deck -- I'm
18 sorry, from their deck -- their rear deck -- down to the
19 property. They vary in terms of the type, but the type
20 that we're talking about, there's precedent along those
21 sets.

22 And the neighbor that would be closest to those
23 stairs had no objection whatsoever.

24 COMMISSIONER TURNBULL: Okay, thank you.

25 CHAIRMAN HILL: And your revised plan, though,

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1 is the one in Exhibit 41. Correct?

2 MR. RUBINSON: I wish I knew the --

3 CHAIRMAN HILL: That's okay. I'm looking at
4 it. It's Exhibit 41. Okay, can we turn to the Office of
5 Planning?

6 MR. KIRSCHENBAUM: Good afternoon, Board
7 members. Jonathan Kirschenbaum for the Office of
8 Planning. We recommend approval, and we rest on the
9 record. Please let me know if you have any questions.

10 CHAIRMAN HILL: Okay, does the Board have any
11 questions for the Office of Planning? Does the applicant
12 have any questions for the Office of Planning?

13 MR. RUBINSON: No.

14 CHAIRMAN HILL: Is there anyone here wishing to
15 speak in support? Is there anyone here wishing to speak
16 in opposition? Mr. Rubinson, do you have anything you'd
17 like to add in conclusion?

18 MR. RUBINSON: Yes. Only that this can be
19 sometimes a daunting process for people who are new to the
20 process, and I want to really thank Mr. Moy and his staff.
21 Particularly, I was entertained. And also, Jonathan
22 Kirschenbaum and the folks at Office of Planning. They
23 really helped me to navigate through this.

24 CHAIRMAN HILL: Okay, that's wonderful. And
25 how about how efficient the Board is?

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1 (Laughter.)

2 MR. RUBINSON: I'll let you know that in a
3 moment.

4 (Laughter.)

5 CHAIRMAN HILL: I see. All right. Okay, I'm
6 going to go ahead and close the hearing. Is the Board
7 ready to deliberate? Or, as I mentioned in the previous
8 application, you know, we do a lot of homework beforehand,
9 in terms of reading through the entire record, and I would
10 agree with the analysis from the Office of Planning in
11 terms of how the applicant is meeting their burden in
12 order for us to approve the application.

13 I also would agree -- or I should also be glad
14 that the ANC is in support, and they have -- the applicant
15 and the ANC have come to an agreement in terms of one of
16 the items that the ANC was in support -- I mean, would
17 like to see happen. I don't think that that condition is
18 necessarily something that is directly affected with
19 zoning for us. So, I would be happy that the applicant
20 live up to the agreement that they made with the ANC, and
21 fulfill their commitment.

22 Also, that DDOT doesn't have any objection to
23 this. I would, therefore, again -- once again mention
24 that I'd be leaning towards approval, based upon the
25 record and the analysis provided by the Office of

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1 Planning. Does anyone have anything else they'd like to
2 add?

3 MEMBER WHITE: I would just concur with your
4 comments, Mr. Chair. I think they clearly met the
5 criteria for special exception for rear yard and rear
6 addition. And with OP and ANC's comments in the record, I
7 would be in support, as well.

8 CHAIRMAN HILL: Okay. I'm going to make a
9 motion to approve Application number 19846, as captioned
10 and read by the Secretary, and ask for a second.

11 MEMBER WHITE: Second.

12 CHAIRMAN HILL: Motion made and seconded. All
13 those in favor say aye.

14 (Chorus of aye.)

15 CHAIRMAN HILL: All those opposed? The motion
16 passes, Mr. Moy.

17 SECRETARY MOY: Thank you. Highly efficient.
18 With that, Staff would record the vote as five to zero to
19 zero. This is on the motion of Chairman Hill to approve
20 the application for the relief requested. This is, of
21 course, as to the revised site plan at Exhibit 44, and
22 revised plans at -- under Exhibit 41. Seconding the
23 motion, Ms. White. Also in support, Ms. John, Mr.
24 Turnbull, Vice-Chair Hart. Motion carries.

25 CHAIRMAN HILL: Thank you. Thank you. All

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1 right, Mr. Moy. Let's actually do that last one before
2 lunch. So, we're going to do, again, 19822 prior to
3 lunch, and then we're going to have lunch. So, if
4 anyone's here for that, we're going to do probably a 30-
5 minute lunch, 20-minute lunch. We'll try to do it in
6 20/30 minutes, and we'll see how it goes in terms of
7 lunch. All right, Mr. Moy, whenever you like.

8 SECRETARY MOY: All right, parties are moving
9 to the table, to Case Application number 19822, of Blue
10 Sky Development, Inc. Advertised caption for area
11 variance from the front setback requirement, Subtitle B,
12 Section 315.1(b). This would construct a new detached
13 principal dwelling unit in R-1(b) zone. This is at 3724
14 30th Place, NE, Square 4304, Lot 34.

15 CHAIRMAN HILL: Okay, great. If you could
16 please introduce yourselves, from my right to left. You
17 need to push the button again.

18 MR. SULEKOIKI: Darryl Sulekoiki. I'm the
19 contractor for the -- for Blue Sky.

20 CHAIRMAN HILL: Okay. Could you spell your
21 last name, please, sir.

22 MR. SULEKOIKI: S-U-L-E-K-O-I-K-I.

23 CHAIRMAN HILL: S-U-L-E --

24 MR. SULEKOIKI: K-O-I-K-I.

25 CHAIRMAN HILL: Well, Mr. Sule- --

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1 MR. SULEKOIKI: Sulekoiki.

2 CHAIRMAN HILL: Sulekoiki.

3 MR. SULEKOIKI: Yeah.

4 CHAIRMAN HILL: You've been here before, I
5 think. Correct?

6 MR. SULEKOIKI: You bet.

7 CHAIRMAN HILL: Okay, great.

8 MR. SULEKOIKI: Thanks.

9 CHAIRMAN HILL: All right. Next, sir.

10 MR. BELLO: Toye Bello, representing the owner.

11 MS. DUMAS: Karen Dumas, resident at 3726 30th
12 Place, right next door.

13 CHAIRMAN HILL: Okay. And, Ms. Dumas, you are
14 here to testify in opposition? Is that correct?

15 MS. DUMAS: Correct.

16 CHAIRMAN HILL: Okay. So, later on in the
17 hearing -- that's okay. So, later on in the hearing,
18 we'll call you up in order to testify. But at this point,
19 it's just the applicants. So thank you very much.

20 MS. DUMAS: Can I leave my items here?

21 CHAIRMAN HILL: You can leave your items there.
22 Sure. If you could turn off the microphone, though,
23 because it kind of feeds back. Thank you. All right, Mr.
24 Bello, so I assume you're going to be presenting to us.

25 MR. BELLO: That's correct.

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1 CHAIRMAN HILL: Okay. So again, you know now
2 what -- I mean, I know you've been here before, so if you
3 could kind of walk us through the project in terms of how
4 you're meeting the standard for the request that you're
5 asking us to approve. And I'm going to put 15 minutes on
6 the clock, just so I know where we are.

7 Obviously now, there are some people here that
8 have some opposition to it. I don't know if you know what
9 that opposition is or not. If you want to speak to it
10 now, you can. Otherwise, we'll get to it when we get to
11 it. And you can start whenever you like.

12 MR. BELLO: Thank you. So, the relief that the
13 owner is asking is an area variance from the front yard
14 setback requirement. The uniqueness of the property is an
15 exceptional situation and condition of property, having to
16 do with its configuration.

17 The lot is an L-shaped lot that has a narrow
18 front that's 25 feet wide. This subdivision was approved
19 by the zoning administrator prior to the adoption of the
20 2016 zoning regulations, and prior to the adoption of the
21 front yard setback requirements.

22 It's practical difficulty is that the proposed
23 building cannot obviously be placed within the stem area
24 of the lot, the front of the property, because it would be
25 practically impossible for that structure to adhere to the

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1 two-side yard setback requirements, by setting front yard
2 location equal to the block face of the property. So, the
3 front yard would be about 115 -- 123 feet setback from the
4 block face.

5 The applicant met with the community -- with
6 the single-member district immediate neighbors -- had a
7 meeting in front of the property. At that point, there
8 were, I think, about ten attendants. There was no
9 opposition to the application.

10 We also presented to the ANC proper, and the
11 ANC recommended approval of the project, as does the
12 Office of Planning.

13 CHAIRMAN HILL: Okay. Does the Board have any
14 questions for the applicant? Okay, I'm going to turn to
15 the Office of Planning.

16 MS. ELLIOTT: Good afternoon, Mr. Chair,
17 members of the Board. I'm Brandice Elliott, representing
18 the Office of Planning. Office of Planning is
19 representing -- I'm sorry, is recommending approval of the
20 requested variance for front setback. I'll go ahead and
21 stand on the record of our report, but I'm happy to answer
22 any questions you have.

23 CHAIRMAN HILL: Okay, does anybody have any
24 questions for the Office of Planning? Okay, Mr. Bello, do
25 you have any questions for the Office of Planning?

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1 MR. BELLO: No, Mr. Chairman.

2 CHAIRMAN HILL: Okay. Could you kind of walk
3 us through again how the property's going to be on the
4 lot? I'm a little -- I just want to make sure I
5 understand how it's -- how it is on that lot.

6 MR. BELLO: I think the best way to illustrate
7 that is to point you to Exhibit -- excuse me for a minute.

8 CHAIRMAN HILL: That's all right. Is it 46?

9 VICE CHAIR HART: Forty-six is the
10 siting/grading plan.

11 MR. BELLO: Yeah. There's a block face
12 submission.

13 CHAIRMAN HILL: Or 42?

14 MR. BELLO: Yes. Thank you very much. Exhibit
15 42, the block face survey of the entire --

16 CHAIRMAN HILL: Yes.

17 MR. BELLO: -- up to the entire street.

18 CHAIRMAN HILL: So, I guess you're walking in
19 through that -- the walkway there. Correct?

20 MR. BELLO: Yes. We wouldn't --

21 CHAIRMAN HILL: And then -- sorry.

22 MR. BELLO: Go ahead.

23 CHAIRMAN HILL: No, I was just curious. I
24 guess, curious as to how that -- the one in the pipeline
25 is going to be configured. Like where is the front door,

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1 and --

2 MR. BELLO: The front door will be facing the
3 rear property lot line of the front lot. So, you walk
4 through the pipe stem all the way to the back, and then
5 you make a left.

6 CHAIRMAN HILL: I see. Okay. All right. Does
7 the Board have any questions about the configuration?
8 Okay. All right, is there anyone here wishing to speak in
9 support? Is there anyone here wishing to speak in
10 opposition? If you could please come forward. I already
11 asked, I think, is the ANC here? No. Okay. All right.
12 If you could please introduce yourself again, ma'am?

13 MS. DUMAS: Sure. Karen Dumas. And I live
14 right next door to the existing property.

15 CHAIRMAN HILL: Okay.

16 MS. DUMAS: Yes.

17 CHAIRMAN HILL: All right. Well, Ms. Dumas, I
18 know we have your letter in the record here. But still,
19 I'm going to put up three minutes here on the clock, and
20 it's kind of -- both sides --

21 MS. DUMAS: Sure.

22 CHAIRMAN HILL: -- are on the ceiling.

23 MS. DUMAS: And I do have another letter from
24 another neighbor, but I think there were other letters
25 that were submitted. I'm not sure, but --

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1 CHAIRMAN HILL: You have another letter that
2 hasn't been submitted into the record? Or you have --

3 MS. DUMAS: I have one that was not submitted
4 earlier, but I assume that other neighbors had voiced
5 their feelings either way, but I'm not sure.

6 CHAIRMAN HILL: Okay.

7 MS. DUMAS: I can only speak for myself.

8 CHAIRMAN HILL: Okay. So, go ahead then, and
9 we'll let you -- you can begin whenever you like.

10 MS. DUMAS: Okay. First of all, I'm kind of
11 curious about the fact that Ms. Gail -- the ANC
12 Commissioner -- said there was no opposition. We had an
13 onsite meeting in August at the site of the property.
14 There were people who were from my street, and then the
15 next street over, which would be Otis.

16 There was no way to ascertain where the yeas
17 and the nays were, because there were countless
18 conversations about countless other issues. Excuse me.
19 And of the ten families of my block, only five were
20 represented. So I'm not sure where Ms. Brevard got her
21 count from.

22 All that said is that I fully believe that she
23 misrepresented the position of the neighbors on 30th
24 Place. And I'm not sure how she came up with her
25 conclusion. But that's neither here nor there. My

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1 feeling about the house being proposed, is that it will
2 definitely -- and I'm going to refer to my notes, this is
3 new for me.

4 It's really not -- I'm not really clear as to
5 why this would be consistent with what's going on in our
6 neighborhood -- virtually no other houses with a house
7 behind it.

8 And that's just kind of -- there's just a
9 question in my mind as to why, when the design was
10 originally submitted, that was the case. But I think the
11 case was, is that Blue Sky subdivided the property so that
12 they could basically build two homes.

13 And I did speak to Darryl, who told me from the
14 onset that he was planning to build a second home on the
15 property.

16 We got a letter after the first property was
17 just about finished, that basically had no opposition.
18 And it was sent to us certified and placed in our
19 mailboxes. And I had some issues about that, because I
20 didn't think it was a fair letter to say this is what I
21 plan to do, but if you have opposing feelings, please
22 inform me.

23 It was just, thank you very much, sign here,
24 sign here, and that was it, in favor of the property to be
25 built. The second house, if built, will be directly

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1 facing my backyard. And the picture here that we have
2 doesn't really give you a full representation as to how
3 it's going to look. And I do have the two pictures that
4 Darryl did send.

5 This is a short street -- 30th Place is short
6 -- less than ten houses. One is going to be renovated
7 soon. We're talking about more traffic congestion on a
8 narrow street, more crowding, and the second house is
9 basically going to be behind the first property.

10 For me, granting this variance will interfere
11 with the quiet environment of my backyard, as the front of
12 the proposed building is going to be directly looking into
13 my backyard, blocking sun, air and privacy.

14 CHAIRMAN HILL: You can keep going. It's okay.

15 MS. DUMAS: Okay. I have no problems with the
16 development of the first house. I'm going to go on record
17 with saying that. The property that was replaced was a
18 house of horrors. The new house, although it doesn't fit
19 in with the character of the neighborhood; it's a very
20 modern structure.

21 My house is the one that's here to your right.
22 I don't know if this was the picture that was provided to
23 you. But the second house -- sorry about this -- this is
24 the first house, and -- that is built --

25 CHAIRMAN HILL: Ms. Dumas, I'm sorry. You kind

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1 of have to put it -- there's a camera somewhere that you
2 have to point at. But --

3 MS. DUMAS: Okay.

4 CHAIRMAN HILL: But it's okay.

5 MS. DUMAS: All right.

6 CHAIRMAN HILL: You can continue with your
7 testimony.

8 MS. DUMAS: All right. The -- this is the
9 house that stands -- I hope I'm doing it -- is this the
10 camera to my right? Yes.

11 CHAIRMAN HILL: I think you're okay.

12 MS. DUMAS: Okay. This is the house where I
13 have new neighbors.

14 CHAIRMAN HILL: Uh-huh.

15 MS. DUMAS: And, as I said before, I have no
16 opposition with it. The second house is basically going
17 to be totally behind the first house, and will be closer
18 to my property. So, I'm being asked to be considerate of
19 another nine months of construction, if not more.

20 As this house right next to me was being
21 constructed, another house directly across the street was
22 being renovated. So, we endured two simultaneously
23 construction or renovations of houses. And as -- once
24 again, I say, the house -- the street is a very narrow
25 street.

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1 And, you know, who doesn't know that there's
2 constant construction in Washington, DC. You know,
3 everybody is enduring it. So, we're being told now to
4 endure more construction.

5 Quiet neighborhood, small neighborhood, lots of
6 open property. Will this set a new precedence for having
7 two houses built on a lot that was originally created for
8 one? Because this is what's going to exist now if this
9 goes forward.

10 It's just not clear as to the real reason why
11 this second house is going to be developed the way it's
12 going to be developed. I think that if Blue Sky had set
13 the initial house back, then everything would have been
14 fine.

15 CHAIRMAN HILL: Okay.

16 MS. DUMAS: But, it was a -- I think it was
17 deliberate to make the first house for it, therefore
18 needing the recommendation to have a consideration of an
19 extension --

20 CHAIRMAN HILL: Okay.

21 MS. DUMAS: -- or whatever the law is.

22 CHAIRMAN HILL: Okay. All right, does anybody
23 have any questions for the witness? Does the applicant
24 have any questions for the witness?

25 MR. BELLO: No, thank you.

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1 CHAIRMAN HILL: Okay. Ms. Dumas, I do have
2 one. Did you go to the ANC meeting where this was being
3 debated?

4 MS. DUMAS: Yes. It was right next to my
5 house.

6 CHAIRMAN HILL: Okay.

7 MS. DUMAS: We met in August --

8 CHAIRMAN HILL: No. Did you go to the ANC
9 meeting where they took the vote?

10 MS. DUMAS: No. I was not at that meeting. I
11 was out of the country.

12 CHAIRMAN HILL: Okay. Okay. So, what I'm
13 trying to get at is like --

14 MS. DUMAS: Okay.

15 CHAIRMAN HILL: -- you're aware that the ANC
16 voted to approve the application.

17 MS. DUMAS: And my understanding, by word of
18 mouth, is that she based it on the meeting that we had in
19 August at the site.

20 CHAIRMAN HILL: Well, it's not one person.
21 It's all of the ANC Commissioners voting six to zero to --
22 six ANC people -- Commissioners -- voted to approve.

23 MS. DUMAS: Well then, I guess my question
24 would be, how would they know what the neighbors felt if
25 they didn't get accurate information from our ANC reps?

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1 CHAIRMAN HILL: Yeah. I don't know how your
2 SMD, you know, works. But still, they, the ANC -- so, to
3 answer your question --

4 MS. DUMAS: Okay.

5 CHAIRMAN HILL: -- the applicant goes and
6 presents to the ANC. And then, the ANC bases their
7 opinion on -- well, I don't know what your ANC might
8 necessarily base their opinion on -- but they are letting
9 us know -- it doesn't matter. I'm just trying to --

10 MS. DUMAS: Sure.

11 CHAIRMAN HILL: I was just trying to ascertain
12 whether or not you had been to the ANC meeting, and you
13 had not.

14 MS. DUMAS: Okay.

15 CHAIRMAN HILL: Okay, anything else for the
16 applicant? I mean -- I'm sorry -- for the witness? Okay.
17 No? Okay, Ms. Dumas, you had one more thing?

18 MS. DUMAS: Yes. I just do have one question.
19 And this is new to me. Okay?

20 CHAIRMAN HILL: Sure. It's all right.

21 MS. DUMAS: Totally new. And I've lived in my
22 house since 1987. Okay?

23 CHAIRMAN HILL: Sure.

24 MS. DUMAS: If there was an option of not
25 building a second house -- say if, hypothetically, the

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1 current owners wanted to purchase the property -- is that
2 something that would be considered? I mean, I --

3 CHAIRMAN HILL: Well, here's, Ms. Dumas, what
4 -- and I'm just kind of helping you -- at least also
5 clarifying how my understanding of how it all works -- I
6 mean, they subdivided the lot.

7 MS. DUMAS: Yes, they did.

8 CHAIRMAN HILL: So, there's another lot there
9 now.

10 MS. DUMAS: Oh, I'm aware.

11 CHAIRMAN HILL: Okay. And so that lot is
12 another lot. So, they're here to apply for a variance, so
13 that they can use that lot. And so, there are criteria
14 that we go through to determine whether or not -- and I
15 don't know what the Board's going to decide here --

16 MS. DUMAS: Sure.

17 CHAIRMAN HILL: -- but there are standards that
18 we go through to determine whether or not the variance
19 should be granted --

20 MS. DUMAS: Yes.

21 CHAIRMAN HILL: -- so that that lot can be
22 used. So, whether -- what they end up doing with it,
23 what, you know, they -- it's not up to us as to what a
24 property owner might or might not do with their lot --
25 whether they sell it to somebody, whatever they do.

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1 But they're just here to apply for an area
2 variance, saying that they can't do anything with the lot
3 unless this is approved.

4 MS. DUMAS: Correct.

5 CHAIRMAN HILL: And so, the Office of Planning
6 -- and I don't know whether you've had a chance to kind of
7 look through the record and the report that the Office of
8 Planning has given -- but the Office of Planning goes
9 through a pretty lengthy explanation as to how they
10 believe they have or have not met the criteria to approve
11 the application.

12 And so, they have gone through that criteria,
13 and so that's something that you can take a look at. Ms.
14 White, you had a question?

15 MEMBER WHITE: So, one question for you.

16 MS. DUMAS: Yes.

17 MEMBER WHITE: You live in the adjacent house,
18 which is the adjacent lot. Right?

19 MS. DUMAS: This is --

20 MEMBER WHITE: Right.

21 MS. DUMAS: -- right here.

22 MEMBER WHITE: So, tell me specifically what
23 type of difficulties this development would pose for you.
24 And I'm asking you because that's one of the standards
25 that have to be met in order to meet the variance

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1 criteria.

2 I know -- you know, obviously the ANC has voted
3 to approve it, but I'd still like to hear your concerns.
4 I know you are concerned about construction, and you would
5 look out the window and it would be -- you would be able
6 to see that development. So I'm just asking you again.

7 MS. DUMAS: I guess, just the fact that we're
8 talking about having two separate homes in a physical area
9 that had previously been one home. So, I'm now going to
10 go from the two neighbors who are there now, to maybe,
11 hypothetically, six neighbors.

12 And, opposed to two cars, hypothetically, there
13 could be four or five cars. I mean, I don't know. So,
14 sure, I'm looking at an explosion just directly next door
15 to my property.

16 The density, obviously, is going to be at least
17 doubled from previous -- the previous structure being
18 there. And then, of course, you know, I don't know, in
19 terms of how the design is for parking. We do have a
20 reasonable amount of parking on my street, so that's not
21 really so much of an issue.

22 And the current owners, at this point they have
23 two cars. You know, a car each. So their home is going
24 to be facing -- the back of their home will be facing the
25 front of the proposed structure.

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1 And how it's going to impact on me, I don't
2 know. I don't know what kinds of new neighbors I might
3 get. It could be four people, it could be eight people,
4 it could be 12, I don't know. Because the new
5 construction is a reasonable size home -- I'm sure bigger
6 than my home, in terms of square footage.

7 MEMBER WHITE: Okay.

8 MS. DUMAS: So, that's one issue. And then, of
9 course, just the serenity -- you know, the sunlight, the
10 air, et cetera, et cetera, et cetera. Many times, when
11 people come to visit me earlier in my residence there,
12 they always say, wow, this is just like you're out in a
13 park. You know? It's so much land. Where's the swimming
14 pool, Karen?

15 Okay, I don't know where the swimming pool is.
16 But it's just that level of development, and therefore,
17 lack of development. I don't know if you know the area of
18 Woodridge, which is just right over from Brookland, but,
19 you know, it's leafy, it's nice, quiet, and a really
20 subdued environment.

21 So, all I'm wondering is that, am I going to
22 look up and have someone else come for the same
23 consideration, so that they can build another property
24 behind --

25 CHAIRMAN HILL: Okay. I don't think you have

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1 -- this is a -- each case we look at is different.

2 MS. DUMAS: Okay.

3 CHAIRMAN HILL: And the way that this lot was
4 subdivided, it was divided in an earlier regulation.

5 MS. DUMAS: Yes, it was.

6 CHAIRMAN HILL: And so, it wouldn't be
7 something that you'd be able to do now anyway, in terms of
8 -- well, actually, I don't know if that's accurate. But in
9 any case, I don't -- I can't speak to how other things
10 might happen down on your block, but I suspect that this
11 is, again, a very unique situation.

12 But -- okay, anybody got any more questions for
13 Ms. Dumas? Sure, please.

14 MEMBER JOHN: One question. Ms. Dumas --

15 MS. DUMAS: Yes.

16 MEMBER JOHN: -- could you take a look at
17 Exhibit 42. Can someone put that up on the -- could the
18 applicant pull up Exhibit 42? No?

19 MS. DUMAS: Is this from the --

20 (Simultaneous speaking.)

21 MEMBER JOHN: Well, this is the block face
22 diagram. I'm trying to determine where Ms. Dumas lives in
23 --

24 VICE CHAIR HART: I was just asking Mr. Bello
25 if you could show Ms. Dumas that -- the block face

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1 diagram.

2 MEMBER JOHN: Right.

3 MS. DUMAS: Oh, I do have a copy of this, as
4 well as my --

5 VICE CHAIR HART: Okay.

6 MS. DUMAS: -- very accurate photo.

7 MEMBER JOHN: My question is --

8 MS. DUMAS: Sure.

9 MEMBER JOHN: -- where do you live in -- based
10 on this diagram, if you could show me where your house is.
11 Is it what's numbered five?

12 MS. DUMAS: Yes.

13 MEMBER JOHN: Okay, thank you.

14 MS. DUMAS: Uh-huh. And is it possible for
15 you, physically, to look at a photograph that Blue Sky had
16 presented to us? Because I'm not sure how to ascertain to
17 get it on this screen so you all can see --

18 VICE CHAIR HART: It's okay. I think that's
19 Exhibit 40, which is a -- it's the last page -- actually,
20 page 4. Yeah. Is it the one with the -- where they have
21 the house on it?

22 MS. DUMAS: With the tan and the brown?

23 VICE CHAIR HART: Well, they have it black and
24 white, so it's hard for me to tell you what that is.
25 That's the same one.

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1 MS. DUMAS: Okay. Yes. So, my home is
2 obviously the brown with the tan. But what I was trying
3 to indicate before, is that this picture with the
4 superimposed home that's yet to be developed, is really
5 not an accurate depiction.

6 I can walk right over to Steve's house by
7 cutting across my grass and over their driveway, as I did
8 yesterday.

9 CHAIRMAN HILL: Okay. All right. All right,
10 thank you, Ms. Dumas.

11 MS. DUMAS: Sure. And am I able to leave -- I
12 don't know if it's pertinent to leave the two letters
13 here.

14 CHAIRMAN HILL: I don't know if you --

15 MS. DUMAS: No?

16 CHAIRMAN HILL: -- can you submit things into
17 the record with --

18 SECRETARY MOY: Yes, if it's in hard copy, the
19 staff can submit it into the record. But I would like to
20 show the letter to the Board.

21 MS. DUMAS: Oh, absolutely.

22 COMMISSIONER TURNBULL: Mr. Bello, I wonder if
23 you could state for the record this is a single-family
24 residence.

25 MR. BELLO: Absolutely, sir. Yes.

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1 COMMISSIONER TURNBULL: Okay.

2 CHAIRMAN HILL: Okay. So, let's see. So, Mr.
3 Bello, do you have anything else you'd like to add?

4 MR. BELLO: I'd just like to add that Ms. --

5 CHAIRMAN HILL: Dumas.

6 MR. BELLO: -- Ms. Dumas --

7 MS. DUMAS: Or Karen.

8 MR. BELLO: Or Karen -- thank you -- actually
9 attended the --

10 CHAIRMAN HILL: Ms. Dumas, could you turn off
11 your microphone? I'm sorry, we're just getting feedback.
12 Thank you.

13 MR. BELLO: Ms. Dumas actually attended the
14 immediate resident meeting that we had with the single-
15 member district commissioner. And in that meeting, the
16 single-member commission actually took a survey of anybody
17 objecting to the application. My recollection is that Ms.
18 Dumas did not speak up at that time.

19 CHAIRMAN HILL: Well, she's here now, Mr.
20 Bello. She seems pretty sure she's opposed.

21 MR. BELLO: That's fine.

22 CHAIRMAN HILL: Right? And so --

23 MR. BELLO: And we are sympathetic to --

24 CHAIRMAN HILL: Right. Okay.

25 MR. BELLO: And we are sympathetic to --

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1 CHAIRMAN HILL: All right.

2 MR. BELLO: -- her concerns.

3 CHAIRMAN HILL: Thank you.

4 MR. BELLO: Yes.

5 CHAIRMAN HILL: Okay.

6 VICE CHAIR HART: Mr. Chairman, I just have one
7 question about this. With -- I'm looking for the image
8 now. It was an image showing the -- Exhibit 42? No, it
9 was a DC -- 45. Well, one of them showed the pervious --
10 impervious surface? And I just was curious as to what is
11 the impervious surface -- amount of impervious surface
12 that you have -- that you're proposing for the site. Oh,
13 yes. There's a max of 50 percent.

14 MR. BELLO: Fifty percent and we will be in
15 compliance.

16 VICE CHAIR HART: So, this is going to be less
17 than that?

18 MR. BELLO: Yes, sir.

19 VICE CHAIR HART: Okay. It looks like a lot.
20 That's why I'm asking.

21 MR. BELLO: Yeah, it's quite a sizeable lot.
22 I'm pretty sure we won't get that passed the zoning
23 administrator in the course of the permitting process.

24 VICE CHAIR HART: Yeah, I was just curious as
25 to what it was. We don't have any information on it. The

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1 OP report doesn't -- says it wasn't provided, and I just
2 have no idea what that is.

3 MR. BELLO: Yeah.

4 VICE CHAIR HART: So, I was just curious.

5 MR. BELLO: It would be less. Perhaps the GC
6 can speak to that, but it will be less. It will be in
7 compliance.

8 VICE CHAIR HART: If you could?

9 MR. SULEKOIKI: Yes, it is in compliance,
10 because this is quite a sizeable lot.

11 VICE CHAIR HART: Okay.

12 MR. SULEKOIKI: Because the area of the lot in
13 the back that we're talking about is almost 7,000 square
14 feet.

15 VICE CHAIR HART: Okay. And you're looking at
16 how much for the impervious surface of that?

17 MR. SULEKOIKI: Probably combined, because we
18 took it a little bit from the front lot and a little bit
19 from the rear lot. So, we're talking about probably less
20 than 2500.

21 VICE CHAIR HART: Okay. So, you'd be somewhere
22 around 40 percent?

23 MR. SULEKOIKI: Yeah.

24 VICE CHAIR HART: Something like that?

25 MR. SULEKOIKI: Yeah. Yeah.

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1 VICE CHAIR HART: I mean, I know that's rough,
2 but --

3 MR. SULEKOIKI: Something like that.

4 VICE CHAIR HART: Okay.

5 MR. SULEKOIKI: Yeah.

6 VICE CHAIR HART: Thank you.

7 CHAIRMAN HILL: Okay. Does the Board have any
8 more questions?

9 COMMISSIONER TURNBULL: Yeah. I do, Mr. Chair.
10 Mr. Bello, I didn't have -- didn't bring this up to Ms.
11 Elliott. One of the things, on page 3 of the OP report,
12 Ms. Elliott did add, in order to provide additional
13 privacy to abutting properties to the north and the south,
14 the applicant should consider installing screening such as
15 fencing or lush landscape alongside lot lines.

16 We don't have any kind of a drawing that shows
17 what you might be considering. And in light of the fact
18 that we do have Ms. Dumas here, can you provide us with
19 some indication of what you could do to maybe alleviate
20 her concerns about the visual aspect of screening the
21 property?

22 MR. BELLO: Well, we can certainly work with
23 her to what would meet with her satisfaction. I don't
24 think the owner would object to that at all. And if it
25 pleases --

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1 COMMISSIONER TURNBULL: Well, how about a
2 drawing showing that, for the record?

3 MR. BELLO: Well, we'll have to provide one.
4 But if it pleases the Board, the Board can also set it as
5 a condition of approval, should they consider it
6 favorably.

7 COMMISSIONER TURNBULL: All right. I just want
8 to make sure we are covering something in here that would
9 be adequate to cover the needs of Ms. Dumas that -- I
10 don't want to go overboard here, either, but if there's
11 something -- it is a condition that OP has talked about
12 that the applicant should consider. And I think that they
13 should, too, that it's --

14 CHAIRMAN HILL: Again, Commissioner Turnbull,
15 I'm just trying to figure out how to do it.

16 COMMISSIONER TURNBULL: Yeah.

17 CHAIRMAN HILL: I think that if, you know, the
18 applicant would work with Ms. Dumas in order to provide --
19 you know, be committed to work with Ms. Dumas to come up
20 with a solution that would be in adherence to what the
21 Office of Planning is suggesting, then I would be
22 satisfied with that, unless the Board has another thought.

23 COMMISSIONER TURNBULL: I just want to check
24 with OAG. I think that's language that could be added
25 too, that the applicant will work with the adjacent

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1 neighbors to develop a landscaping screening plan.

2 MS. NAGELHOUT: No, it's not terribly
3 enforceable. If you wanted to make a condition, it should
4 be something more like, the applicant shall install --
5 ideally, there will be a submission from the applicant
6 showing what they can do, and if --

7 COMMISSIONER TURNBULL: That was -- that was my
8 feeling. But I'm trying to address the comments of Mr.
9 Bello, where he says we could work with the neighbor. My
10 feeling is I'd rather see a drawing of some sort.

11 MS. NAGELHOUT: Yes. I think that's --

12 COMMISSIONER TURNBULL: I'm looking at you guys
13 --

14 MS. NAGELHOUT: Yes.

15 COMMISSIONER TURNBULL: -- to give me the
16 advice.

17 MS. NAGELHOUT: Yes, but you would want the
18 condition to be, like, install and maintain landscaping.
19 In working with the neighbor, one, the neighbor's not
20 required to do anything, and two, you know, what does that
21 -- how is that enforceable?

22 COMMISSIONER TURNBULL: Okay.

23 VICE CHAIR HART: Mr. Turnbull -- Commissioner
24 Turnbull, I would also think that we should have a drawing
25 that actually shows that. And if this were a special

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1 exception, I might be kind of, you know, a little bit less
2 inclined to look for a drawing. But I think for the
3 variance, I think that we, you know, really should be
4 getting something that shows -- and especially because --

5 CHAIRMAN HILL: Well, I would concur.

6 VICE CHAIR HART: -- especially because of the
7 issue around the amount of space that they have between
8 the two properties.

9 CHAIRMAN HILL: Right.

10 VICE CHAIR HART: That may be -- you know, that
11 could be problematic, depending on where they put that --

12 COMMISSIONER TURNBULL: Well, I would concur.
13 And that was my first initial -- that was my first initial
14 response. But I just wanted to float it out there to make
15 sure that we were all looking at the same -- reading the
16 same page here on this.

17 CHAIRMAN HILL: Okay, so I'm just trying to
18 figure out how we do this in a way that's efficient. And
19 if -- I mean, the applicant is here, as is the party in
20 opposition. Like, if you can come up with a drawing today
21 -- you know, over lunch -- that you can submit into the
22 record, that indicates what would be proposed for the --
23 as to what OP is kind of leaning towards, in terms of some
24 kind of -- I mean, again, you're talking about just some
25 kind of think that the owner wouldn't have an issue with,

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1 in terms of creating some kind of an element, then we can
2 put that into the record, and then move forward.

3 COMMISSIONER TURNBULL: Mr. Chair, the other
4 option is what we did on the other case, is that give them
5 -- have a -- put it on the public meeting agenda for the
6 14th, and they would have a drawing that would be
7 submitted to us for the -- and we would look at it and
8 either approve it or -- and that something that Ms. Dumas
9 has looked at. I'm just throwing that out there.

10 CHAIRMAN HILL: Okay. Whatever the Board -- I
11 mean, it looks like the applicant was going to say
12 something. Was the applicant going to say something?

13 MR. SULEKOIKI: Yes. I was going to say that I
14 had spoken with Ms. Dumas before, and I gave her a letter
15 to sign and I've met with her. I promised that I will do
16 whatever she wants in order to make everything to smoothly
17 for her.

18 CHAIRMAN HILL: No, I appreciate that. I guess
19 what the Board is saying now, is that, like, you know,
20 they want to see something that --

21 MR. SULEKOIKI: In writing. Some kind of
22 drawing. Yes, I can present to her, as long as she
23 doesn't have any objection to me doing that later, as
24 opposed to holding it up or --

25 VICE CHAIR HART: Well, I think that we're --

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1 quote, unquote -- holding it up --

2 MR. SULEKOIKI: Oh, okay.

3 VICE CHAIR HART: -- because we are -- our
4 responsibility is to make sure that the zoning regulations
5 are followed, and right now we don't have anything to go
6 by, in terms of saying, oh, well we have the confidence
7 that this is actually going to be mitigating some of the
8 issues that have been raised during this -- by Ms. Dumas
9 during this hearing.

10 So, to be able to say, well, we'll figure out
11 something in the future, if at some point you all cannot
12 get to an agreement, then you can walk away from it and
13 not have to do that, and there's nothing that will enforce
14 that you will actually do that.

15 So, what we're trying to do is to make sure
16 that there is something that is enforceable, that we can
17 make sure that we have our sense of -- that this can be
18 completed in a timely fashion. So, that's what I'm -- I
19 think that we're looking at.

20 I understand that you can work with her, and
21 I'd encourage you to do that. And, Ms. Dumas, I encourage
22 you to work with him, as well. But I just think that
23 right now, because of this being a variance that you're
24 seeking, it is something that you need to take some steps
25 in to make sure that we can get done and move forward with

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1 -- in a fairly timely fashion.

2 I mean, I think that we can possibly set this
3 for decision next week if you could say that you could
4 actually have a drawing by then. But that's -- I don't
5 know what, you know, what all that is.

6 CHAIRMAN HILL: Okay, okay. So, if you guys
7 can get a drawing to us by next week -- okay? -- meet with
8 Ms. Dumas, see what kind of thing you can come up with in
9 terms of privacy screening or what -- I mean, I guess what
10 I'm trying to get at is, you know, whether or not they
11 have the privacy screen or not, I think they meet the
12 variance test.

13 And so, that's where I'm like, you know -- but
14 I'm a little bit in disagreement here as to how we're
15 moving forward. But if we're back here again next week
16 and you could provide us with a drawing that could be in
17 the record so it makes the Board feel comfortable with
18 what we're doing moving forward, when do you think you can
19 get something into the record for us?

20 MR. SULEKOIKI: We can do it before next week
21 -- definitely.

22 CHAIRMAN HILL: Okay. So, Ms. Dumas, will you
23 please meet with the gentlemen here at the table, and see
24 if you can come up with some solutions concerning
25 screening, and then submit that into the record by next --

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1 Mr. Moy?

2 SECRETARY MOY: Okay. I think I heard the
3 applicant saying that they could submit the information
4 requested in a week's time. So that's -- next week would
5 be November 7th. And then allow time -- from what I'm
6 hearing from the Board -- for Ms. Dumas to respond to that
7 document? Did I hear that correctly?

8 MR. SULEKOIKI: Oh, no. We're going to try to
9 meet with Ms. Dumas today --

10 CHAIRMAN HILL: Okay. I was hopeful that we
11 could get back here to decide next week.

12 SECRETARY MOY: Oh, for the 7th. Well, then,
13 in that case, then I'm assuming that what the applicant is
14 submitting will have the agreement from Ms. Dumas by the
15 7th. Let's say -- so if you want to decide this on the
16 7th --

17 CHAIRMAN HILL: Yes.

18 SECRETARY MOY: -- that's a Wednesday -- then
19 if -- then we can get the submission, let's say by Monday
20 the 5th.

21 MR. SULEKOIKI: That's correct. We'll do it.

22 MS. DUMAS: And I'll be out of town.

23 CHAIRMAN HILL: You don't need to be here, Ms.
24 Dumas.

25 MS. DUMAS: Okay, thank you.

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1 CHAIRMAN HILL: That's okay.

2 MS. DUMAS: I just -- I keep looking at my
3 calendar.

4 CHAIRMAN HILL: Sure. Sure.

5 MS. DUMAS: Okay, yes.

6 CHAIRMAN HILL: Okay, Mr. Moy, repeat that
7 again? I'm sorry.

8 SECRETARY MOY: The applicant would make their
9 filing on Monday, November 5th, and the Board will make
10 its decision on Wednesday the 7th.

11 CHAIRMAN HILL: Okay. All right, does the
12 applicant understand?

13 MR. SULEKOIKI: Yes.

14 CHAIRMAN HILL: Okay, does the Board have any
15 other questions? Okay. All right, we're going to break
16 for lunch. And so, hopefully, we're back here at 1:45?
17 1:45. Thank you.

18 (Whereupon the above-entitled matter
19 went off the record at 1:11 p.m. and resumed at 2:08 p.m.)

20 CHAIRMAN HILL: All right, Mr. Moy whenever you
21 like.

22 SECRETARY MOY: Thank you, Mr. Chairman. So
23 the board's reconvening. And my clock shows 2 o'clock
24 p.m. We can have parties to the table to Case Application
25 Number 19843. This is Penny Boyd. Caption advertise for

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1 area variances from the lot dimension requirements,
2 subtitle D, Section 302.1. Front setback requirement,
3 subtitle D, Section 305.1. This would expand the existing
4 principle dwelling unit, subdivide the property, and
5 construct a new principle dwelling unit on the new lot, R-
6 1-B-Zone. This is at 2853 Belair Place NE Square, 4287
7 Lot 816.

8 CHAIRMAN HILL: Okay, good afternoon. If you
9 could please introduce yourselves for the record.

10 MS. TANYERI: My name is Gozde Tanyeri. I'm
11 the architect from ADG+G representing the owner. I'm
12 sorry, I lost my voice today. So I'm going to refer to
13 Cynthia on my left. She's also the project manager
14 architect on the project.

15 CHAIRMAN HILL: Okay, great. No problem.

16 MS. JOHNSON: Cynthia Johnson, ADG+G.

17 MS. SANDERLIN: Valerie Sanderlin, real estate
18 developer on this project.

19 CHAIRMAN HILL: Could you spell your last name
20 for me? You need to push it again.

21 MS. SANDERLIN: Yes. S-A-N-D-E-R-L-I-N.

22 CHAIRMAN HILL: Okay. So Ms. Johnson, I guess
23 you're going to present to us?

24 MS. JOHNSON: Yes.

25 CHAIRMAN HILL: Okay. So have you been through

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1 this process before?

2 MS. JOHNSON: Not this particular process. I
3 have been before BZA before.

4 CHAIRMAN HILL: Okay. Okay. So if I'm the --
5 and I don't know exactly -- I mean I did read through the
6 record and everything, so unless something has changed
7 from when I read through it, you guys kind of have a
8 little bit of an uphill climb in terms of that the Office
9 of Planning is in denial with the application. And it
10 seems like ANC 5C has also denied your application.

11 So what I'd like you to do is go ahead and walk
12 us through the presentation and how you think your meeting
13 the requirements of the standards for us to grant the
14 application. And so I'm going to put 15 minutes on the
15 clock just so I know where we are. And you can begin
16 whenever you like.

17 MS. JOHNSON: Thank you. I think one of the
18 important things to understand is that as we are dividing
19 the lot, we are within the percentages of lot occupancy.
20 We are able to meet the requirements for green area ratio
21 and what have you. The biggest concern is the frontage
22 along Belair Place. We were proposing a 12 and a half
23 foot width for the front to get onto the remaining portion
24 of the second lot. So if you're looking at Sheet 004, you
25 can see that the issue that we have --

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1 CHAIRMAN HILL: Which exhibit do you think
2 you're in?

3 MS. JOHNSON: How is this marked? This is the
4 package that was sent to BZA.

5 CHAIRMAN HILL: I'm just trying to figure out
6 which exhibit.

7 VICE CHAIR HART: Exhibit 4? We have a list of
8 exhibits that are part of the record.

9 MS. JOHNSON: Okay.

10 VICE CHAIR HART: So when we have to refer to
11 drawings, it's always helpful for us to know which exhibit
12 we're talking about because sometimes we have multiple
13 sets of drawings. And it seems as though there's only one
14 set.

15 MS. JOHNSON: There is only one set, that's
16 correct.

17 VICE CHAIR HART: Okay. And that's Exhibit 4.

18 MS. JOHNSON: That's Exhibit 4 then, yes.

19 CHAIRMAN HILL: Okay, so we're in Exhibit 4.
20 And which sheet were you in again?

21 MS. JOHNSON: I was on A004.

22 CHAIRMAN HILL: Okay. Okay, please continue.

23 MS. JOHNSON: Yes. So what we want to make
24 certain of is to understand that we are meeting as far as
25 some of the area density and height restrictions for each

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1 of the individual lots. We are asking for an exception on
2 the size of the lot, which is Lot B. And also in
3 reference to Lot B, the 12 and a half foot front yard with
4 a front yard. Lot A meets all of the requirements as far
5 as area, as far as again percentage of lot occupancy, and
6 as far as green space that we need to provide.

7 CHAIRMAN HILL: I'm sorry, that's it?

8 MS. JOHNSON: That -- yes.

9 CHAIRMAN HILL: Okay. Okay. I mean the
10 argument that you have to make is whether or not you meet
11 the variance standard for this application. So I kind of
12 understand what you're saying, but let's just -- I'm going
13 to turn to the Office of Planning and they can walk us
14 through a little bit the application.

15 MS. VITALE: Sure. Good afternoon, Mr. Chair
16 and members of the board. Elisa Vitale with the Office of
17 Planning. The Office of Planning recommends denial of the
18 area variance relief that's been requested for lot width
19 and front setback. This would be for Lot B. The
20 applicant has not met the burden of proof for the
21 requested variance relief. And OP does not believe that
22 the property exhibits an exceptional situation that would
23 result in a practical difficulty.

24 While Lot 816 measures 62 and a half feet in
25 width, the minimum lot width required in the R-1-B Zone is

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1 50 feet. So this property really is not sufficiently wide
2 to create two conforming lots. The subdivision
3 regulations do provide for some flexibility with respect
4 to lot width. And a property could be subdivided provided
5 that the resulting street frontage was at least 40 percent
6 of the required minimum lot width. So in this instance,
7 they would still need 20 feet of frontage. And the
8 applicant here is proposing a subdivision that falls short
9 of that 20 foot width and also creates a flag lot or a
10 panhandle lot, which is not something that the Office of
11 Planning would normally support.

12 With respect to the second prong of the
13 variance test, we don't believe that construction of a new
14 detached dwelling here in the R-1-B Zone would result in a
15 substantial detriment to the public good. However, given
16 the proposed lot configuration and the creation of this
17 panhandle lot that doesn't meet lot width and also needs
18 front yard setback, it pushes that new proposed dwelling
19 pretty far back on the lot, and that causes it to start to
20 bump up against the rear yards of other adjoining
21 properties. And that's a situation that could be
22 potentially detrimental to the public good.

23 And with respect to the third prong, as I've
24 stated, the creation of a substandard lot that does not
25 meet the minimum lot width requirements would not be

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1 consistent with the purpose and intent of the zoning
2 regulations.

3 That hopefully provides enough background.
4 I'll conclude my report with that, and I'm happy to answer
5 any questions. Thank you.

6 CHAIRMAN HILL: Can you just go over again how
7 you don't think they're meeting the first prong of the
8 test?

9 MS. VITALE: Sure. To meet the first prong,
10 the property would have to have an exceptional situation
11 that would result in a practical difficulty. Lot 816 is
12 62.5 feet in width. And the R-1-B Zone, the minimum lot
13 width required is 50 feet. So it's not as if this is an
14 exceptionally large property. So we didn't believe that
15 there was a practical difficulty here related to the
16 property.

17 CHAIRMAN HILL: Okay. Does the board have any
18 questions for the Office of Planning? No one has anything
19 for the Office of Planning?

20 COMMISSIONER TURNBULL: Ms. Vitale, I've just
21 got a question. I mean, there are panhandle lots in the
22 city. And I won't talk about other cases that we've had,
23 but you're opposed to creating new panhandle lots then.
24 Is that what you're saying? I mean --

25 MS. VITALE: That's correct. There's certainly

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1 -- the situation exists in the district, and there
2 certainly are existing lots that fit this characteristic
3 of a flag lot or a panhandle lot. But no, we would not
4 encourage the creation of new ones --

5 COMMISSIONER TURNBULL: The creation of new
6 ones.

7 MS. VITALE: -- through subdivision. And
8 particularly in a situation like this where the
9 subdivision to create that lot requires variance relief.

10 COMMISSIONER TURNBULL: And a lot of that is
11 due to the impact that it would cause on adjacent lots
12 surrounding the creation of the second lot then too.

13 MS. VITALE: That's correct. And again, by
14 creating this panhandle or flag lot, it increases the
15 relief necessary. It creates a situation where the
16 proposed new dwelling couldn't meet the front setback
17 requirement. And then again as I stated when I was
18 speaking to the second prong, it does push that new
19 proposed dwelling pretty far back onto the lot, and makes
20 it so that it would be fairly close to other dwellings
21 that front on Hamlin Street to the north.

22 COMMISSIONER TURNBULL: Okay. Thank you.

23 CHAIRMAN HILL: Ms. White, you had a question
24 for the applicant?

25 MEMBER WHITE: Just the main question is what's

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1 your position in terms of how you believe you're meeting
2 the variance criteria for the relief? Because obviously
3 OP is opposed. So I just wanted to hear your position on
4 what you believe the exceptional situation is that would
5 suggest that you be granted the variance relief in this
6 situation?

7 MS. JOHNSON: I think there were a couple of
8 things that I do want to address. Number one, when I
9 spoke initially about these setbacks as far as the rear
10 yard as an example, and that was brought up as being close
11 to the adjacent property to the rear of us. We do have
12 the 25 foot rear yard that is required for that zone. So
13 we are not encroaching upon the rear yard.

14 I think the only concern about -- the major
15 concern about this would be the width of the frontage
16 where ordinarily the board would consider 20 feet, the 40
17 percent of the 50 versus what we had to offer. But no
18 less than 14 feet. So we think that we might be able to
19 accomplish the 14 feet to address that particular issue.

20 With regard to the side yards, again, we do
21 meet the regulations for each individual lot in providing
22 at least 8 feet on all sides of that lot. So I think we
23 have a -- we do need to revisit the front yard, but I
24 think with respect to the remaining portion of the
25 exception, I think we've met that.

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1 CHAIRMAN HILL: Okay. Does anyone have any
2 more questions for the applicant? Does the applicant have
3 any questions for the Office of Planning?

4 MS. TANYERI: May I explain something? I'm
5 sorry.

6 CHAIRMAN HILL: Sure. Just before you explain
7 anything, do you have any questions for the Office of
8 Planning?

9 MS. TANYERI: No.

10 CHAIRMAN HILL: Okay. Okay.

11 MS. TANYERI: So there's an existing house on a
12 close to 11,000 square feet lot. Minimum lot requirement
13 of this area is 5,000 square feet. Ms. Penny Boyd, which
14 we're representing, originally when she bought the lot,
15 she was told that she has two lots in the property. And
16 she believes, I'm not sure of the record keeping of that,
17 when that was happening and when it was turned into a
18 single lot. But there were two lots in this particular
19 space.

20 So when she approached to us, she wants to keep
21 her house and build an addition and build a rear yard,
22 another house, we planned this with the setback
23 requirements and everything to keep the original farmhouse
24 setting and created the driveway without really touching
25 this. Otherwise, there are many other ways to subdivide

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1 this lot for her. Knock down her farmhouse in the
2 neighborhood, not build an addition, but build something
3 that is, you know, the two houses that are narrow and long
4 in this lot. If this lot is subdivided right in the
5 middle or in a different format, we would be able to ask
6 for a variance to build two houses on this lot with a
7 5,000 square feet lot.

8 So the idea of the panhandle comes in
9 essentially because we did not want to knock down the
10 texture of the neighborhood. There are a couple of
11 farmhouse looking structures on the same street. That's
12 how this came. But Penny Boyd is trying to develop this
13 with potentially two houses for the future. We did look
14 into ANC. You know, we talked to ANC. ANCs concerns are
15 water on the property. We talked to WASA many times
16 regarding their issues. WASA addressed some of the
17 things. Civil engineers are working on it as well. So
18 those concerns are going to be addressed as well. And
19 setback requirements on all sides, except for the frontage
20 is met.

21 CHAIRMAN HILL: Okay. Again, does anybody have
22 anything for the applicant? Okay. So just to make sure,
23 Ms. Johnson. You're saying you did present to the ANC and
24 they are in denial of the application? Okay. And you're
25 saying that the reason why they're in denial is because of

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1 water issues or something?

2 MS. TANYERI: So the ANC's concerns have been -
3 - You know we met with them just about this project as
4 well several times and they just essentially don't want
5 it. They are bringing the water issues, the seepage in
6 their grade. However, the houses in our rear are sitting
7 higher. The front of the lot on Belair is about a -- you
8 know from the front to the rear of the lot, we have about
9 8 foot sloping towards the street.

10 So as you all know, that when water runs
11 through the grade, it runs through the sewer system and to
12 the -- you know, storm water management system of the
13 city. If there's a clog in any of those areas, that's the
14 responsibility of the city. The neighborhood is in
15 denial, most of the cases that when we build this second
16 house on this lot, which any different configuration which
17 we may still do by right, the square footage area that is
18 occupied within this lot is going to be the same. So it's
19 not going to in any shape or form address their essential
20 concern of, what we understand from it is if you build a
21 house, there will be more water on my street and clogage
22 to my drains and puddling in through this area of the
23 city.

24 CHAIRMAN HILL: Okay.

25 MS. TANYERI: Their other concern is -- excuse

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1 me -- vibration. They feel the train passing through and
2 they feel a lot of vibration in the earth. And they think
3 -- and we couldn't really relieve that in our meetings,
4 that they think through a sublevel construction in any
5 kind of shape or form is going to be detriment to their
6 land --

7 CHAIRMAN HILL: Okay. Okay.

8 MS. TANYERI: -- and detrimentally vibrating
9 their structures.

10 CHAIRMAN HILL: Okay, all right. Okay. I was
11 just trying to figure out some of the reasons -- I mean
12 again, like you're here and the Office of Planning does
13 not agree with you meeting the standard, right? Then the
14 ANC is also not agreeing with you meeting the standard.
15 I've been here -- I've only approved one when they're both
16 in denial. And that only happened like two months ago
17 after like me being here four years. So it's a difficult
18 -- and you're here for a variance. So it's a very
19 difficult bar for you guys to achieve. You know, I don't
20 know what you can do by matter of right, but you know,
21 that's what you can do by matter of right.

22 You're not here for matter of right, you're
23 here because you need to be here in order to do this and
24 get a variance, which is not an easy thing to do. Right?
25 So if there were a special exception, then there's kind of

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1 easier criteria that you can go through and meet. And
2 even then, you'd still probably need the approval of, you
3 know -- I mean you don't need it, you know, because the
4 board is able to determine on its own. And we'll see what
5 happens one way or the other whether or not they think
6 you've met the criteria.

7 Is there anyone here wishing to speak in
8 support? Is there anyone here wishing to speak in
9 opposition? If you could please come forward. And did
10 you all get sworn in earlier? Okay. Did everybody get
11 sworn in here? Okay, all right. We'll swear some people
12 in later. We'll swear some people in later. Thank you.
13 Thank you.

14 Sir, if you could just go ahead and introduce
15 yourself for the record.

16 MR. MONTAGUE: My name is Jeremiah Montague,
17 Jr. I live at 2914 25th Street NE.

18 CHAIRMAN HILL: Can you spell your last name
19 for me?

20 MR. MONTAGUE: M-O-N-T-A-G-U-E, Romeo and
21 Juliet.

22 CHAIRMAN HILL: Oh, Montague. Okay, that's
23 great. That was easier than some -- okay, great. All
24 right, Mr. Montague. You got something for us here that
25 you're submitting for us to read, is that correct?

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1 MR. MONTAGUE: Yes, but --

2 CHAIRMAN HILL: Was this in the record prior?

3 MR. MONTAGUE: No.

4 CHAIRMAN HILL: Okay.

5 MR. MONTAGUE: I thought it had been submitted
6 but it wasn't.

7 CHAIRMAN HILL: Okay. Did you give one of
8 these to the applicant?

9 MR. MONTAGUE: Oh, no. I can.

10 CHAIRMAN HILL: Okay. Do you have one to give
11 to the applicant? There's an extra one there, sir also
12 that the secretary has. Okay. I'll tell you what, Mr.
13 Montague.

14 MR. MONTAGUE: I'm going to save us some time.

15 CHAIRMAN HILL: Sure. Pardon me?

16 MR. MONTAGUE: I'm going to save us some time.

17 CHAIRMAN HILL: Oh, no. That's all right. You
18 have three minutes. But why don't you give us one minute
19 here real quick. Okay? Just kind of -- all right, Mr.
20 Montague. I'm going to go ahead and put three minutes on
21 the clock for you. And it's up there on your left and
22 right in the ceiling. And you can begin whenever you
23 like.

24 MR. MONTAGUE: All right. Instead of reading
25 the whole thing that's in front of you, I'm going to try

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1 to summarize it.

2 CHAIRMAN HILL: Mr. Montague, I don't think you
3 can get through this in three minutes.

4 MR. MONTAGUE: I know.

5 CHAIRMAN HILL: So go ahead and yes, summarize
6 for us.

7 MR. MONTAGUE: I'm going to talk to the points
8 that are issues in the neighborhood. One of them is the
9 actual subdivision of the land, which there was a mention
10 of there being two parcels that originally were combined
11 to form 816 and that happened in 1946 back when they re-
12 surveyed that particular area, 4287.

13 Now one of the issues right now is that it is
14 uncommon in that particular place which was set up by the
15 original permanent system of highways. They have large
16 lots originally in that particular section, which was the
17 eastern section of the Old Clark Mills subdivision. So
18 over time, some of them were merged to become one. All
19 right? But in general, the character of that particular
20 part of the subdivision has always stayed the same from
21 the way it was originally laid out in 1910.

22 The other thing is, is about the water issue.
23 It's not so much about -- this property would sit what we
24 call mid-hill. The high-hill where the old fort there
25 used to be back in the 1900s. There is the mid-hill,

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1 which is Hamlin Street and Hamlin Place which runs towards
2 Langdon Park. And then there's the low hill, which is
3 Girard. So this property is towards having a place, which
4 is at the top of the hill.

5 The issue is that if you take this -- and as
6 they said, you're going to divide it in half, add a flag
7 or a stovepipe to it and then you're going to actually
8 push the new house up against the back of my property
9 line. So they say it's going to be 23, 25 feet away from
10 it, but still. The plan as we understand it and the way
11 it was presented to the SMD, the way it was presented to
12 the ANC is that the 1895 house -- the farmhouse that they
13 talk about, which is Ms. Boyd's primary residence right
14 now, would be enlarged. Okay? It would be altered and
15 heightened. So that would affect the property of Ms.
16 Green which is on 2425 Hamlin. Okay? She's right directly
17 behind it.

18 Then you want to take and create a larger house
19 in what they call Lot B. So that would be on the
20 backside. And so our objections is not only that you're
21 going to destroy the 1895 house, but now you're going to
22 inflict on us another one where the resident may or may
23 not stay to occupy, but it will be a permanent fixture in
24 altering the character of that particular block.

25 The water flow is the water flow through the

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1 ground that we're concerned about, just the natural flow.
2 Water flows from the top of the hill, comes down through
3 25th to Hamlin, flows on either street through the ground
4 towards Langdon Park and then goes on and forms part of
5 Hickey Run.

6 So we're concerned that if you put a second
7 structure in it that's larger with a basement, then the
8 water's going to have to find a way around it. What would
9 be most affected is this house on the small parcel to the
10 south of Ms. Boyd's property. And that house literally
11 sits with their feet on the property line. And therefore
12 any redirection of water is now going to be intensified
13 towards that particular house and the houses that sit
14 further down.

15 So we already have -- let's just say this
16 summer was brutal because of the constant rain, rain,
17 rain, rain, rain. So what happens is what was
18 traditionally named the high flow area, water just
19 accumulates in the ground. And because the ground is
20 basically unstable, anything that happens, we all feel it.

21 CHAIRMAN HILL: Okay. Mr. Montague, I'm going
22 to interrupt you just because you've gone over. And ask
23 the board if they have any questions of you.

24 MEMBER WHITE: Just one question. Do you know
25 if WASA has looked at any of these issues at all?

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1 MR. MONTAGUE: We met with -- his name is in
2 here --

3 MEMBER WHITE: I don't need a lot of detail,
4 just generally.

5 MR. MONTAGUE: We actually have brought several
6 issues and when we met with Mr. McDermott in September,
7 the question was about what is a normal flow of water?
8 And what are the sedentary and the water main layouts? So
9 we actually got to see the drawings. And we know that
10 there is a catch basin at the corner of Hamlin Place and
11 Belair at the top of the hill. And there's a catch basin
12 at the bottom of the hill at Belair and Girard. The two
13 are not connected. So whatever water that comes down 24th
14 or comes down 25th and comes down Hamlin, flows either
15 into those two catch basins or it gets ignored and it
16 flows towards Langdon Park.

17 MEMBER WHITE: Okay, thank you.

18 CHAIRMAN HILL: Okay. Sure, go ahead, please.

19 MEMBER JOHN: Mr. Chairman, I just have a quick
20 question. So the house that's on Lot B, is that on a
21 higher grade than the farmhouse? Does it sit higher than
22 the farmhouse?

23 MR. MONTAGUE: Well, at the back end of Ms.
24 Boyd's house, there is like an V, an indentation. And so
25 it would be on the rise towards my house. And the garage

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1 -- the basement would be partially exposed. It's not a
2 full, you know, submerged basement. But the roof profile
3 of it would make it as high as the house that they intend
4 to build in front of it. So when they redo her existing
5 house -- 1895 house, that profile or that second house is
6 going to be as high.

7 So one of my -- Reverend Green asked me about a
8 question about it. He says, well, if I look out my
9 window, what am I going to see? And the answer is you're
10 going to see her roof. Okay? Because even though his
11 house is higher than Ms. Boyd's house on the land, when he
12 looks out right now, he can look down through the backside
13 of the houses on Belair and the backside of the houses,
14 which are on 25th. And so there's like an open greenway
15 that goes down through there. But when this house is
16 built, the Greens, Reverend and his wife, won't be able to
17 -- they'll just look into another house.

18 CHAIRMAN HILL: Okay. You have a question for
19 the witness? You'll have an opportunity -- Yes, you'll
20 have an opportunity to make a statement again. But do you
21 have any questions? You do not. Okay. Can you just say
22 you do not in the microphone? I'm sorry.

23 MS. JOHNSON: I do not.

24 CHAIRMAN HILL: Okay, great. All right, Mr.
25 Montague, thank you so much for your testimony. All

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1 right, so now Ms. Johnson you wanted to add something in
2 conclusion?

3 MS. JOHNSON: Yes, I did. I want to emphasize
4 that again, we have met the rear yard restriction. We
5 have met the height restriction as far as from the
6 building measuring point up to the roof. So I don't want
7 the roof being characterized as something that is
8 overwhelming. It is in proportion and in compliance as
9 far as the lot occupancy is concerned. And again, with
10 the setbacks that are designated for that zone. So I
11 don't want to give the impression or leave with the
12 impression that this is overwhelming.

13 I also wanted to make a point that yes, we have
14 developed the civil plans. We are able to connect our
15 structures into the storm water system. We do have that
16 drawing that we can provide. And again, part of the issue
17 is water running down. We are obligated to meet the
18 requirements as far as percentage of green space with both
19 planting sod seed and pervious pavers. And we believe
20 we've met that to address the issues of the water.

21 CHAIRMAN HILL: Okay. Does the board have any
22 questions for the applicant?

23 VICE CHAIR HART: Yes, actually. Are there any
24 -- and I'm not sure who to answer this -- who could answer
25 this. But have you done any like shadow studies? Any

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1 idea of what impacts would be for a house? I mean you're
2 being a house behind some other houses and that may have -
3 - it seems to me that it might have some impacts on some
4 of the adjacent houses.

5 MS. TANYERI: So I'm going to answer that.
6 When this house -- on the exhibit package, if you look at
7 003, this house -- so the Hamlin houses are about probably
8 12 feet higher than us. They look at our roofs of this
9 lot at the moment. It's just at this particular lot is
10 especially deeper. When the second house will get in the
11 center, the house height would not be higher than, you
12 know, 25 or 30 feet and that will cast no shadows to
13 anything that's nearby other than perhaps our own front
14 lot. But it's a one to one shadow --

15 VICE CHAIR HART: Well, the height max is 40
16 feet, so you could have some impact on it.

17 MS. TANYERI: We did not raise up to that
18 level. We have a two-story house. That's not -- you
19 know, we didn't go up to the 40 foot height at all. We're
20 27 feet. So if we have 27 feet --

21 VICE CHAIR HART: Well to measure the house,
22 it's at 27 feet. The actual house is much higher than
23 that. The roofs are higher than that. I'm looking at
24 your drawing, so that's what --

25 MS. TANYERI: Right.

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1 VICE CHAIR HART: -- I'm basing that on.

2 MS. TANYERI: Okay. Well when we add that,
3 that's let's say the 31 feet -- the 30 feet below the 40
4 feet maximum still would not cast a shadow to anything
5 nearby except for the front lot, Lot A.

6 VICE CHAIR HART: Okay. I'm not sure what
7 you're basing that on because I don't have anything to --

8 MS. TANYERI: One to one shadow line.

9 VICE CHAIR HART: What I'm saying is that I
10 have nothing to show any of that.

11 MS. TANYERI: Okay.

12 VICE CHAIR HART: You're giving me your opinion
13 on what this is.

14 MS. TANYERI: Right.

15 VICE CHAIR HART: You're not saying that this
16 is a drawing that we've done to actually --

17 MS. TANYERI: No, we don't have a drawing that
18 we've done for that.

19 CHAIRMAN HILL: Okay, all right. So again, you
20 know I appreciate that you're here and she was trying to
21 create an argument for what you're trying to do. But
22 again, you've been working with the Office of Planning --
23 I'm looking right at the Office of Planning's report as to
24 how they believe you're not making the -- at least even
25 the first prong of the task. Right? The exceptional

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1 situation resulting in a practical difficulty.

2 And you know, you keep repeating that you're
3 meeting this requirement. You're not meeting that
4 requirement. I'm looking right at the report as to how
5 you're not meeting the requirement for us to grant this.
6 So I mean, I'm just kind of letting you know that I don't
7 think, you know -- so, all right, I'm -- does anybody have
8 any more questions for the applicant?

9 COMMISSIONER TURNBULL: I guess my only --
10 There is a -- there is a house on Hamlin. Is it Hamlin?
11 It's certainly kitty corner. It's not Mr. Montague's
12 house, but it's like kitty corner. It would be almost
13 really backing up to the B house. And it looks like it's
14 pretty darn close to that house. And you're -- you'd be
15 looking into the backyard and into the -- It's hard to
16 tell from the photo. And I'm looking at the photo that
17 you provided on Page -- the aerial view on 3 of your
18 submission, 3 of 18. What is that? I forget what drawing
19 it is -- Drawing 3. And it looks like you're looking
20 right -- it looks like you're -- the new house you'd want
21 to build is pretty darn close to that other house.

22 MS. TANYERI: So if you're looking at 3 of 003,
23 it looks near that, but it's way up higher than that. But
24 if you look at 4 on the same, I think that little garage
25 or small structure that you're seeing up high is actually

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1 backing to next door lot, if I'm understanding this
2 correctly. You're just looking at the small structure,
3 correct?

4 COMMISSIONER TURNBULL: Right, the small house.

5 MS. TANYERI: Yes, the green house is our next
6 door neighbor.

7 COMMISSIONER TURNBULL: Well, it's the one to
8 the right of that as I'm looking at the photo. It's got a
9 red roof.

10 VICE CHAIR HART: You're looking north of the
11 lot.

12 COMMISSIONER TURNBULL: Yes.

13 MS. TANYERI: Oh, north.

14 COMMISSIONER TURNBULL: Yes. It looks like
15 that house B -- The B house is really --

16 VICE CHAIR HART: That was my point as well.

17 COMMISSIONER TURNBULL: Yes.

18 VICE CHAIR HART: Which is I think that, that
19 house is much closer than any of the other houses that are
20 there, and I have no idea what the impacts of a, you know,
21 30 foot, 35 foot house is to that -- That house has
22 nothing really behind it. But this house will be in
23 fairly close proximity to it.

24 And I mean, it looks as though there may be
25 some impact, but I don't know what that is. And I

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1 understand that there may be zoning -- there may be
2 topographic differences, but still since we have no
3 drawing, it's really hard to, you know, to guess. And I
4 don't like guessing about stuff like that.

5 COMMISSIONER TURNBULL: You're absolutely
6 correct, Mr. Hart.

7 CHAIRMAN HILL: Okay. All right, anything
8 else? All right, any last words?

9 MS. SANDERLIN: Yes. Mr. Chair and members of
10 the board, on the neighbor -- I'm looking at Exhibit
11 Number 3, the green house. The neighbor was here earlier.
12 She had to take leave. She wanted to, you know, come in I
13 guess to give her views, Felicia Young. But again, she
14 had to get back to work. So I just wanted to say that for
15 the record, she had come down as well.

16 CHAIRMAN HILL: Okay. Well unfortunately you
17 can't really testify for her unless she's here. And so I
18 can't really know what she's saying. But even if she were
19 here to testify, again, like the analysis that we're
20 supposed to do is whether or not you're meeting the
21 variance test. And if somebody likes or doesn't like the
22 project isn't necessarily what we're looking at, but I
23 appreciate that. Okay, so anything else?

24 MS. JOHNSON: Nothing further.

25 CHAIRMAN HILL: Okay, all right. So I'm going

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1 to go ahead and close the hearing. Is the board ready to
2 deliberate? Okay, well I can start. I appreciate you all
3 coming down as I said. And I appreciate you trying to do
4 what you can do. But I don't see how we can approve this
5 in terms of you meeting the test for us to grant this
6 variance. I mean, a variance is again, you know, it's a
7 three-pronged test. It's a hard test to meet. And you
8 know, I don't think you've clearly met it.

9 And in addition to that, the ANC isn't in favor
10 of it. And so not that, that necessarily -- you know, we
11 take their great -- we take their report into account, as
12 well as that of the Office of Planning. But for me, I
13 don't think you met the standard for us to grant the
14 relief. So I'll be in denial of this application.

15 Does anybody else have anything else they would
16 like to add?

17 VICE CHAIR HART: Yes, Mr. Chairman. Just that
18 I think that one of the difficulties that you are facing
19 is that you're trying to create a lot in an area that --
20 you're trying to create a lot in an area -- and in
21 creating that second lot, you're doing it kind of at a
22 time that the Office of Planning and the Zoning Commission
23 have -- they're not looking for having new flag lots that
24 they are wanting to create.

25 So you're already kind of going up a very steep

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1 hill. And so I think that's also why you got the
2 recommendation for denial of the application for that.
3 Because you're creating something that has really been
4 determined or decided that they're not really looking to
5 do.

6 Again, as the chairman said, we do have to look
7 at the variance test -- the three prongs of the variance
8 test. And I would agree with him that I don't think that
9 this has met that test. I think that the -- that it would
10 be difficult to make that determination. It would be
11 difficult -- it's always difficult for us to approve
12 variances. And I think this case is, you know, even
13 harder because you're looking at kind of landlocked --
14 you're trying to create a landlocked lot that is, whatever
15 you're going to call it, a stovepipe, pork chop, whatever
16 the terminology you want to use. And I'm not exactly sure
17 what the impacts of allowing that would have on the kind
18 of light and air impacts that you would have on adjacent
19 properties.

20 I understand that there's a different
21 topography and you know that, that would be -- there might
22 not be, you know, those impacts. I just feel that you all
23 haven't provided that information to be able to say oh
24 yes, there's not going to be any impacts. I just think
25 that this is definitely one that I would not be able to

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1 support. And that's it.

2 CHAIRMAN HILL: Okay. I'm going to go ahead
3 and make a motion to deny -- make a motion to deny
4 Application Number 19843 as captioned and read by the
5 secretary and ask for a second.

6 VICE CHAIR HART: Second.

7 CHAIRMAN HILL: Motion made and seconded. All
8 those in favor, say aye.

9 (Chorus of aye.)

10 CHAIRMAN HILL: All those opposed? Motion
11 passed. Mr. Moy?

12 SECRETARY MOY: Staff would record the vote as
13 5:0:0. There's a motion by Chairman Hill to deny the
14 request for zoning relief. Seconding the motion is Vice
15 Chair Hart. Also in support of the motion Ms. White, Ms.
16 John, and Mr. Michael Turnbull. Motion carries.

17 CHAIRMAN HILL: Okay, thank you. Thank you all
18 very much.

19 SECRETARY MOY: The next application before the
20 board is Case Application Number 19849 of Stack Eight,
21 LLC. Capture and advertise for special exceptions from
22 the theoretical subdivision requirements of Subtitle C,
23 Section 305.1 and under Subtitle C, Section 703.1 from the
24 minimum parking requirements of Subtitle C, Section 701.5
25 and pursuant to Subtitle X, Chapter 10 for variances from

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1 the lot occupancy requirements of Subtitle F, Section
2 304.1 and from the minimum rear yard requirements Subtitle
3 F, Section 305.1. This would construct seven new flats
4 and four attached principle dwelling units of affordable
5 housing, RA-1 Zone. This is at 3401 13th Street SE,
6 Square 5936, Lot 802.

7 CHAIRMAN HILL: Okay, great. Thank you, Mr.
8 Moy. Could you please introduce yourselves from my right
9 to left? Sir, you have to push the button on the
10 microphone --

11 MR. HENRY: Oh, thank you.

12 CHAIRMAN HILL: -- on one of them.

13 MR. HENRY: My name's Peter Henry, PA
14 Architecture. I'm the architect for the Stack Eight
15 project.

16 CHAIRMAN HILL: Next? Thank you.

17 MS. PITTS: Jessica Pitts. I'm with Stack
18 Eight, LLC, the applicant.

19 CHAIRMAN HILL: Pitts?

20 MS. PITTS: P-I-T-T-S.

21 CHAIRMAN HILL: Okay, great. Thank you.

22 MR. MILLER: Good afternoon. John Miller, also
23 with the applicant.

24 MR. MAYAH: Good afternoon. William Mayah, I'm
25 a consultant for the applicant, Stack Eight, LLC. Mayah

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1 spelled M-A-Y-A-H.

2 CHAIRMAN HILL: Okay, great. Y-A-H. Okay.

3 All right, great. Who's going to be presenting?

4 MR. MAYAH: I will.

5 CHAIRMAN HILL: Mr. Mayah, okay. So Mr. Mayah,
6 you can go ahead and walk us through your application in
7 terms of again what you're asking for. And how you're
8 meeting the criteria for us to approve the application. I
9 mean, you have a lot of different things you're kind of
10 asking for. But you know, if you could do as concisely as
11 possible, that would be helpful.

12 MR. MAYAH: Sure.

13 CHAIRMAN HILL: The one thing that I did have a
14 question about, I guess, was -- And I know that I think
15 you're aware of it, but it's kind of where on the site
16 plans do you have the DDOT bike garage?

17 MR. MAYAH: Yes.

18 CHAIRMAN HILL: And so that's one thing. And
19 then the last thing I guess you could kind of point out is
20 I don't think we have a report from the ANC 8E. And so if
21 you could speak to your outreach with the community and
22 the ANC. I'm going to put 15 minutes on the clock, which
23 Mr. Moy did up there. And you can start whenever you
24 like.

25 MR. MAYAH: Okay. Thank you very much. So

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1 just to get straight to the nature of the special
2 exceptions and the variance request. We are asking for
3 special exception relief to create multiple primary
4 buildings on a single record lot and relief from the
5 minimum parking requirement. Additionally, the applicant
6 is seeking variance relief for lot occupancy for the
7 garden block, which is shown here. I'm pointing that out
8 for you on here. And also the 13th Street block, which is
9 just east of that.

10 So as far as the special exception is
11 concerned. There were two major issues related to this
12 project, which is necessitating this special exception
13 request. And that actually leads into the variance
14 request as well. So on this slide, if you look at the
15 pictures presented on the left side of the slide, we've
16 tried to present for you the extenuous circumstances
17 having to do with the elevation change from the northwest
18 portion of the site to the southeast portion. And you can
19 kind of see it exhibited in these bottom two pictures on
20 the left. There is a very extreme elevation change of
21 about 28 feet.

22 We also wanted to, in this project, maintain
23 the contextual nature of the existing construction there.
24 We have some pictures for you on the right side of the
25 slide here that shows that the existing development there

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1 is mainly single family detached dwelling in nature.
2 There are also duplexes and triplexes existing, especially
3 on that block, but also to the north, east, and south of
4 the subject property. Across the street, there are
5 multifamily apartment developments, but specifically
6 pertaining to the character of the block that the project
7 sits on, it's mainly single family development.

8 So we wanted to maintain that character. So
9 rather than having one building on that single record lot
10 to achieve the number of affordable dwelling units that
11 we're going for, we decided that it would be best and most
12 appropriate to -- I should say the applicant decided that
13 it would be best and most appropriate to split that up.
14 And that would remain -- that would keep the context of
15 the existing development, especially on Congress Street
16 and 13th Street. So rather than having one building on
17 one lot, we want to break that up into three separate
18 buildings on three separate lots, which is requiring the
19 special exception request.

20 We've met all the requirements for a
21 theoretical subdivision. We've provided the necessary
22 plans and elevations to staff as noted in the staff
23 report. We've also addressed all the zoning requirements,
24 except for two which is necessitating the variance
25 request.

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1 As it pertains to the bicycle parking, which
2 has to do with the other special exception request, it is
3 provided on the northwest portion of the site, which is
4 shown here, which I'm pointing out for you. Which is
5 marked out as 5.1. And Mr. Miller's going to address that
6 for you.

7 MR. MILLER: If I may, if you refer to the
8 exhibit only recently updated, I believe yesterday
9 evening, Exhibit 42. You can see in the northwest corner,
10 it's a little clearer than the PowerPoint presentation.
11 Thank you.

12 CHAIRMAN HILL: 5.2 or 5.1?

13 MR. MILLER: I misspoke. It is 5.1.

14 CHAIRMAN HILL: Okay.

15 MR. MILLER: Apologies.

16 CHAIRMAN HILL: Okay, all right. Please
17 continue, Mr. Mayah. And also actually, it was brought to
18 my attention that -- Mr. Miller, you and Mr. Henry
19 submitted their resumes in the record.

20 MR. MILLER: Yes.

21 CHAIRMAN HILL: Are you just submitting that
22 just for our benefit? You're not asking for expert
23 status?

24 MR. MILLER: If I may, in speaking with Office
25 of Zoning staff, they recommended that anyone who wasn't

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1 the applicant -- at least my understanding and perhaps it
2 was incorrect, should submit their resumes for the board's
3 consideration. I may have misunderstood and if so, I
4 apologize.

5 CHAIRMAN HILL: Okay. That's okay. We'll just
6 leave them in there and just -- I don't want to go through
7 whether you're -- unless you -- I don't think it's
8 necessary for you to be considered an expert right now in
9 order for us to take your testimony. So we're going to go
10 ahead and just --

11 MR. MILLER: Sure.

12 CHAIRMAN HILL: -- move forward. But Mr.
13 Henry, you're very polite and that's great. You can come
14 back anytime you like.

15 MR. MILLER: I'm actually Mr. Miller. That's
16 Mr. Henry, but --

17 CHAIRMAN HILL: Oh Mr. Miller, you've very
18 polite. Mr. Henry, I hope you're just as polite as Mr.
19 Miller if you speak. Fantastic. Okay. Please, Mr.
20 Mayah, go ahead.

21 MR. MAYAH: Sure, thank you very much. So the
22 special exception request, we've addressed those. And
23 then as I stated earlier, due to the theoretical
24 subdivision that we're proposing and the breaking up of
25 the development into three separate buildings, we have run

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1 into some design issues and have requested variances for
2 those.

3 So I will -- let's see -- move over to the next
4 slide, which shows in green there is the Congress block.
5 In blue is the 13th block. And in pink is the Garden
6 block. So we are requesting -- And first, a lot occupancy
7 variance for the Garden block. One of the things that we
8 haven't -- to address in the -- I'm sorry. In the
9 interest of being brief, one of the qualities of this
10 development that's being proposed is the net zero aspect
11 of the construction here. And very, very stringent
12 techniques that are being used in order to make sure that
13 the level of energy consumption that is being used by this
14 construction is brought to a minimum. And actually we do
15 have Mr. Miller here and Ms. Pitts to address any of those
16 comments or questions about that.

17 But the Garden block, the issue that is --
18 that's being presented is that the -- We wanted to make
19 sure that the construction that's being proposed on the
20 Garden block does not create any shadowing issues for the
21 Congress block. As in the wintertime, we want to make
22 sure that all the construction is being heated adequately
23 inside the house. And if you have extra shade that's
24 being produced by, you know, the construction in the
25 Garden block, that can mitigate what we're actually trying

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1 to achieve there in terms of energy efficiency.

2 So we propose to instead of having three
3 stories on the Garden block, to lower it to two. But we
4 still want to maintain the living space there. So that
5 required the applicant to, instead of having a taller
6 building, having a wider building for the Garden block.
7 And that would mitigate the height issues there and the
8 shadows that are cast on the rest of the development. So
9 we are proposing for a lot occupancy variance to address
10 that issue.

11 As far as the rear setback requirement for the
12 13th block, which is actually related to the construction
13 on the Garden block, there are two issues there. One is
14 that they wanted to have a design that would conform to
15 what's existing in the neighborhood and not cause any
16 adverse effects on existing development. So you'll see
17 that on the Garden block, which I'm showing here, the side
18 yard setback is actually meeting the setback requirement
19 for your exterior lot line shown here. And if we were to
20 meet the rear lot line -- rear yard setback shown here for
21 the 13th block, we would have to push this building
22 further to the west. And that would have some adverse
23 effects on the neighboring lot, and we wanted to avoid
24 that.

25 And we also wanted to maintain the building

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1 line showed on this plan, which I'm pointing out for you.
2 So those issues we felt that the plan best addresses those
3 design issues with what we've presented. And staff has
4 agreed with us. We've very closely with the Office of
5 Planning staff to make sure that all the issues and
6 concerns that they had were met. And that's been
7 demonstrated in the Office of Planning report.

8 CHAIRMAN HILL: Okay. Does the board have any
9 questions for the applicant?

10 MEMBER WHITE: Yes. I mean this is a very
11 unique project, so it's a very interesting concept. I'm
12 really curious about community feedback. I'm kind of
13 surprised I didn't see an ANC report. But I wondered if
14 you can share whatever feedback you've gotten from the
15 community regarding this project?

16 MR. MAYAH: Sure. And Mr. Miller can address
17 that question.

18 MR. MILLER: Thank you for the question. We've
19 met extensively with ANCAD. I personally have been to all
20 but two of their monthly meetings since February. They've
21 been briefed on the project multiple times. I've sent out
22 handouts to all attendees at those meetings when we were
23 called on to speak. And otherwise, at every meeting, we
24 bring a stack with us. And I would say the ANC is
25 supportive. They've decided -- I can't speak for them of

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1 course, but they've decided to not write a letter pro or
2 con. We've addressed many questions that they've had, and
3 have made modifications to the site plan.

4 One, for instance, is that we actually put a
5 sort of opaque -- I shouldn't say opaque -- a sort of an
6 open metal fence around the entire site. That was a
7 request they made of us. We've met with our single
8 member, multiple times with the chair, both at meetings
9 and outside. And they just have decided not to take a
10 position. But we've answered all their questions and
11 we've also knocked on doors, met with neighbors, both in a
12 sort of informal door knocking effort. And also just on
13 ad hoc basis when they see us on the site, making visits
14 to undertake surveys and other site investigations.

15 So the ANC has declined to do anything at this
16 point, but we believe generally that they are supportive
17 of the application.

18 MEMBER WHITE: And when you say a metal fence,
19 you mean during construction only, right?

20 MR. MILLER: Well there will certainly be one
21 during construction and they've asked for that. But
22 they've also asked for sort of a high quality
23 architectural grade metal -- I don't want to use the word
24 picketed fence, but you know, sort of in the DC style to
25 ring the entire site. As you can see, the building faces

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1 themselves and circle most of the site. So if you were to
2 -- If I can just gesture to William's laptop here.

3 If you were to look at the area I'm
4 highlighting here between the Congress block and 13th
5 block, they've asked for a fence there. And you can see
6 that in our exhibits that such a fence is displayed. So
7 their concern was that we might have people coming to the
8 site, stealing packages, causing trouble. They really
9 actually wanted to reserve this interior court for the use
10 of the residents.

11 CHAIRMAN HILL: Okay, great. Thank you.
12 Anybody else?

13 VICE CHAIR HART: Did you say that the -- is
14 the fence just here or did you just say that it was also
15 on this -- you know, on the -- is it around the entire
16 site?

17 MR. MILLER: It is, sir. It extends at the
18 northwest corner and down adjacent to our neighbor and
19 around the back of the site as well. Yes.

20 VICE CHAIR HART: Okay. And the topography
21 from what I understand, the image that's in the bottom
22 left is kind of like here, looking that way. Or maybe
23 along the street, looking -- what is it, 13 Street? Is
24 that along 13th Street?

25 MR. MILLER: Yes, it looking to the southwest

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1 corner of the site from its northeast corner.

2 VICE CHAIR HART: And then the image that is
3 above that is actually looking at it from this hill,
4 looking down -- looking down that way?

5 MR. MILLER: That's correct.

6 VICE CHAIR HART: Okay, thank you.

7 COMMISSIONER TURNBULL: Just a quick -- the
8 majority of the buildings around the surrounding are all
9 brick?

10 MR. MAYAH: Yes, that's correct.

11 COMMISSIONER TURNBULL: Okay, thank you.

12 CHAIRMAN HILL: All right, any more questions?
13 All right, I'm turning to the Office of Planning.

14 MR. JESICK: Thank you, Mr. Chairman and
15 members of the board. My name is Matt Jesick. The Office
16 of Planning is supportive of the application and
17 recommends approval. We have a considerable amount of
18 detail in our written report. I'm happy to go into that
19 if the board would like. But for now, I'll just rest on
20 the written record and take any questions. Thank you.

21 CHAIRMAN HILL: No, Mr. Jesick, your report was
22 very thorough. I think it was 14 pages. Yes, that's the
23 longest -- that's the biggest one I think we've had in a
24 long time. I enjoyed the reading. It was very, very
25 nice. Does anybody have any questions from Mr. Jesick?

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1 Okay, does the applicant have any questions for the Office
2 of Planning?

3 MR. MAYAH: No.

4 CHAIRMAN HILL: Okay. Is there anyone here
5 wishing to speak in support of the application? Is there
6 anyone here wishing to speak in opposition to the
7 application? All right. Wow, okay. Is there anything
8 you would like to add in conclusion?

9 MR. MAYAH: No, thank you for the opportunity.

10 CHAIRMAN HILL: Okay, great. I'm going to go
11 ahead and close the record.

12 COMMISSIONER TURNBULL: Mr. Chair, I just had
13 one comment.

14 CHAIRMAN HILL: Yes.

15 COMMISSIONER TURNBULL: I mean I think it's a
16 very commendable project. I'm just curious about the
17 choice of materials for your project and how you relate
18 that to the neighborhood.

19 MR. MILLER: That's a great question. We've
20 selected stucco onsite three part -- field applied stucco,
21 not --

22 COMMISSIONER TURNBULL: I was going to say,
23 real or -- it's real stucco.

24 MR. MILLER: Yes, sir. We will not be using
25 the EIFS product that's typically deployed.

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1 COMMISSIONER TURNBULL: Okay.

2 MR. MILLER: And then siding for the other
3 buildings. Actually I'll defer to our architect, Peter to
4 speak more about that.

5 MR. HENRY: Yes. So the reason we're doing --
6 we're choosing a stucco product, instead of a -- I mean it
7 would seem like the obvious choice would be a brick
8 product in this case. But these dwellings are super
9 insulated, so their walls are 1 foot 4 inches thick. And
10 8 inches of that --

11 COMMISSIONER TURNBULL: One foot four?

12 MR. HENRY: Yes. Because we're needing --
13 these buildings will only use 1/10 of the energy for
14 heating and cooling of a standard residence. And being
15 that efficient requires a substantial amount of
16 insulation. And that insulation is actually -- most of
17 it, I call it outsulation. That is, it's outside of the
18 building's structural shell. And we have to put our
19 finish outside of that. So a very heavy finish is hard to
20 support through 8 inches of insulation or 7 inches of
21 insulation. So using a lighter weight finish makes it
22 easier. It would not be impossible to do a brick facade,
23 but it would be much more difficult. These buildings will
24 be built and shipped to the site, so that the
25 transportation also makes that more challenging. So

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1 that's one of the reasons why we've chosen these materials

2 --

3 COMMISSIONER TURNBULL: Okay.

4 MR. HENRY: -- because of their ease of
5 installation.

6 COMMISSIONER TURNBULL: The siding, is that
7 cement or is that real wood or --

8 MR. HENRY: No, it would be a cementitious
9 siding.

10 COMMISSIONER TURNBULL: Cementitious, okay.

11 MR. HENRY: Yes.

12 COMMISSIONER TURNBULL: All right, thank you.

13 CHAIRMAN HILL: Okay, anything else? All
14 right, I'm just going to go ahead and close the record.
15 Is the board ready to deliberate?

16 VICE CHAIR HART: Sure.

17 CHAIRMAN HILL: Would anyone else like to
18 start?

19 VICE CHAIR HART: Sure.

20 CHAIRMAN HILL: Okay, great.

21 VICE CHAIR HART: You've had a lot of stuff
22 you've had to work on today. So this is an ambitious
23 project, but I think that it is one that has provided a
24 substantial amount of information. The record is very
25 full on this. I would kind of on the outset, I'll just

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1 say that I am supportive of the -- I am in support of the
2 application because I believe that the Office of Planning
3 and the applicant have provided sufficient information for
4 me to understand how you are meeting the special exception
5 criteria, as well as the variance prongs.

6 I think that's it's a difficult project in
7 that, you know, net zero is not easy. And I know that it
8 is really just an interesting project looking at, you
9 know, the design from various vantage points. And I would
10 be in support of the application as I noted. I think that
11 as I said, you all have done a commendable job in bringing
12 forward a project such as this. And I think you've
13 addressed the issues that we've kind of -- any questions
14 that I've had after reviewing the record. I don't have
15 really a lot to say on it, but I think that you've
16 definitely provided us with sufficient information for me
17 to be able to support it.

18 MEMBER WHITE: Yes, Mr. Chair, I just had a
19 couple of comments about it. I think the project is very
20 commendable. It's an affordable project. I think the
21 plans that you have in the record show a very attractive
22 project. So I think it will be a benefit for this area.
23 But technically I think they did meet the criteria for the
24 variance and the special exception relief that you're
25 seeking.

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1 I was really taken by some of the energy
2 efficient stuff that you're doing. So I'll be very
3 interested to see how that moves forward. But in short, I
4 concur with my colleague that they've met the criteria.
5 And I would be in support, especially because of the very
6 fine report that the Office of Planning submitted into the
7 record. I think it supports the relief that the applicant
8 is seeking.

9 COMMISSIONER TURNBULL: I'm in total support.

10 MEMBER JOHN: As am I, Mr. Chairman.

11 CHAIRMAN HILL: Okay. I have nothing to add.
12 I'm going to make a motion to approve Application Number
13 19852 as captioned and read by the secretary and ask for a
14 second.

15 VICE CHAIR HART: Wait, which one?

16 CHAIRMAN HILL: Who? Sorry.

17 VICE CHAIR HART: No, 19849.

18 CHAIRMAN HILL: I've moved on.

19 VICE CHAIR HART: You're trying to move on a
20 little too quick.

21 CHAIRMAN HILL: You were going to approve
22 something --

23 (Simultaneous speaking.)

24 VICE CHAIR HART: Would you like me to start,
25 Mr. Chairman?

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1 CHAIRMAN HILL: Okay. Yes, sure.

2 VICE CHAIR HART: I'll make a motion to approve
3 Application Number 19849 of Stack Eight, LLC as read and
4 captioned by the secretary. Do I have a second?

5 MEMBER WHITE: Second.

6 CHAIRMAN HILL: Motion made and seconded. All
7 those in favor say aye.

8 (Chorus of aye.)

9 CHAIRMAN HILL: All those opposed. Motion
10 passed. Mr. Moy?

11 MR. MOY: Thank you very much. The staff would
12 record the vote as 5:0:0. This was on the motion of Vice
13 Chair Hart to approve the application for the relief
14 requested. Seconded the motion, Ms. White. Also in
15 support, Ms. John, Mr. Turnbull, and Chairman Hill. The
16 motion carries.

17 CHAIRMAN HILL: Thank you, Mr. Moy. Thank you
18 all very much. All right, so we're going to do one more
19 and then we're going to take a break, I think. And then
20 we'll do the appeal just so everybody knows.

21 SECRETARY MOY: If we could have parties to the
22 table to Case Application Number 19852 of Clay Street NE,
23 LLC, caption and advertise for special exception under
24 Subtitle D, Section 520.1 from the lot occupancy
25 requirement Subtitle D, Section 304.1 rear yard

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1 requirement, Subtitle D, Section 306.2, side yard
2 requirements, Subtitle D, Section 307.1, nonconforming
3 structure requirements, Subtitle C, Section 202.2. This
4 would permit an existing two-story rear addition to an
5 existing principle dwelling unit, R-2 Zone. This is at
6 4521 Clay Street NE Square 5134 Lot 834.

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

9 MR. MORRIS: My name is Frank William Morris,
10 Morris Architects.

11 MS. WILSON: Alex Wilson from Sullivan & Barros
12 on behalf of the applicant.

13 CHAIRMAN HILL: Okay. I'm getting over jet
14 lag, so sorry that I already approved your application.
15 So the -- yes, we do have some questions about it
16 obviously. And I guess if you want to go ahead and
17 present -- Ms. Wilson, I ran into you in the hall and you
18 said it was very quick. And so like it's not really,
19 really very quick. You've got like a split thing going on
20 here.

21 So if you could go ahead and walk us through
22 what you're trying to do and why we should approve your
23 application due to the standards that you're trying to
24 meet. But obviously in particular if you could focus a
25 little bit on how the Office of Planning's analysis is

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1 flawed in the area that they're denying, okay? But you
2 know, I'll go ahead and put 15 minutes on the clock for
3 you and you can begin whenever you like.

4 MS. WILSON: Great, thank you so much. So the
5 applicant is asking for relief for an already constructed
6 addition. The issue is that there were originally two
7 sets of plans; a preliminary set and then a set of plans
8 upon which the permit was actually issued. And the
9 contractor constructed the building based on the
10 preliminary drawings, which were never approved by Zoning.
11 And the contractor maintains he never received or saw the
12 permit drawings.

13 And this is just for some background, we are asking for
14 special exception relief, not variance relief. And this
15 does not really relate to the special exception
16 requirements.

17 So the project itself includes a second story
18 addition on top of the existing footprint, a two-story
19 rear addition, and a rear inside deck. The applicant is
20 asking for special exception relief for the eastern side
21 yard. It was nonconforming and the addition extended it.
22 The applicant is also asking for special exception relief
23 for the lot occupancy and rear yard requirements, as the
24 addition brought the building over lot occupancy. And the
25 rear yard is just shy of the 20 foot requirement.

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1 And here is a photo of the previously existing
2 versus the quote, unquote proposed as it is already
3 existing. And I'm happy to have the architect walk you
4 through the addition and plans after the presentation if
5 you have any questions. But in the interest of time, I'm
6 going to skip to the special exception requirements.

7 The light and air available to the neighboring
8 properties will not be unduly affected. The building is
9 separated from the adjacent properties by side yards. To
10 the west, there is a five foot side yard on the subject
11 property and a small side yard on the adjacent property.
12 The property to the east has about a five foot side yard
13 as well. The deck makes the property about three feet shy
14 of meeting the rear yard requirements. The addition to
15 the building itself meets the rear yard requirements. It
16 is only the deck, which is an open air structure, that
17 requires relief. And the adjacent neighbor to the east
18 submitted a letter in support of the project.

19 Regarding the privacy and use of enjoyment, the
20 Office of Planning recommended approval of all requests
21 except for the deck on the east side. The adjacent
22 neighbor to the east has signed a letter in support,
23 noting that the addition will not impact her privacy. And
24 she has a five foot side yard on the property, which acts
25 as a buffer.

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1 Here is a photo of the side deck. The door is
2 just for egress and access from the kitchen to the rear
3 yard. People are not hanging out on this deck. Also, the
4 adjacent neighbor has a similar walkout door and structure
5 that leads to the front. This feature is not unusual and
6 the neighbor to the east, as well as 13 other neighbors
7 who signed a petition, are supportive of the project.

8 In terms of proof that this requirement is met,
9 we are in the unique position of reviewing something that
10 is already built. I understand the Office of Planning is
11 looking at this more of a hypothetical as their report
12 states that the deck could impact privacy. But we have
13 provided direct evidence from the neighbor that this does
14 not in fact impact her privacy. As there is no evidence
15 to the contrary, we assert that this requirement has been
16 met with respect to the deck and the addition.

17 There are also a mix of styles on this street
18 and therefore the addition will not intrude upon the
19 character of this street as demonstrated by the following
20 photos. And this is the subject property and adjacent
21 properties. This is a view across the street. They're in
22 a different style, but they are also two-story dwellings.
23 And I've also included some aerial views to get a better
24 idea of the different styles in this area. The
25 application meets all the other requirements of D5201 as

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1 we are only proposing a lot occupancy of 46.2 percent.

2 In conclusion, the ANC voted unanimously to
3 support the application. The Office of Planning is
4 recommending approval for everything but the side deck.
5 And as I noted, the only impacted neighbor is in support
6 of the project. Further, the neighborhood overall is
7 generally supportive as is clear by the petition and
8 support from 13 neighbors.

9 And with that, we are happy to answer any
10 questions.

11 CHAIRMAN HILL: Does the board have any
12 questions for the applicant?

13 VICE CHAIR HART: Yes. Ms. Wilson, you said
14 that the neighbor is in support of it. And they don't
15 want anything -- they're not like saying that they want
16 anything else. Like you know, if you put a -- I don't
17 know, like a screen or something up that's between them or
18 anything. This is just kind of an unconditional support?

19 MS. WILSON: Correct.

20 VICE CHAIR HART: Thank you.

21 CHAIRMAN HILL: The -- oh, I'm sorry. Mr.
22 Turnbull?

23 COMMISSIONER TURNBULL: I guess you're saying
24 mistakes were made. And you're asking the board to
25 approve the mistakes that were made to make them compliant

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1 -- to make everything go away. That nobody noticed that
2 there was mistakes on the drawings. And that the owner
3 didn't notice the contractor used drawings that no one was
4 looking at. Things were built and now you're asking us to
5 make the owner whole.

6 MS. WILSON: That's certainly one
7 characterization. I would say that would be more
8 applicable in a variance scenario. And as we're asking
9 for special exception relief, it relates more to the
10 light, air, and privacy. And let's say we were looking at
11 this if mistakes had not been made, those same standards
12 would still be applicable. And I would argue that we meet
13 those standards.

14 COMMISSIONER TURNBULL: You can argue that.

15 CHAIRMAN HILL: Okay. So if this weren't
16 approved, how would you guys fix the issue on -- because
17 if you can show us exactly what happens. Is that a
18 different unit that's coming out of that side there in
19 order to have access to the rear yard? Was that the whole
20 -- no. I mean you would just get rid of that portion of
21 the deck.

22 MS. WILSON: I don't want to speak for the
23 owner.

24 CHAIRMAN HILL: Okay. Well, I can have the
25 Office of Planning tell me what you would end up having to

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1 do, but that's all right. I don't know if the architect
2 wants to answer that or not.

3 MR. MORRIS: It's a very simple access from the
4 kitchen at the first floor level to the rear deck. That's
5 the sole function of that walkway --

6 CHAIRMAN HILL: Okay.

7 MR. MORRIS: -- if that answers your question.

8 CHAIRMAN HILL: Yes, it does. All right, I'm
9 going to turn to the Office of Planning. Hold on, unless
10 somebody has any more questions for the applicant.

11 VICE CHAIR HART: Yes, I'm sorry. I just
12 realized that -- so, there is a letter in the record,
13 Exhibit 30, by someone by the name of Derek Figures. He
14 says, I live and own the property located at 4519 Clay
15 Street.

16 MS. WILSON: That is the neighbor to the west.
17 And he is not really impacted by our proposal as all of
18 the relief is related to the side yard to the east -- the
19 different neighbor.

20 VICE CHAIR HART: I need to see an image of
21 this because I'm --

22 MS. WILSON: His property is the larger one,
23 the grey house.

24 VICE CHAIR HART: He's here? He's here?

25 MS. WILSON: I don't know --

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1 CHAIRMAN HILL: Just look on the screen. He
2 made a mark on the screen.

3 VICE CHAIR HART: This one?

4 MS. WILSON: Yes.

5 VICE CHAIR HART: Okay. I'm just asking
6 because he kind of, you know, was looking for quite a few
7 things. But he just thought that it was -- he just
8 thought it was just too large for the site. I mean he
9 brings up some issues about inferior materials and some
10 other things. But I just didn't know how -- what your
11 reaction -- I mean you -- I understand what you're saying
12 about the impacted neighbor is actually the other
13 neighbor. But it is an adjacent property owner and so we
14 do, you know, want to understand what the adjacent
15 property owner -- what their issues are if they have any.
16 So I didn't know if you had any response to that besides
17 what you gave me.

18 MS. WILSON: Sure, I'm happy to respond. Other
19 than the fact that he is not necessary impacted, I would
20 just say that his comments were largely unrelated to the
21 actual relief requested. The addition to the building
22 itself met the rear yard setback. It's just the deck that
23 does not meet the rear yard requirements. And it's just
24 shy. I believe it's 2.75 feet.

25 VICE CHAIR HART: Okay. I mean, it does raise

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1 the issue that it's -- that the project is too large for
2 the lot. So, I mean, he is raising that it is a larger
3 development that's there. So that's what I was looking
4 for. You've answered it, so thank you.

5 CHAIRMAN HILL: Okay, turning to the Office of
6 Planning.

7 MR. MORDFIN: Good afternoon, Chair, members of
8 the board. I'm Stephen Mordfin with the Office of
9 Planning. And the Office of Planning recommends approval
10 of a portion of this report -- a portion of this
11 application. And also recommends denial of a portion.

12 Office of Planning recommends approval of the
13 special exception request for lot occupancy for the rear
14 yard, for the east side yard, for the dwelling itself, and
15 also for nonconforming structures, as it finds that those
16 building additions would not have an adverse effect on the
17 light and air and use and enjoyment of property because
18 it's extending the existing -- what was the existing
19 structure back, maintaining the existing side yards. And
20 is not -- and the rear yard request is also not for an
21 enclosed structure, but rather for a deck. And also the
22 lot occupancy is within the amount that's permitted to be
23 approved by the board for this zone.

24 The Office of Planning does have an issue with
25 the east side yard for the new deck that runs almost up to

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1 the property line. It's 0.23 feet off of that property
2 line and it also rises up to the height of almost the
3 fence. Although the applicant did say they have something
4 similar next door, I disagree that it really is similar.
5 Next door what they have is a landing with steps down.
6 This is actually a passageway along the side of the house
7 and I think it is a different type of structure.

8 Although that neighbor may have said that this
9 will not adversely affect her privacy, this is not done by
10 popular vote. Because what I see here is that something
11 where you actually walk along the property line above the
12 fence line, which kind of like eliminates the whole
13 purpose of the fence to separate properties and create a
14 sense of privacy in somebody's rear yard when you can walk
15 across the top. And it's not just a landing, which I
16 think would be something different. This is a whole
17 passageway. And that is the reason why the Office of
18 Planning recommends denial of this. We do find that, that
19 would -- that, that does adversely impact privacy.

20 CHAIRMAN HILL: Okay. Does anybody have any
21 questions for the Office of Planning? The one question I
22 just have, Mr. Mordfin, again is like you know, this is
23 already there, so that's -- it doesn't determine as to our
24 analysis. But I guess what I'm also trying to -- if this
25 was a brand new property that was before you, you would

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1 still be in -- you would be in the same position that you
2 are now.

3 MR. MORDFIN: I mean that's a hypothetical, but
4 I mean most likely yes, we would not recommend approval of
5 this --

6 CHAIRMAN HILL: Okay.

7 MR. MORFDIN: -- just because --

8 CHAIRMAN HILL: That's all right.

9 MR. MORFDIN: -- if it was something like --

10 CHAIRMAN HILL: Like I said, it's hypothetical.
11 Okay, does the applicant have any questions for the Office
12 of Planning?

13 MS. WILSON: No, thank you.

14 CHAIRMAN HILL: Okay. Did I already ask if
15 anybody had any questions for the Office of Planning?
16 Does anybody have any question for the Office of Planning?
17 Okay. is there anyone here who wishes to speak in
18 support? Is there anyone here wishing to speak in
19 opposition? Does the applicant have anything they'd like
20 to add at the end?

21 MS. WILSON: Just one last thing. I would just
22 like to reiterate that while I understand the Office of
23 Planning is looking at this from a hypothetical
24 perspective and that it could impact privacy, we have
25 submitted factual evidence that the addition does not

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1 adversely impact the neighbor to the east. And there's
2 not stronger factual evidence that shows otherwise.

3 CHAIRMAN HILL: Okay, all right. Anybody else?
4 Everybody good? Okay, I'm going to close the record. Are
5 we ready to deliberate? I'm ready to deliberate. I can
6 start. We can start again. We can do it again --
7 deliberate again later.

8 Let's see, although the applicant says -- I
9 mean, I agree with the Office of Planning. I mean I don't
10 think it's a hypothetical. I think that it is a deck
11 that's along the line of the fence, looking down into the
12 property. I mean again, that one owner can say they don't
13 have an issue with it. But then the next owner that comes
14 along might have an issue with it. And so I'm just giving
15 my impression of the report and the position that the
16 Office of Planning is taking. And I would agree with them
17 in terms of the denial of the side yard requirements.

18 I mean, I appreciate that the applicant has
19 gone ahead and found that the neighbor is saying they
20 don't have any issues with the deck. I would actually
21 have an issue with the deck, but that's just me. And so
22 the -- and I also appreciate that the ANC did vote in
23 favor of the application. I don't know if they
24 necessarily broke it down in this particular way. But I
25 understand that they're in approval of it. So I would be

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1 in the place where the Office of Planning is in terms of
2 approval in part and denial in part. But I will let my
3 board members please help me out.

4 COMMISSIONER TURNBULL: Mr. Chair, I would
5 concur with your analysis. I would support, I think, the
6 Office of Planning with their -- Mr. Mordfin's explanation
7 of the lot occupancy of the rear yard, the east side yard,
8 and nonconforming structures approval. I think he's very
9 clear and I would agree with that 100 percent.

10 And I would also agree with you and your
11 explanation of denial of the east side yard in that it's
12 not -- it's nice to have the approval of the individual
13 neighbor as such, but it goes to the property as a whole
14 that another neighbor might come in and find that it's
15 offensive. And I think Mr. Mordfin is speaking from the
16 sense of the zoning regulations that this is really
17 noncompliant. And I would be in support of not approving
18 the deck on the east side.

19 CHAIRMAN HILL: Okay. Anyone else?

20 MEMBER JOHN: Mr. Chairman, I agree with the
21 report from the Office of Planning as clarified during
22 this hearing. And I also believe that while it is great
23 for the neighbor to the east to not oppose the special
24 exception, I agree, it doesn't meet the requirements. And
25 so I would not support relief for the east side yard.

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1 CHAIRMAN HILL: Nobody else? Okay, all right.
2 Then I'm going to go ahead and make a motion to approve
3 Application Number 19852 of Clay Street NE, LLC pursuant
4 to 11DCMR, Subtitle X, Chapter 9 for a special exception
5 under Subtitle D5201 for the lot occupancy requirements of
6 Subtitle D304.1, the rear yard requirements of Subtitle
7 D306.2 and the nonconforming structure requirements of
8 Subtitle C202.2 to permit an existing two-story rear
9 addition to an existing principle dwelling in the R2 Zone
10 of premises 4521 Clay Street NE. I would also make a
11 motion to deny the side yard requirements of Subtitle
12 D307.1 and ask for a second.

13 VICE CHAIR HART: Second.

14 CHAIRMAN HILL: Motion made and seconded. All
15 those in favor say aye.

16 (Chorus of aye.)

17 CHAIRMAN HILL: All those opposed? The motion
18 passed. Mr. Moy?

19 MR. MOY: Staff would record the vote as 5:0:0.
20 This is on the motion of Chairman Hill to, I'm going to
21 say, to deny in part and to approve in part as cited in
22 the chairman's motion. Seconding the motion, Vice Chair
23 Hart. Also in support of the motion, Ms. White, Ms. John,
24 and Mr. Michael Turnbull. The motion carries.

25 CHAIRMAN HILL: Okay. Thank you, Mr. Moy.

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1 Thank you --

2 MS. WILSON: I just -- could we stipulate that
3 it's just the deck and not the portion of the addition?
4 Mr. Mordfin split his denial to just the deck.

5 CHAIRMAN HILL: All right, now I'm confused
6 about the motion I made. The motion I made was to deny
7 the side yard requirements of Subtitle D307.1 and that is
8 the deck.

9 MS. WILSON: There is also a portion of the
10 existing building that didn't meet the side yard
11 requirements and it was extended back, so that also does
12 not meet the side yard requirements. That was part of the
13 side yard relief. There's this portion here.

14 MS. NAGELHOUT: The house -- the one-story
15 house was not conforming with respect to side yard. And
16 they built a two-story rear addition that extended that
17 aspect of nonconformity. You know, the original house was
18 this long. And then they built a two-story rear addition
19 with a side yard less than 8 feet, so that part is
20 nonconforming. What I'm understanding is you don't have
21 an issue with that. What you do have an issue with is the
22 side deck. Is that right?

23 CHAIRMAN HILL: Yes.

24 MS. NAGELHOUT: Okay.

25 CHAIRMAN HILL: I'm sorry, I'm still -- it's

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1 the jet lag working on me, so I'm just trying to --

2 MS. NAGELHOUT: If you look at Exhibit -- what
3 exhibit number is this? If you look at the PowerPoint
4 presentation --

5 CHAIRMAN HILL: I'm just trying to figure out
6 how to make the motion --

7 (Off microphone comments.)

8 VICE CHAIR HART: So we should make a new
9 motion, is that what you're saying just to clarify?

10 MS. NAGELHOUT: Or just amend the motion to --

11 VICE CHAIR HART: Okay --

12 MS. NAGELHOUT: -- clarify that the denial
13 refers only to the side deck.

14 VICE CHAIR HART: I'll make sure. So I guess
15 it would be too -- oh I guess you have to reopen -- did
16 you read -- did you --

17 CHAIRMAN HILL: No, please go ahead. Amend my
18 motion.

19 VICE CHAIR HART: That would be -- Which one
20 are we on? To deny side yard requirements for the new
21 proposed -- for the proposed new deck along the east wall
22 of the building. And this is pursuant to Subtitle D307.1.
23 I think that, that's clear, as opposed to the rear
24 addition. So we're not including the rear addition. So
25 amending it is to say that deny the side yard requirements

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1 for the proposed new deck along the east wall of the
2 building.

3 MS. NAGELHOUT: And otherwise to approve the
4 application.

5 VICE CHAIR HART: And otherwise to approve the
6 rest of the application.

7 CHAIRMAN HILL: Second. The motion made and
8 seconded. All those in favor say aye.

9 (Chorus of aye.)

10 CHAIRMAN HILL: All those opposed? Motion
11 passed. Mr. Moy?

12 SECRETARY MOY: Staff would record the vote
13 then as 5:0:0. This is on the motion of Vice Chair Hart.
14 Seconded by Chairman Hill. Also in support Ms. White, Ms.
15 John, and Mr. Turnbull.

16 CHAIRMAN HILL: Okay, we're going to take a
17 quick break before our last -- before our appeal.

18 (Whereupon, the above-entitled matter went off
19 the record at 3:37 p.m. and resumed at 3:51 p.m.)

20 CHAIRMAN HILL: Okay, Mr. Moy.

21 SECRETARY MOY: Thank you, Mr. Chairman. The
22 time is about 3:52; the board's reconvening after a break
23 or recess. And the last action for the Board here is
24 Appeal No. 19550 of ANC6C as amended in the appeal from
25 the decision made on March 31st, 2017 by the zoning

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1 administrator, Department of Consumer and Regulatory
2 Affairs to issue Building Permit No. B17006219 as revised
3 by B1805207 to permit the renovation of a one-family
4 dwelling to two separate one-family dwelling units RF-1
5 Zone at premises 125 7th Street, N.E., Square 886, Lot 35.
6 As the Board will recall, this was last convened and heard
7 at a public hearing at its September 19th, 2018 hearing,
8 and where the Board completed its hearing procedure and
9 requested supplemental information from the property owner
10 and from DC area and that is filed in the case record.

11 CHAIRMAN HILL: Okay, great. I think some
12 people need to be sworn in, correct? Whoever needs to be
13 sworn in, if you can please stand and take the oath
14 administered by the secretary to the left.

15 SECRETARY MOY: Do you solemnly swear or affirm
16 that the testimony you're about to present in this
17 proceeding is the truth, whole truth and nothing but the
18 truth?

19 Thank you; you may be seated.

20 CHAIRMAN HILL: Okay. All right, welcome back,
21 everyone; whole table's full. Happy Halloween and let's
22 go ahead and introduce ourselves from right to left,
23 please.

24 MS. LORD-SORENSEN: Good afternoon. Adrienne
25 Lord-Sorensen, Assistant General Counsel with the D.C.

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1 Department of Consumer and Regulatory Affairs.

2 MR. LE GRANT: Matthew Le Grant, Zoning
3 Administrator DCRA.

4 MR. CUMMINS: Kevin Cummins, intervener; I'm
5 the adjoining property owner at 1123 7th Street, N.E.

6 MR. ECKENWILER: Mark Eckenwiler, Vice Chair
7 ANC6C.

8 MR. BROWN: Patrick Brown from Greenstein,
9 DeLorme & Luchs on behalf of the property owner, Atlas
10 Squared.

11 MR. TEASS: Will Teass, a principal with Teass
12 Warren Architects here on behalf of the property owner.

13 MR. JAWED: Tarique Jawed, property owner of
14 1125 7th Street, N.E.

15 MS. RIPPE: Mariah Rippe, residential designer
16 and worked on the project, the drawings at Moment
17 Engineering + Design.

18 CHAIRMAN HILL: Okay, sir. I'm sorry; can you
19 spell your name for me as the property owner?

20 MR. JAWED: Sure, it's Tarique which is T-A-R-
21 I-Q-U-E, the last name is Jawed, J-A-W-E-D.

22 CHAIRMAN HILL: Okay, great. So, we had a very
23 full hearing the last time and there was a lot of
24 questions that we had from everybody in terms of further
25 clarification, for things that the Board wanted to look

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1 at. We did get all of the things that we asked for and I
2 wanted to just kind of go over how I think we're going to
3 move forward with this so that everybody knows and the
4 Board also knows. So, I was going to -- so, this is my
5 initial plan -- and you'll forgive me, I've kind of
6 mentioned this already -- I'm kind of going through -- I
7 just got back from overseas so I'm a little slower. And
8 so I just want to walk through what I think we're going to
9 try to do, which is that I'd be interested in -- the Board
10 can tell me what you all's thoughts are on this -- but I'd
11 be interested in kind of hearing a little bit of a summary
12 of what we ask for of the appellant/intervener, DCRA, and
13 the building owner. Then I thought we could ask questions
14 of everyone, and so we'll just go ahead and ask our
15 questions. We might try to ask them in the order of DCRA,
16 intervener, appellant, and then property owner, or -- yes,
17 that would be kind of my thought -- and then the different
18 parties can cross each other's answers to the questions
19 that we give. And the order that I was planning on going
20 was the same way that the conclusion is at the end, which
21 in the regulation says appellant, intervener, DCRA and the
22 property owner. And I love that Commissioner Eckenwiler
23 is nodding so I know that I'm following along correctly.
24 And so that's the way that I had hoped to do the cross.
25 And then after the cross there will be an opportunity for

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1 rebuttal from the appellant on everything because the
2 appellant hasn't had an opportunity yet to rebut anything.
3 Then there will be cross of the rebuttal from the other
4 parties, and then there will be conclusions in the way
5 that I went forward with all that.

6 So, does anybody have any questions either from
7 the parties here or the Board as to what I had thought we
8 would do with this last portion of the hearing?

9 MR. ECKENWILER: Mr. Chairman, just one process
10 question; I had understood OAG to say at the last hearing
11 that this was not to be testimony, it was only going to be
12 the Board asking questions of the parties about what had
13 been filed, but that we weren't going to be presenting
14 additional testimony.

15 CHAIRMAN HILL: And that's fine. I should
16 clarify where I'm at; I'm not asking for testimony. I
17 guess I would just like to hear from -- and this is just
18 now I guess asking the Board -- I would just like
19 clarification as to what the parties thought we had asked
20 for and what they had submitted. So that's not
21 necessarily testimony; it's clarification as to what you
22 thought we had asked for and what you submitted. So
23 that's -- I'm not asking for testimony; I'm just asking
24 for clarification as to what everybody thought was
25 happening, right. So, that is not testimony; you're

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1 correct. And then there would be the questions, and so
2 then the answers to the questions is what we would be
3 providing cross, and then you, Commissioner, would get an
4 opportunity to have rebuttal on everything because you
5 haven't had that opportunity yet. Did that answer that
6 question?

7 MR. ECKENWILER: I'll try to follow as we go
8 along.

9 CHAIRMAN HILL: Okay, good. Does the Board
10 have any questions or thoughts on what I just said?

11 Okay, so in that order, if the appellant could
12 just kind of clarify what you thought we had asked for and
13 then what you submitted, and then the same goes for then
14 the intervener, DCRA, and finally the appellant. And I
15 just want clarification; I just want what you submitted,
16 that kind of thing because we have looked at everything,
17 and it is quite extensive, as to what you had submitted
18 since the last hearing. And so then we'll get into
19 questions, so I just want clarification. So to start with
20 you Commissioner Eckenwiler, if you could just again
21 clarify what you thought the Board asked for of you and
22 what you submitted.

23 MR. ECKENWILER: Our understanding was that the
24 Board did not ask directly for anything from ANC6C; rather
25 that we were merely afforded an opportunity to respond to

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1 what was requested, and our understanding of what was
2 requested of the other parties, specifically DCRA and the
3 property owner, is laid out on Page 1 of our supplemental
4 statement; that's Case Exhibit 66. I can summarize that
5 if you want orally.

6 CHAIRMAN HILL: Sure, that'd be great, just
7 while I look at it.

8 MR. ECKENWILER: Okay, so our understanding was
9 that there were three specific areas of coverage; the
10 first was cornices that Vice Chair Hart asked DCRA to
11 provide "An example of when you would have seen this as
12 being a cornice or what you would consider that" adding
13 from more than ten examples.

14 CHAIRMAN HILL: I'm sorry, Commissioner
15 Eckenwiler; you don't have to read through it all again.

16 MR. ECKENWILER: I'm sorry.

17 CHAIRMAN HILL: That's okay. I do see exactly
18 what you're talking about.

19 MR. ECKENWILER: I'll just rest on that.

20 CHAIRMAN HILL: Okay, that's fine. Mr.
21 Cummins, what, again for your position, did you think we
22 asked of you and/or submitted, or that you submitted?

23 MR. CUMMINS: No, I don't believe any specific
24 information was asked of me, but I was not also barred
25 from responding to the material that was submitted by DCRA

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1 and the property owner. So I submitted a response
2 reacting to DCRA and the property owner and I included two
3 exhibits along with that.

4 CHAIRMAN HILL: Okay. Ms. Lord-Sorensen, same
5 question.

6 MS. LORD-SORENSEN: Yes, hi. When we were here
7 last on September 19th there were four items that the
8 Board asked DCRA to respond to; the first being they
9 wanted DCRA to create a time line of the permits, which we
10 submitted; we also included the cancelled permits. So
11 everything that we have for 1125 7th Street we created a
12 list and we provided that to the Board. Also, the Board
13 asked us to identify changes which occurred between each
14 revision, because the last time we were here, there was
15 discussion about whether changes were substantial or not.
16 And so we provided a copy of the original plans and if
17 there were subsequent revisions we provided the relevant
18 provisions and I circled all of the, every single change
19 that was made between each revision where applicable. And
20 the next there was a question about identifying when each
21 permit was issued, submitted and completed. The Zoning
22 Administrator had testified to the Board back in September
23 that there were two tracking systems; there's Acela and
24 ProjectDox. So what I provided to the Board I provided
25 the ProjectDox work flow routing slip for building permit

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1 ending in 219 as well as some of the other building
2 permits at issue here, as well as the Acela spreadsheet
3 showing when items were accepted in ProjectDox versus when
4 the permit was accepted according to Acela. And the last
5 item the Zoning Administrator was asked to provide some
6 cases, not an exhaustive list, but some cases where the
7 cornice was protected and there is a little table that was
8 provided to the Board identifying about four or five
9 properties where the cornice was either allowed to be
10 removed or was protected.

11 CHAIRMAN HILL: Okay. Mr. Brown?

12 MR. BROWN: Yes, and --

13 CHAIRMAN HILL: You need to push your button.

14 MR. BROWN: Sorry.

15 CHAIRMAN HILL: To some extent our ask for
16 paralleled DCRA; we provided additional time line
17 information; we also provided comparison of the permits
18 basically before and after the various versions of the
19 permits. And most importantly, and I think going to Mr.
20 Turnbull's request and the overall Board, more detail,
21 including a video simulation of the actual operation of
22 the above-grade connection. And then we provided some
23 additional cornice information and also prepared to
24 provide some additional cornice information responsive to
25 what DCRA filed that may or may not be helpful to the

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1 Board, but we have it available.

2 CHAIRMAN HILL: All right, so here we go. So
3 who has questions and who'd like to start?

4 VICE CHAIR HART: So, this is question for, I
5 guess this is Mr. Eckenwiler; you noted in your post-
6 hearing statement that you -- I'm sorry; let me start this
7 over again -- the owner noted in their post-hearing
8 statement, Exhibit 63, that you have added additional ZA
9 errors in the appeal that were not part of the initial
10 appeal filing that you did originally, and they've noted
11 that these added copies should not have been included
12 really here because they are untimely. I know that you
13 did discuss this in your Exhibit 66, but I wanted to hear
14 some of this from you in testimony; and you have also kind
15 of countered and said that the applicant didn't raise this
16 in the hearing, or earlier, but waited until after the
17 hearing to bring this up. So if you could just talk a
18 little bit about that, not long, but just kind of what are
19 your thoughts on that.

20 MR. ECKENWILER: Sure, and I plan to cover this
21 in closing argument, too, but as to cornices the reason
22 that the argument there is fundamentally frivolous is that
23 the original permit was issued on March 31st, 2017; at
24 that time and therefore in the regulations with which that
25 permit was required to comply, the word "cornices" did not

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1 appear in Section E206, which is the architectural rooftop
2 element provision at issue here; it was a month later on
3 April 28th when that text officially came into effect in
4 that regulation, and it was at that point that cornices or
5 architectural features in the nature of cornices came with
6 the protection of Section E206. So it wasn't at issue for
7 the first permit, and frankly if we had argued then, Mr.
8 Brown would be arguing the exact opposite; he'd be saying
9 well they were trying to get us to comply with the
10 regulation that hadn't yet come into effect. What does
11 make it relevant is that subsequently the original permit
12 was amended not just once, as in Mr. Moy's summary, but
13 recall we're now on the second revised permit that was
14 issued on August 2nd this year; that's B1811245. And
15 under the regulations, I believe it's A301.4, every time
16 you amend a permit you have to comply with the regulations
17 that are in effect at the time of the amendment, unless
18 there's an exception, and there is this list of exceptions
19 in A301. There is no such exception applicable to the
20 cornice provision, E206, which requires a special
21 exception to remove any of those listed features, and
22 therefore the argument really just didn't withstand
23 scrutiny. A somewhat similar argument on the guard rail
24 issue; as I pointed out -- I think this may have been in
25 rebuttal on September 19th -- every time the permit gets

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1 amended, that's a brand new permit. And I mentioned in a
2 colloquy with Chairman Hill, that we had actually opposed
3 the incorporation of that first revised permit into this
4 appeal because it meant that we weren't going to be able
5 to start over; if we had started over, we filed a brand
6 new appeal, the same timing requirements and we would have
7 raised in that new appeal this objection. We, instead,
8 raised in the, I want to say it was during the second
9 revised pre-hearing statement --

10 VICE CHAIR HART: The fact that you have to
11 kind of think about that makes it -- I know that it's
12 hard; that's what I'm saying; there's a lot of -- you've
13 provided a lot of information to us which I appreciate
14 because it's very thorough. I know that it gets hard to
15 try to figure out kind of when did this actually happen in
16 this sequence because of the amount of changes that we've
17 had to deal with over time, but I appreciate it. And yes,
18 I don't know what Mr. Brown would or would not say to the
19 cornice thing; you may be correct on it, but -- so you're
20 basically saying that this is really because of some of
21 the timing of where we have -- where some of the zoning
22 regulations have changed, and with respect to where the
23 permit, what stage the permit was in at that point. You
24 couldn't have raised an issue because it was premature in
25 some cases.

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1 MR. ECKENWILER: Vice Chair Hart, I think I
2 might turn that around a little bit and say that all of
3 these are triggered by the fact that the original permit
4 was amended not once but twice, and in the case of the
5 cornice you have the additional factor that there was an
6 intervening amendment to the relevant regulation, and we
7 raised that objection at the first available opportunity
8 after becoming aware of the issuance of the first revised
9 permit. That was the first permit amendment after that
10 text change.

11 VICE CHAIR HART: I appreciate the
12 clarification, and that's very helpful for me. Thank you.

13 CHAIRMAN HILL: Wait a minute; I'm just trying
14 -- so I know Mr. Brown wanted to say something and now Mr.
15 Cummins wants to say something. So I'm trying to figure
16 out how we're going to get through this in an efficient
17 manner.

18 It's okay, Mr. Cummins.

19 So, I suppose we can go ahead and ask questions
20 and have cross of all those, each individual question,
21 because then at least it provides more clarity I suppose,
22 right, because we'll remember it, or we can try to ask all
23 of our questions and have cross of all of our questions.
24 What does the Board think?

25 MEMBER JOHN: Mr. Chairman, the issuance of the

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1 cornice is quite important. So it would help to sort of
2 drill down for a minute or two; it might get rid of some
3 of the cross-examination later.

4 CHAIRMAN HILL: Okay. So then Mr. Commissioner
5 -- the commissioner has just asked a question -- so in
6 terms of the order of cross it would have been Mr.
7 Cummins, you have any questions for, or cross I should say
8 concerning the testimony that was just given?

9 MR. CUMMINS: I have a fact on the record to
10 point out that's directly relevant to Mr. Hart, so then I
11 can pose that in the form of a question to Mr. Eckenwiler.

12 CHAIRMAN HILL: Pose it in the form of a
13 question to Mr. Eckenwiler.

14 MR. CUMMINS: Commissioner Eckenwiler, are you
15 aware that the intervener's first pre-hearing statement
16 did raise the issue of the cornice protection and that in
17 the response by Mr. Brown on behalf of Atlas, he did in
18 fact raise an objection that it was not timely at that
19 time?

20 MR. ECKENWILER: I do recall that it was raised
21 in your initial filing; I don't recall what Mr. Brown's
22 response was to that.

23 CHAIRMAN HILL: So Mr. Brown, do you have any
24 cross questions for Mr. Eckenwiler, or do you have a point
25 that you'd also like to make in the form of a question?

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1 You need to push the button.

2 MR. BROWN: Yes. Commissioner Eckenwiler, the
3 original permit issued March 31st, 2017, you have
4 characterized that in several points in your briefs as
5 providing for the total removal of the front facade,
6 correct?

7 MR. ECKENWILER: Yes.

8 MR. BROWN: And that permit, in your own words,
9 approved the total removal of the front facade, including
10 the facade trim or what you later want to call a cornice,
11 that was all authorized to be removed?

12 MR. ECKENWILER: Yes, I think we covered all
13 this on September 19th, but yes.

14 MR. BROWN: And at the time of the original
15 permit -- well, let me back up -- you've also attempted to
16 argue that the facade removal was at that time pre-cornice
17 rule, also an illegal removal of a rooftop architectural
18 element; is that correct?

19 MR. ECKENWILER: I'm not sure I understand your
20 question. So let me see --

21 CHAIRMAN HILL: Give me a second; even I don't
22 understand the question. So, Mr. Brown, what I'm trying
23 to get at is, so there will be an opportunity for
24 everybody to give a conclusion and there will be an
25 opportunity -- anyway, my point was I'm trying to

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1 understand your question based upon the testimony that
2 Commissioner Eckenwiler gave in a response to a question
3 that Vice Chair Hart asked. So again, ask your question.

4 MR. BROWN: When the original permit was issued
5 and it authorized total removal of the front facade, using
6 your own words, did you consider that a violation of the
7 existing rule having to do with the removal of "rooftop
8 architectural elements"?

9 MR. ECKENWILER: No, and that's why it was not
10 raised in the initial appeal because the development
11 language was not yet in the regulation.

12 CHAIRMAN HILL: Okay. All right. Okay, we're
13 good?

14 MR. BROWN: One last follow-up.

15 CHAIRMAN HILL: Sure.

16 MR. BROWN: The original permit was revised and
17 then revised again. Did any of those revisions change the
18 approved fact that the original permit authorized total
19 removal of the front facade?

20 MR. ECKENWILER: No, but it did so in a
21 different legal environment.

22 CHAIRMAN HILL: That's okay. Can you say that
23 again, Mr. Brown?

24 MR. BROWN: The question I asked was, did the
25 original permit authorize the total removal of the front

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1 facade, which Mr. Eckenwiler has acknowledged. And I
2 asked him the question, did the second -- did the first
3 revised permit or the second revised permit in any way
4 alter or change the previously approved total removal of
5 the front facade; and his answer was that those permits
6 did not change the authorized total removal of the front
7 facade.

8 CHAIRMAN HILL: Commissioner Eckenwiler, was
9 that your answer?

10 MR. ECKENWILER: I'd say all three permits --
11 let me just recharacterize it because I think I agree with
12 what Mr. Brown said -- all three permits from the original
13 through the second revised have authorized, or currently
14 authorized the removal, the total removal of the front
15 facade.

16 CHAIRMAN HILL: Okay. All right, so it was one
17 question.

18 MR. BROWN: Mr. Chairman, can I share --

19 CHAIRMAN HILL: Yes, sure.

20 MR. BROWN: One, I'm not a big fan of cross-
21 examination.

22 CHAIRMAN HILL: I've already said that a
23 thousand times, Mr. Brown.

24 MR. BROWN: So you and I are --

25 CHAIRMAN HILL: But it doesn't matter what I

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1 think.

2 MR. BROWN: Yes, but I think the Board asking
3 questions is critical, and I don't want to cut that off.
4 But the cross-examination after it, in my view -- and I'll
5 ask others -- is really unnecessary, because again, the
6 Board's asking --

7 CHAIRMAN HILL: That's okay. Mr. Brown, I
8 appreciate your comment and I guess I haven't been here
9 long -- or actually I've been here now relatively long --
10 four years -- no, I'm just saying -- not for this case --
11 I've been here relatively long, right, and what I'm saying
12 is that I have had a difficult time in general trying to
13 understand cross-examination; however, as it's been told
14 to me many times, this is the process and the Office of
15 the Attorney General has already pointed this out to me
16 that this is the process. So I'm going to do my best to
17 make sure that we can be as clear as possible during the
18 cross, so we're just asking questions about the answer
19 that was given and not try to provide further testimony,
20 because what's really going to happen here today and I'll
21 let you guys know, we're not going to make a decision
22 today, there's just so much stuff on the record and
23 there's so many things going on, and it is I think
24 necessary or important for the Board to be able answer
25 questions kind of freely without having to worry about how

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1 much longer each question is going to add on. Because
2 believe it or not, probably there's a bunch of mental math
3 going on up here; which is like okay if I ask five
4 questions we're here until 7:00, if I ask no questions,
5 we're leaving right away. And I don't know if that helps
6 anybody. So I'm just kind of throwing that out, for the
7 more that you all keep this going, the less clarity might
8 happen, okay?

9 So, Mr. Eckenwiler?

10 MR. ECKENWILER: I just want to say I agree
11 with the spirit of what I understand Mr. Brown to be
12 saying, which is neither assessing objection with the
13 Board asking questions whatever questions the Board wants
14 to ask; it's the interplay across the parties that I think
15 will consume --

16 CHAIRMAN HILL: It is -- so I'm going to try my
17 best, okay, and we're going to try this in a different way
18 now, I guess. We're going to ask our questions, okay, and
19 we're going to go back to what I thought was my initial
20 concept, which is that everybody is going to go through
21 cross of all the answers, okay, and we're just going to
22 do it in one big bunch. And so we'll see how that goes,
23 okay, because I want to get our questions answered, okay?

24 So let's go ahead and just ask questions, okay?
25 So, who would like to go next?

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1 MEMBER WHITE: I just have one question
2 regarding the cornice, to the commissioner. What evidence
3 do you provide on the record that the removal of the
4 cornice was improper?

5 MR. ECKENWILER: Ms. White, the answer lies in
6 the date of the issuance of the first and second revised
7 permit. So that language came into effect on April 28th
8 of 2017; it says that certain architectural features, and
9 on April 28th, 2017, that list of features which was
10 amended to explicitly include cornices, specifically
11 features such as cornices as it's worded; and subsequent
12 to that the permit was amended, and under the regulations
13 8301.4, every time you amend a permit you have to comply
14 with the regulations in effect at the time of amendment.
15 That's the default rule; you don't get to go back to what
16 was before. There are exceptions, and those are laid out
17 explicitly in the text of 8301. There is no relevant
18 exception applicable to cornice removal, which means that
19 at the time of the first and second revised permits were
20 issued, the applicant had an obligation to comply with
21 E206 which says you can't remove these features unless you
22 get special exception relief, and no such special
23 exception relief had been granted. So I hope that answers
24 your question.

25 MEMBER WHITE: Okay, thank you. That's my

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1 question.

2 CHAIRMAN HILL: Okay, sure. Go ahead,
3 Commissioner Turnbull.

4 COMMISSIONER TURNBULL: Commissioner Eckenwiler,
5 Mr. Brown will argue the definition of "cornice" and talk
6 about an architectural embellishment or a feature, and we
7 can argue that this definition, you can make a case
8 whether the thing on top is a coping and down below is the
9 cornice. His idea -- I don't want to put words in Mr.
10 Brown's mouth, believe me -- but I think he refers to it
11 as an architectural embellishment or a feature, not a
12 cornice.

13 MR. ECKENWILER: I think the testimony was that
14 it's applied trim; I think that was the phrase of choice.

15 COMMISSIONER TURNBULL: Right, in your
16 viewpoint, though, does that matter whether his term is
17 not a cornice or not? Are we going to argue -- have we
18 come to a place in a point of this hearing that we can
19 somehow agree on the term "cornice"? Maybe we're not
20 going to; I don't know.

21 MR. ECKENWILER: As I'll cover in closing
22 argument, frankly I think that everybody at this table has
23 conceded that there is a cornice under the terms of the
24 regulation at some point in either their testimony or
25 their filings. One of the points that I made on September

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1 19th, and I'll re-raise this one to get to a closing
2 argument, is the language of the regulation it says -- and
3 I don't have the full text in front of me -- but it says
4 features such as, and then there's a long list of things,
5 so it's turrets, dormers and so on -- it says "such as
6 cornices," so it includes not only things that are agreed
7 to be cornices, turrets and so on, but my argument is
8 things that are in the nature. So you might say it's
9 really close to a turret; it's not technically a turret,
10 but boy is it really -- like its half-brother -- but that
11 would be protected as well. It doesn't mean that
12 everything under the sun is protected, but things that are
13 similar in nature to those enumerated features, as well as
14 those enumerated features themselves. So that's the
15 fallback argument. I'll say it again, I said it on
16 September 19th and I'll repeat here; I don't think the
17 Board will really need to reach that in this case and I'm
18 prepared to cite to various items in the record that I
19 think pretty clearly establish that there's agreement at
20 this table, even if some people don't want to admit it.

21 COMMISSIONER TURNBULL: Okay, thank you.

22 CHAIRMAN HILL: Okay. Now I think we are
23 putting words in people's mouths, just a little bit.

24 Like, I don't know if Mr. Brown agrees with you that he
25 has come up with the same definition that you have, but

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1 that's what cross is for. So, next question.

2 MEMBER JOHN: Mr. Chairman, I have a question
3 for Mr. Le Grant. So, I'm going to try to see if I can
4 come up with an example; so if I have a permit for
5 alteration and repair and I can remove my front steps and
6 put in something different -- I don't know what that is --
7 and the regulation changes and I can no longer remove my
8 front steps, and that's the only thing I'm asking for --
9 or no, I'm asking for something unrelated to the relief I
10 got initially -- would it be your opinion that because the
11 regulations changed, what I was already allowed to do
12 under the previous regulations I could no longer do, even
13 though the relief I was asking for had no connection to
14 that permission I was first granted? And that's what has
15 confused me during this entire conversation; every time a
16 permit is revised, do we start over from the beginning and
17 revise everything that was in that permit? Where does it
18 end?

19 MR. LE GRANT: So, excellent question. And so
20 I appreciate that. And to speak to what A301.4 says, and
21 my approach; so if a permit is issued that permits that
22 the regulations at the point that permit was issued
23 allowed that, as a matter-of-right.

24 CHAIRMAN HILL: Can you start again? I'm
25 sorry.

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1 MR. LE GRANT: Okay, so looking at A304.1 --
2 A301.4, excuse me -- the question is, and I'll call it
3 generally vesting, okay -- if you have a permit that was
4 issued under a certain rule, and then the rules changed
5 after that permit was granted, the question is -- first of
6 all, it's not an issue that you may be allowed to continue
7 that construction because you're vested under that rule.
8 If, however, you come back and say we're revising the
9 permit now, we're going to -- to use your example -- I was
10 going to remove some steps and the rule changed that you
11 can't remove the steps, but I'm going to add a rooftop
12 penthouse or something, and let's say the rule change was
13 you cannot do a rooftop penthouse as a matter-of-right;
14 then the way I would say, even though you're vested in
15 that original permit that's allowed you to remove the
16 stairs and now you want to revise the permit to add a
17 penthouse removal, I have to look to the new rule, the
18 rules in effect that would apply to the revised permit.
19 Oh, you want to remove a penthouse; wait a second, we have
20 a rule that says you can't remove a penthouse. Therefore,
21 you have no authority, you have no right to erect a
22 penthouse that's now under the rules in effect today that
23 prevent you, but that looks at that rule that also said
24 you can't remove steps, but that you're vested in and you
25 have a right to continue. That's been my long-standing

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1 interpretation, the application of A301.4 in the example
2 that you proffered.

3 MEMBER JOHN: Thank you.

4 CHAIRMAN HILL: I've got a bunch, so I'm just
5 waiting until the end. Okay.

6 All right, so Mr. Le Grant, the one that I've
7 been kind of struggling with for the examples is just,
8 again, the 309.1, right, and I'm just, again, the
9 structures that are separated from the ground up by common
10 division walls or contain multiple sections separated
11 horizontally such as wings or additions or separate
12 buildings, structures or sections shall be considered
13 parts of a single building if they are joined by a
14 connection that is, A, fully above-grade; B, enclosed; C,
15 heated and artificially lit, and either, one, common space
16 shared by all users -- common space shared by users of all
17 portions of the building such as a lobby or recreation
18 room, loading dock or service bay, or space that is
19 designed and used to provide free and unrestricted passage
20 between separate portions of the building such as an
21 unrestricted doorway or walkway. So that's the one that
22 I've been having a little bit more of a discussion about.
23 And I remember -- I'm kind of looking for even
24 historically how things -- like what do you think the --
25 well, I guess a bunch of questions I have about this is

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1 that one of them is historically how do you think -- when
2 this regulation was put into effect, what do you think the
3 purpose of it was -- in other words, I remember when there
4 was like trellises, right, and trellises were making a
5 connection and the trellis was a piece of wood that was
6 not covered, that were above you, and that was the
7 meaningful connection. So, what was the whole point of
8 the -- what do you think -- here are the two questions --
9 what do you think the whole point of the meaningful
10 connection was in the beginning when it was put forth;
11 that's my first question.

12 MR. LE GRANT: Okay, so I'll give you my
13 impression and my office's dealing with the building
14 connection issue. Going back historically to ZR58,
15 because it changed in ZR16 in September 2016, so you're
16 right in the ZR58 days there was minimal guidance in the
17 zoning regulations about what constituted a separate
18 portions of a single building, or the general term was
19 "meaningful connection." And it had been established even
20 prior to my tenure, but during my tenure up until
21 September 2016 that certain connections, such as a
22 trellis, was permissible as a meaningful connection to
23 connect separate portions to make a single building. The
24 commission said we need something different and they put
25 in B309 that set forth specific criteria, that you've now

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1 noted -- the first one's there's fully above-grade and
2 enclosed, heated and artificially lit, for the most part
3 those are less contentious. The last section, Subsection
4 B309.1D says either common space, and that can be the
5 whole thing, or space is designed to provide free and
6 unrestricted passage. So here I believe the commission
7 said to be a meaningful connection, to use the colloquial
8 term, or to have portions of a single building, this is
9 the criteria they have to meet. Therefore, going forward
10 from that, and in this case my office has to apply that
11 test when we look at is this a single building or not, and
12 that's sort of the background to how I approach the
13 meaningful connection issue. I don't know if that speaks
14 to your question?

15 CHAIRMAN HILL: Yes, it kind of does. I'm
16 sorry; that's the one that I'm kind of struggling with,
17 right. And -- okay, so I'll maybe come back to it -- so
18 the property owner, again, as I was looking through your
19 animation that you did -- and -- yes, and however this
20 ends up working out one way or the other, I appreciate all
21 the time and energy that has gone into this. I wish that
22 there wasn't somebody who was going to actually lose in
23 this, but there has been a lot of time and energy and the
24 animation was there, and as I was looking through the
25 animation there was like a wall, right, and I wasn't clear

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1 as to what was kind of all around this property. And I
2 don't need the animation from you shown, but if there was
3 something you can show me, if you can -- like, I wasn't
4 clear, again, what was all around the property. I mean,
5 there was like, the meaningful connection was up against
6 the wall it look like, right, so there's another building
7 next door to this property, and is there another building
8 on the other side that creates this closed court at that
9 high level. It seems like -- I'm unclear as to what's on
10 the other side, I suppose.

11 MR. BROWN: Well, I'm trying to think if we --
12 I don't want to talk without a drawing.

13 CHAIRMAN HILL: Sure. I mean, if there's an
14 exhibit you can point me to again, or you know.

15 MR. BROWN: On your -- oh, and our PowerPoint I
16 have hard copies that are right there by Mr. Moy's --

17 CHAIRMAN HILL: Mr. Moy, you've got the hard
18 copies of the PowerPoint that -- which exhibit?

19 SECRETARY MOY: It hasn't been --

20 CHAIRMAN HILL: Oh, this is today if we had
21 gotten to this?

22 SECRETARY MOY: Yes.

23 CHAIRMAN HILL: Okay. Did you provide one of
24 these to commissioner and intervener?

25 MR. BROWN: Absolutely.

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1 CHAIRMAN HILL: Okay, and also DCRA?

2 MR. BROWN: Page 22. And I did double side to
3 be somewhat green friendly. If you look at 22, yes let
4 the architect --

5 CHAIRMAN HILL: I got you; I'm at 22. Okay,
6 the architect can speak. I didn't mean it that way; I'm
7 just saying you can go ahead and begin.

8 MR. TEASS: So on Page 22 you're looking at a
9 diagram that shows really the permit in 2017 and permit in
10 2018. In regards to your question, there's a property to
11 the north that has been improved with a new structure that
12 extends back, and so there is, the red portion is what
13 we're referring to as that common entrance, the connection
14 between the two; behind that is the three-story wall of
15 the adjacent property to the north, the adjacent property
16 to the south is the intervener's property.

17 CHAIRMAN HILL: Okay. Now, Mr. Le Grant, I'm a
18 little ignorant of this, I guess, to -- what I was trying
19 to ask, I suppose, and I'm not saying whether or not I
20 think that you have made an error in this meaningful
21 connection or not; that's not what I'm really kind of
22 asking. I'm just curious more along the lines is that
23 when this was proposed and this concept developed, I mean
24 is that kind of -- the meaningful connection -- what am I
25 trying to say -- the meaningful connection, the whole

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1 concept was the -- do you think the regulation was put
2 forward so this type of development could take place? Or
3 was it like a carriage house that they were thinking about
4 was going to --? I don't know how to ask my question
5 fully and I'm kind of confused in my question, but I think
6 if I throw out the carriage house as an example, what do
7 you think the intent of the meaningful connection was?

8 MR. LE GRANT: Sure, okay. Well, I will say
9 that neither the commissioner or the Office of Planning
10 solicited my opinion about this provision in the
11 production of ZR16. I believe that the intent was that,
12 as we noted earlier, there was some approvals from my
13 office, and I believe there may have been cases before the
14 Board that you could have a trellis between two portions
15 of a single building, maybe one you could call a carriage
16 house, but because of a door, a walkway underneath, and a
17 trellis that allowed passage, that was deemed at the point
18 previously, historically, as a meaningful connection. I
19 think the commission said, "We're not going to do that
20 anymore. It can't be that is not sufficient." And that's
21 why the specific criteria in B309 were set, it has to be
22 closed and it has to be heated and above-grade, and these
23 criteria, D1 and D2 has a commonality or D1, the common
24 space, D2 the space is designed to provide unrestricted
25 passage. So I believe the intent was no more trellises;

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1 you got to have a more substantial connection. That being
2 said, was this intended -- is this project contrary to
3 that; and of course my office believes it does not. The
4 test is does it meet the criteria or not. This project,
5 as well as others, come up with all sorts of interesting
6 ways to comply, but does it meet the test or not is
7 something my office has to look at.

8 CHAIRMAN HILL: No, I appreciate that and I
9 understand that what you look at is what you're supposed
10 to look at. So I appreciate the answer.

11 Let's see -- so Mr. Cummins, you're the house
12 right next door to this, right. You're the house right
13 next door to this. So, all right, anybody else?

14 COMMISSIONER TURNBULL: Mr. Chair, just to help
15 you get back to your question about the meaningful
16 connection; and Mr. Le Grant's right, we had a lot of
17 issues on BZA cases before where second floors were being
18 added onto garages and carriage house situation, and the
19 convenient way to do it was to put a trellis between the
20 main house and the garage. It got to the point where we
21 said, no, it can't just be a trellis, it has to be a
22 connected trellis; the trellis has to be connected at both
23 ends. And we still found a lot of ANC's, a lot of
24 neighborhoods were really getting upset by the fact that
25 all these developments were going on, and they felt that

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1 they were out of the loop, that there was no control over
2 these extra dwelling units being added. So after going
3 through six, eight years of ZR16, the language that was
4 finally agreed upon is the one that's in there now, not
5 imagining we'd have anything like this. I mean, still,
6 the meaningful connection is still another one of those
7 terms as to what that really -- I guess if you look back
8 on it now, it's just should we have put in more
9 clarification on that, but it happened with a lot of
10 developments on garages.

11 CHAIRMAN HILL: And just to kind of have some
12 discussions going on here; the regulations are what they
13 are and what is now there is now there, right. And so
14 people buy property, they develop things, they assume
15 they're going to get to do something or not based upon how
16 they determine they're fitting in with the regulations.
17 And so, again, we're having an extemporaneous conversation
18 to a certain extent, which is again, I was kind of trying
19 to understand what the zoning commission might have had in
20 mind when they were putting this together, and whether or
21 not this is or isn't what they had in mind is not really
22 what is before us right now, I suppose, but I am getting
23 some further clarity as to what they might have thought
24 they were getting into when they were writing these
25 regulations.

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1 Okay, so I've asked my question. Who has
2 anything else?

3 MEMBER JOHN: Just one brief question for the
4 property owner. So I looked at the video and as I was
5 watching it, I said this looks sort of contrived to me,
6 and wouldn't an atrium or a one-level lobby serve the same
7 purpose? I don't know. And was there a reason to connect
8 the parking -- I didn't understand why we needed to have
9 this long corridor in the back; it just didn't make a lot
10 of sense to me. So maybe there's a good technical reason
11 for that.

12 MR. TEASS: Sure, I'd be happy to answer the
13 question. So, the current design solution is with the
14 understanding that there needs to be access from both
15 units to the street and to the parking area, and that
16 could be in the way we've chosen, or the designer here has
17 chosen to represent it is that it's going through it at
18 the lower level. Certainly it could have been done at the
19 ground level but in our opinion we felt that it was
20 appropriate and legal use to make that connection
21 underneath the front portion of the front building in the
22 lower portion of the rear building.

23 MEMBER JOHN: Okay, so maybe I missed that. So
24 the reason for that tunnel is to accommodate the parking
25 in the back?

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1 MR. TEASS: The reason for the front area,
2 front tunnel so to speak, is for access to the rear unit,
3 the portion of the rear tunnel, so to speak, is for
4 providing access from the front unit to get to parking and
5 to trash at the rear.

6 MEMBER JOHN: Okay, thank you.

7 MR. BROWN: Ms. John, if I could interject; if
8 you're in the rear unit and you want to go to the street,
9 7th Street, this allows you, rather than going out in the
10 alley and walking around the block, it allows you to walk
11 from your unit and access 7th Street; it also allows you
12 to come from 7th Street and enter in your property without
13 going around the rear should you be a pedestrian. The
14 same is true reciprocally for the front unit. So it's not
15 contrived. For the people who live there and from a
16 design perspective -- I don't have my license for
17 architecture -- is it's an important feature for this
18 property, for both the front and the rear unit. And a
19 simple thing, and I live in a -- never mind -- I live in
20 the district -- but this above-grade connection, and
21 everybody's looking at it from a different perspective,
22 the simplest way to look at it is that you have a way for
23 the owner of the front unit to go within this above-grade,
24 lit, enclosed, enclosure, and go knock on the rear unit's
25 owner to borrow a cup of sugar, to go to dinner, and vice

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1 versa. And that's -- I mean, it's a hallway between two
2 units which you put in the context of others is really not
3 unusual.

4 CHAIRMAN HILL: So, the -- how do you say your
5 name again, sir? I'm sorry.

6 MR. JAWED: Tarique.

7 CHAIRMAN HILL: Tarique. No, your last name?

8 MR. JAWED: Jawed.

9 CHAIRMAN HILL: So Mr. Jawed, how long have you
10 had this property now?

11 MR. JAWED: Three and a half years.

12 CHAIRMAN HILL: I've had some longer than that;
13 I don't feel so bad now. So three and a half years. And
14 was this the original -- this was what your original kind
15 of concept was or thoughts were when you found this; this
16 is kind of something that your architect came up with --
17 I'm just asking -- and this was something that you thought
18 would be the best way to develop the property?

19 MR. JAWED: Mr. Chairman, that's correct. When
20 we looked at this and we said matter-of-right, we could do
21 what our neighbor to the north did, which is build this
22 huge structure not taking into account air and light. We
23 said if we sort of created this courtyard in between, it
24 allows air and light to the intervener's property and we
25 think it ultimately produces a better product that's five

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1 bedrooms, that's designed for families.

2 CHAIRMAN HILL: Let me interject. So at the
3 time, again, when you bought it, and so you're saying that
4 the person to the left developed it under the old
5 regulations, so you could have done it the same way,
6 right?

7 MR. JAWED: We could have. We were before
8 ZR16.

9 CHAIRMAN HILL: Pardon me?

10 MR. JAWED: We were before ZR16.

11 CHAIRMAN HILL: No, I know. I'm saying you
12 probably should have done that.

13 MR. JAWED: We tried.

14 CHAIRMAN HILL: You tried.

15 MR. JAWED: If you look at the time line, we
16 were under review forever. I mean, we submitted, and it's
17 in the record, but we submitted for permit in September of
18 2015.

19 CHAIRMAN HILL: Okay. All right, so that's
20 that. So, Commissioner Eckenwiler, so this popped up in
21 the ANC's radar when? Can you just tell me again how you
22 found about this?

23 MR. ECKENWILER: I think Mr. Cummins and I had
24 a conversation at some point, it was certainly prior to
25 2017.

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1 CHAIRMAN HILL: No, I'm just saying the design;
2 you were aware of this design?

3 MR. ECKENWILER: I honestly couldn't tell you
4 when I first became aware of the design.

5 CHAIRMAN HILL: Okay, because the reason I'm
6 asking is that, again, had under ZR58, had everybody on
7 this block done this, you would have this kind of
8 configuration perhaps the whole way down the row.

9 MR. ECKENWILER: Mr. Chairman, with respect, I
10 don't think it makes any difference. The regs are what
11 they are at the time you get --

12 CHAIRMAN HILL: No, I agree. I guess I'm just
13 kind of asking questions and I'm going to take this
14 opportunity to just kind of clarify as best I can through
15 the whole way. And I'm not trying to be combative; I'm
16 saying that I think that we are trying to understand --
17 like whether or not I like this and whether or not I think
18 this is a good thing -- I mean, I think I understand why
19 this connection is there, I understand why the design is
20 there, and for me it's just kind of understanding whether
21 within the regulations the zoning administrator's hands
22 were tied or whatever. He's just determining whether or
23 not this is what the regulations say. As I've been
24 talking with the zoning commissioner again, like if you're
25 trying to build a room above a carriage house, that's one

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1 thing, and if that's what they were trying to do; if they
2 were trying to like build two buildings on a lot, that's
3 another thing. Whether or not I like it has nothing to do
4 with the fact as to whether or not the regulations say you
5 can do it. So I was just having a hypothetical which is
6 like when did the ANC kind of find out about it. And so
7 it doesn't matter. I mean, you found out about it at some
8 point, then realized that this was something that was
9 going to be this larger structure at the end of this lot.
10 And so I understand why you're here. You don't have to
11 worry; I understand why you're here. And I appreciate why
12 you're here, and so I'm just -- again, what we're charged
13 for, and I'll stop at this, what I'm charged for is
14 whether or not I like it and whether or not I think the ZA
15 erred. And if I live next to this, if I was Mr. Cummins,
16 I'd be sitting down there with Mr. Cummins. But I don't
17 know whether or not -- it doesn't matter whether or not I
18 think, Mr. Cummins, I agree with you or not, or I can
19 agree with you or not. So you'll have an opportunity to -
20 - I'm just kind of trying to understand this design. And
21 Mr. Brown, thank you, this slide is helpful, and so it's
22 helpful to kind of understand.

23 Before you ask your question or answer whatever
24 it is this rambling on that I just did, does anybody have
25 any further questions about the line that I was going down

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1 here?

2 COMMISSIONER TURNBULL: No, the one question I
3 had on -- we just had this PowerPoint on No. 25, Drawing
4 25 -- this cellar connection that pops up in the
5 courtyard, you do that to simply tie into your "meaningful
6 connection," the lobby.

7 MR. TEASS: I mean, the circulation path that's
8 shown on Page 25 illustrates that there's a connection
9 from the courtyard to the street and the courtyard to the
10 rear. And it's an essential connection -

11 COMMISSIONER TURNBULL: Right. I mean, it
12 would have been easier for both buildings if you didn't
13 have those stairs, if they simply went straight through.
14 Except you need to get up --

15 MR. TEASS: You're referring to the stairs
16 going down and then coming back up, if we had done a
17 complete at-grade.

18 COMMISSIONER TURNBULL: That's correct.

19 MR. TEASS: It arguably would have been easier,
20 but I think it also would have had an impact on the
21 interior layouts.

22 COMMISSIONER TURNBULL: I mean, so one way it's
23 a pain in the neck for someone getting trash from Unit A
24 back to the garage then, I guess.

25 MR. TEASS: I mean, I think if you -- I

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1 wouldn't characterize it as that necessarily. I think
2 that you're in a situation that I would concede is a
3 relatively unique way of circulating in the building, but
4 I don't think it's particularly onerous -- I mean, if you
5 lived in an apartment building, for example, you would
6 have a fairly long path from your front door to your unit,
7 and potentially from your unit to your trash. I think if
8 you look at it in the context of two dwelling units on the
9 property.

10 COMMISSIONER TURNBULL: Okay. And the main
11 entrance to Unit B is in that connection?

12 MR. TEASS: It's at the east side of that
13 connection, yes.

14 COMMISSIONER TURNBULL: Okay.

15 MR. BROWN: Mr. Hill?

16 CHAIRMAN HILL: Yes. One second, I'm sorry.
17 Ms. White had a question.

18 MEMBER WHITE: Is there any case law that kind
19 of addresses this meaningful connection issue in terms of
20 what constitutes a meaningful connection, providing
21 examples of maybe buildings, developments in the city that
22 didn't meet that test, or those that did? I couldn't
23 remember if that was supplied in the record, but it's just
24 a fascinating issue, but I just wondered if there's case
25 law going either way?

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1 MR. BROWN: There really isn't going under what
2 ZR16 created, at least when you cite case law, not in the
3 courts the ultimate decision-makers. Under the ZR58,
4 there were cases, but I don't think in this context they
5 were helpful. The one thing I would point out, and it's
6 in my slides which we'll get to, the Board has seen this
7 type of above-grade connection in another contemporaneous
8 case with what was going on in this case. And it's
9 certainly having listened to the video tape of the
10 decision and hearing, an order hasn't been issued, it
11 certainly didn't shock the conscience of the Board. And
12 in fact, I think everybody but Ms. John and Mr. Turnbull
13 sat on that case where they --

14 CHAIRMAN HILL: That's us here in the middle,
15 we're lost. That's us.

16 MR. BROWN: I was having trouble remembering.

17 CHAIRMAN HILL: No, that's okay. I'm just
18 trying to point out.

19 MR. BROWN: That case, which we'll get to, very
20 similar design. The Board appraised the design --

21 CHAIRMAN HILL: Mr. Brown, I got you. We read
22 the record, we know the case you're talking about. That
23 case was different, and you can go ahead and point it out,
24 and I want you to because it just provides further clarity
25 on it. here was no objection from the ANC, there was no

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1 objection from anyone; everyone liked the design. And not
2 that that has anything to do with it, but that was
3 something that made it easier for us to understand the
4 meaningful connection. That's okay, you can talk about it
5 when you get to it; I'm just saying for the three of us
6 that were here, we were here. And so appreciate that.

7 MR. BROWN: Yes. Can I just make one point?

8 CHAIRMAN HILL: Yes -- what I talked about
9 earlier.

10 MR. BROWN: You made a statement that left the
11 impression, at least with me -- perhaps I didn't
12 understand it -- that somehow this building is larger as a
13 result of the use of this above-grade connection. And
14 I've pointed this out previously, but whether there's an
15 above-grade connection or it's just a straight addition,
16 like 1123, the building next door, this building -- our
17 building didn't get any bigger as a result of this; it's
18 still subject to the 60 percent lot occupancy, and all the
19 other measures that are applicable. So it didn't get any
20 bigger. It's designed differently, but there's no size
21 advantage from this above-grade connection.

22 CHAIRMAN HILL: Okay. No, I appreciate you
23 clarifying that, Mr. Brown. I didn't mean that it got any
24 bigger. I guess what I'm confused about -- or I shouldn't
25 say confused -- to the property owner's comment, I know

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1 that there was -- I mean, before I got here, or even just
2 kind of when I got here, I suppose, you could have gone
3 back further, you could have built up higher, and that's
4 how that property got built next door, right? That was
5 under the 58 regs. And so I believe --

6 MR. BROWN: I don't think so. No, because it
7 was permitted and built after our original permit was
8 issued.

9 MR. CUMMINS: That's not correct.

10 CHAIRMAN HILL: Excuse me, one second.

11 MR. CUMMINS: Sorry, that's not actually
12 correct.

13 CHAIRMAN HILL: Hold on, just one second. What
14 were you saying, Mr. Brown?

15 MR. BROWN: Well, we're talking about 1123 7th
16 Street, which is the building on the opposite side.

17 CHAIRMAN HILL: The building that has the big
18 wall, right. And what was your statement that Mr. Cummins
19 was denying?

20 MR. BROWN: That building was not built under
21 ZR58, it was built under ZR16 prior to the enactment of
22 the --

23 CHAIRMAN HILL: 1411.

24 MR. BROWN: The 10 -- well, so --

25 CHAIRMAN HILL: Yes, so that's fine.

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1 MR. BROWN: Yes, so the rear addition could be
2 built --

3 CHAIRMAN HILL: I got you. So what I'm saying,
4 at one point you could have done that, and you can't do it
5 now, right?

6 MR. BROWN: That's correct.

7 CHAIRMAN HILL: And so I understand when that
8 came about because I was here for when that did come
9 about, because there was a lot of discussion of that with
10 the Zoning Commission and with the public how that
11 happened. So -- okay, I got lost -- you clarified, right,
12 that it wasn't -- I wasn't even necessarily saying that it
13 was any bigger -- I'm saying the design pushes it back
14 further than it would the neighboring property, the one
15 that's right next door -- if I can go back, I can go back
16 to your other slide, which is whatever slide it was that
17 at least I'm trying to think about here.

18 MR. BROWN: Well, it pushes it back but it also
19 creates an open space --

20 CHAIRMAN HILL: I don't necessarily disagree
21 with that comment, which is perhaps Mr. Cummins gets more
22 light and air because of that courtyard, as opposed to if
23 it was just as big as -- what's the property next door, is
24 it to the north?

25 PARTICIPANT: Yes, 127.

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1 CHAIRMAN HILL: So at one point, you could have
2 possibly built something just as big next to Mr. Cummins
3 and -- I don't know whether he thinks that that creates
4 more light and air for him or not -- but -- okay, now Mr.
5 Cummins, you were excited about something, but you wanted
6 to -- I think we've gotten clarification on it.

7 MR. CUMMINS: That's fine.

8 CHAIRMAN HILL: All right, who's next?

9 I have one comment before the who's next, if
10 there is any who's next. I think perhaps we're going to
11 end up asking for a Findings of Fact and Conclusions of
12 Law from everyone just to have some kind of clarity as for
13 us to kind of look at. And I know that, at least from the
14 Zoning Administrator, it'll be very helpful to kind of
15 like speak -- well, not that you're going to -- but speak
16 to each one of the points that are addressed by the
17 appellant. But the ones that, again, as we drill down on
18 this whole cornice thing and the timing of things, as you
19 were using that example with the front steps, again, just
20 talk about that in terms of when the permit, how that
21 cornice could continue to be removed, right, and how these
22 permits kind of developed, how you could still have
23 removed the cornice or whatever you want to talk about,
24 embellishment.

25 So, does anyone have any more questions? And

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1 we might have more questions as we go along, but I'm going
2 to now kind of move forward unless we have more questions.

3 MR. BROWN: Mr. Hill, could I just --?

4 CHAIRMAN HILL: Sure.

5 MR. BROWN: Ms. Rippe has to leave now.

6 CHAIRMAN HILL: Okay.

7 MR. BROWN: So it doesn't appear that you had
8 any questions.

9 CHAIRMAN HILL: That's okay. Ms. Rippe, do you
10 have children? Are you trying to go trick or treating?

11 That's okay; you don't have to answer that.

12 Okay, does the Board have any questions for Mr.
13 Rippe?

14 No, all right. Thank you.

15 Let's see -- okay. All right, does the Board
16 have any more questions for anybody?

17 Okay, so we're going to go to cross now based
18 upon what testimony was just taken, and the order in
19 which we're going to do it is the same order we're going
20 to do conclusions, which is the ANC commissioner, the
21 intervener, DCRA, and then finally the building owner in
22 terms of cross, okay? So I'm going to try to just keep
23 people as focused as possible -- and I really don't mean
24 this in any other way than the way that I'm stating it
25 which is that the purpose of the cross is to help clarify

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1 to the Board -- I guess you're clarifying your position,
2 so therefore you're continuing to try to sell your
3 argument, but it's just based upon the testimony that was
4 given. So, Mr. Commissioner, is there cross for any of
5 the parties on the testimony was given? And if so, just
6 tell me who and we'll go down the line.

7 MR. LE GRANT: No questions, Mr. Chairman.

8 CHAIRMAN HILL: Oh, okay. Mr. Cummins, do you
9 have any questions on cross?

10 MR. CUMMINS: Yes, I have a question and the
11 purpose is really to try to clarify that Mr. Turnbull's
12 question about the cellar level connection and below-grade
13 stairs.

14 CHAIRMAN HILL: Okay, who would you like to ask
15 the question to?

16 MR. CUMMINS: I believe Mr. Teass --

17 CHAIRMAN HILL: Teass. Okay, what's your
18 question?

19 MR. CUMMINS: So, the design was changed -- in
20 B1706219 the connection --

21 CHAIRMAN HILL: So in B1706219 --

22 MR. CUMMINS: Right, in the original permit
23 that was brought up before.

24 CHAIRMAN HILL: You know it that fast?

25 MR. CUMMINS: But that was not a fully above-

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1 grade connection, and the stairs that are depicted -- I'm
2 on Page 25 of the PowerPoints.

3 CHAIRMAN HILL: Right, so you're saying that
4 the first permit didn't have the stairs coming up to the
5 courtyard?

6 MR. CUMMINS: Correct. They were inside, they
7 were below-grade and inside the breezeway/lobby/courtyard.

8 CHAIRMAN HILL: Okay, and your question is?

9 MR. CUMMINS: So it appears that they were
10 removed specifically as a result of this appeal. In order
11 to meet the connector above-grade, they have to put the
12 stairs on the other side of the property, and that's why
13 the design was flipped and the interior layout was
14 flipped. So it appears that this change from B1706, the
15 original permit, to the subsequent revised permits appear
16 to have been directly as a result to address the zoning
17 violation contained in the original permit. So that's the
18 gist of the whole significant changes. And Commissioner
19 Turnbull asked why are the stairs over here, it'd be
20 easier if you just walked up the stairs and went directly
21 to your door and you didn't turn left, go across a
22 courtway, open a door and turn right again and go up
23 another staircase. It seems -- that's the question I
24 have, really, is didn't you move the stairs over here so
25 you could redesign a meaningful connection?

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1 CHAIRMAN HILL: So your question is, was it --
2 and I'll be interested to hear the answer and how this
3 answer gets given -- your question is was the design
4 change made to further the argument for the meaningful
5 connection?

6 MR. CUMMINS: I guess more specific to that,
7 was the design change made in order to move the non --
8 excuse me, I just want to ask why was that design change
9 made? And did it have anything to do with the non-
10 compliance of the connector being not fully above-grade
11 before, whereas now it's like there's a vented crawlspace
12 where the stairs used to be.

13 CHAIRMAN HILL: Okay, I understand the
14 question.

15 MR. CUMMINS: Okay. Again, I don't -- explain
16 it to me.

17 CHAIRMAN HILL: That's fine; I think it's a
18 fair question. Mr. Teass?

19 MR. TEASS: So we were brought on about the
20 time of the, during this process. Yes, the location of
21 that corridor was revised as part of the second provision;
22 that was actually something that we suggested, our office
23 suggested to improve the quality of that circulation, so
24 that instead of coming into a long corridor and then
25 coming up -- we just felt that coming into a courtyard was

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1 a more pleasant experience coming into the building.

2 CHAIRMAN HILL: Okay, talk me through that a
3 little bit. How was it before and why is it better now?

4 MR. TEASS: If I could actually direct you to
5 another exhibit here and do a side-by-side comparison,
6 it'd be helpful for the Board.

7 CHAIRMAN HILL: Sure.

8 MR. CUMMINS: I'd like to point out that this
9 is in the record. These documents are not in the record,
10 and it's actually the permit file would be the appropriate
11 place to look at the design and not the PowerPoint or the
12 video which has inaccuracies or do not conform exactly
13 with the plans as approved by the Zoning Commission.

14 CHAIRMAN HILL: Okay, let's do this first; let
15 him answer where we are. So Mr. Teass, where were you
16 taking us?

17 MR. TEASS: So on Page 12, which is also
18 submitted as a previous exhibit, is an illustration on the
19 bottom row -- there's a top row and a bottom row, the top
20 row is an excerpt from the approved permit drawing in
21 March of 2017.

22 CHAIRMAN HILL: The bottom row?

23 MR. TEASS: The bottom row is the approved
24 permit revision in April 2018, and so what we've done is
25 highlight the change that you're seeing there. So the

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1 original design has to be corridor on the north side of
2 the building, and so you came down a set of stairs down
3 the corridor up into the breezeway, substantial connection
4 aspect, and then into the rear unit. And then what you're
5 seeing below is what was revised so that the breezeway
6 connection, or the substantial connection between the two
7 buildings, we've moved the lower level corridor to the
8 south side, and that way it gave you an opportunity for
9 the rear unit to use the -- the courtyard being part of
10 the entry sequence for the rear unit.

11 CHAIRMAN HILL: Okay, so Mr. Cummins, I don't
12 know whether you believe him or not; that's what he's
13 saying they made the change for. Did you get your
14 question answered?

15 MR. CUMMINS: I'm trying to economize time, so
16 as long as I have the time to bring this up in closing,
17 that particular point.

18 CHAIRMAN HILL: Okay.

19 MR. CUMMINS: The other change I want to ask
20 about is the pervious surface requirement was clearly not
21 met in B1706219, the first permit; they claimed that there
22 were 40 percent pervious surfaces when there clearly were
23 not.

24 CHAIRMAN HILL: Whoa, whoa, whoa. Now this is
25 a question on testimony that was given now, so I'm just

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1 trying to understand what your question is. What are you
2 asking a question of?

3 MR. CUMMINS: About changes to the permit, so
4 the original to the revised permits.

5 CHAIRMAN HILL: Did they testify on that today?

6 MR. CUMMINS: No.

7 CHAIRMAN HILL: Okay. I'll go ahead and let
8 you answer the question because if he's got a quick answer
9 for it. Your question is, again, tell me again.

10 MR. CUMMINS: Did changes to the courtyard
11 appear to have been made between the original and revised
12 permit, specifically to address the ANC's appeal?

13 CHAIRMAN HILL: So your question is are they
14 making the change -- did they make the change to the
15 permeable surfaces to --?

16 MR. CUMMINS: To address a matter brought up in
17 the original, the appeal of B1706219, was that changed in
18 order to address the zoning violation that existed in the
19 original?

20 CHAIRMAN HILL: Okay, Mr. Teass?

21 MR. TEASS: Not to my knowledge.

22 CHAIRMAN HILL: Okay. All right, anything
23 else, Mr. Cummins?

24 MR. CUMMINS: Well, I do want to economize
25 time, so I'll try to bring it up and consolidate in my

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1 closing.

2 CHAIRMAN HILL: Okay. Does DCRA have any
3 cross?

4 MS. LORD-SORENSEN: No.

5 CHAIRMAN HILL: Okay. Does the property owner
6 have any cross?

7 MR. BROWN: If I could very quickly, Mr. Le
8 Grant, when you were speaking about amendments to permits,
9 the original permit was issued and it provided for the
10 total removal of the front facade. Does the first revised
11 permit and second revised permit made no change in that
12 previously approved --

13 CHAIRMAN HILL: I'm sorry; Mr. Brown, can you
14 repeat the question again?

15 MR. BROWN: The original permit provided for
16 the total removal of the front facade. And then I'm
17 asking Mr. Le Grant whether the second, the first revised
18 permit or the second revised permit made any change
19 related to the total removal of the front facade that had
20 been previously approved?

21 MR. LE GRANT: It did not.

22 MR. BROWN: And based on that there was no
23 reason to apply the after-the-fact enacted cornice rule?

24 MR. LE GRANT: Yes, it's been my position that
25 the original permit which allowed changing of the facade

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1 and removal of that element which was characterized as a
2 cornice was vested prior to the enactment of the new
3 regulation that explicitly allowed removal of all
4 cornices.

5 MR. BROWN: And going back to the original
6 permit, it provided for a guard rail --

7 CHAIRMAN HILL: Hey, Mr. Brown? I'm sorry;
8 that's starting to feel like testimony to me. What's the
9 question?

10 MR. BROWN: That the original permit approved a
11 guard rail running perpendicular to the side parapet wall.
12 Correct?

13 MR. LE GRANT: That's my recollection, yes.

14 MR. BROWN: And all the subsequent permits
15 provide the same type of perpendicular guard rail?

16 MR. LE GRANT: Yes.

17 CHAIRMAN HILL: Okay, great. We didn't even
18 get to the whole guard rail thing during today. So the --
19 okay, so I'm going to lose some people here by the way;
20 they're slowly going to peel away, and so they'll continue
21 to watch as we move forward with this.

22 Okay, so now we're at rebuttal as I look to
23 OIG.

24 Sure, please go ahead, Mr. Chairman.

25 COMMISSIONER TURNBULL: I just want to get back

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1 to what the intervener -- in the courtyard between the two
2 buildings there's an entrance to Unit B and there's an
3 exit from Unit A, but you don't really need -- you could
4 had simply a nice brick stair or concrete stair going in
5 from that courtyard up to the unit, meaning you'd come up
6 out of this area way and you'd come into this nice
7 courtyard; you could have had a nice brick stair on either
8 case to go in and out of both units. The enclosure, the
9 "meaningful connection" is not really -- I'm trying to see
10 if it's necessary or nice to have. Is it necessary to
11 have that enclosure, or could you just have had a brick
12 stoop stairway going up into the unit?

13 MR. TEASS: In our opinion, it was necessary to
14 have and it provides weather protection at the front door
15 to the rear unit.

16 COMMISSION TURNBULL: Well, most units don't
17 have -- I don't have a cover over my house going in -- I
18 guess I'm trying to figure out necessary or nice to have.
19 And to me somehow that might get into what "meaningful
20 connection" is. Is it necessary to have that connection to
21 go into one door to get to another door, or could you just
22 have had a courtyard with a nice stairway going up into
23 the unit as most other townhouses or row houses would
24 have? So I'm struggling with necessary or nice to have.
25 And I'm struggling with is it nice to have also to fulfill

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1 the purpose for a "meaningful connection"? And that's
2 where I'm struggling, so it becomes a terminology/term, or
3 it's a definition, but getting back to what the ZA would
4 say there's "meaningful connection." Is the "meaningful
5 connection" something that's necessary or can it also be
6 simply nice to have, and that's what I'm struggling with.
7 It's not really a question; it's just a point of my trying
8 to point out where my mind is right now trying to figure
9 out what this link really does. Is it necessary or is it
10 nice to have. You're saying it's necessary, but I'm not
11 convinced yet. To me it's like nice to have, but it also
12 would have been nice to have coming to a nice beautiful
13 courtyard with a nice staircase on either side and you go
14 up and you knock on the door. Even if you're going for a
15 cup of sugar, from one row house to another, you'd go
16 outside and you'd do it. So that's what I'm struggling
17 with right now.

18 MR. BROWN: Mr. Turnbull, and I understand your
19 question, the whether nice to have or necessary, and
20 that's perhaps in the eye of the viewer or beholder. But
21 you go back to the same question: does it comply with the
22 zoning regulations?

23 COMMISSIONER TURNBULL: It gets back to
24 "meaningful connection."

25 MR. BROWN: Well, we don't use that term

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1 anymore.

2 COMMISSIONER TURNBULL: Right. But I mean, I'm
3 just looking at this from the standpoint of how the ZA
4 would -- the ZA thinks you've made a connection, you've
5 made your case and I'm still struggling with that.

6 MR. BROWN: But going back to -- and again --
7 I'll shut up.

8 CHAIRMAN HILL: Okay, let's see -- so -- right
9 okay -- so we're at rebuttal. So commissioner, you have
10 now the opportunity to provide rebuttal testimony, and
11 then after the rebuttal testimony there'll be an
12 opportunity to provide everyone's favorite, cross-
13 examination of your rebuttal testimony. And then we're
14 going to have conclusions. And so that is -- I'm just
15 being a little bit light as we get here kind of at the end
16 of the evening, but please don't let that stop you from
17 providing as much rebuttal as you like. And so I'm going
18 to go ahead and put ten minutes on the clock just so I
19 know where we are, and you can go ahead and begin whenever
20 you like.

21 MR. ECKENWILER: Mr. Chairman, I don't need any
22 time for rebuttal. All the argument that I need I can do
23 in closing argument because everything I want to say is
24 already in the record.

25 CHAIRMAN HILL: Okay. All right, great. So

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1 that means there's no cross, and so we're now going to go
2 to conclusions. And so I'm going to start with you,
3 again, commissioner, and I guess, is ten minutes okay?

4 MR. ECKENWILER: Mr. Chairman, I think it's
5 likely to take a little longer than that.

6 CHAIRMAN HILL: Okay, I'll give you 15 minutes.
7 So everybody will get 15 and that gets to me an hour.
8 Okay, so go ahead and begin, commissioner, whenever you'd
9 like.

10 MR. ECKENWILER: Okay. Thank you, Chairman
11 Hill and members of the Board. ANC6C's appeal is based on
12 four different arguments: the improper setback of the roof
13 railing; the permit improperly allows the removal of a
14 protected architectural element, a cornice; third, it
15 allows two principle structures impermissibly on one lot;
16 and fourth and last it impermissibly allows a rear
17 addition more than 10 feet past an adjacent dwelling. I
18 was going to walk you through a time line, but in the
19 interest of the economy of time, I'll just refer you to
20 Tab B in Exhibit 66; that was our supplemental filing that
21 walks through some of the key dates. I'll touch on those
22 as I go through closing.

23 CHAIRMAN HILL: Can you say that again, please?
24 I'm sorry.

25 MR. ECKENWILER: It's Case Exhibit 66, Tab B,

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1 that was our supplemental statement. So it's actually the
2 very last thing.

3 CHAIRMAN HILL: Okay, got it.

4 MR. ECKENWILER: Prior to today, anyway. So,
5 also because this is closing, I just want to sort of tell
6 you what my intent is here going through. I understand
7 this is closing; it's not that evidentiary part of the
8 hearing; we already did that. So as I go along I will be
9 calling out specific cites to the record.

10 I'm not expecting you to look at all those
11 pictures and regulations and so on; I'm citing them so in
12 the event you want to note that and then you can go back
13 and look at it later during your deliberations, you'll
14 have the benefit of that. But obviously if I'm going too
15 fast, if you have questions please interrupt me, ask away.

16 So the first ground is the failure to provide a
17 mandatory minimum setback for the rooftop guard rail;
18 Section C like Charlie, 1502.1C requires a one-to-one
19 setback from the edge of the roof in this zone. The
20 drawings for the current permit, second revised, is
21 showing a 36-inch railing with zero setback from the edge
22 of the roof. You can see that both in detail at Exhibit
23 59, Page 2, and also the full drawing, the permit drawing
24 for that is at Exhibit 59A, Sheet A, 3.1. And the key
25 thing to keep in mind here is the regulation is

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1 extraordinarily specific. It says any guard rail,
2 literally, it is not unclear as to whether or not it
3 applies to the element here in question. Mr. Le Grant
4 testified at our September hearing that he had invented an
5 exception to the explicit requirement of this regulation,
6 the one-to-one setback requirement for "life safety
7 issues." And when I asked Mr. Le Grant to point to some
8 language in the regulation justifying his position, he
9 admitted there is none, and you can see that in the
10 transcript, Pages 84 to 86. The owner claims they were
11 time-barred; we already addressed that, I covered a little
12 bit earlier. I'll simply rest on Pages 4 to 5 of our
13 supplemental statement; that's Case Exhibit 66. So, what
14 I want to do for each of these bases, starting with the
15 first one, there's a lot of regulations, a lot of
16 citations. I think it's easy to lose the forest through
17 the trees, so let's step back and think about the big
18 picture here. DCRA's position is fundamentally
19 inconsistent with the text of the regs, and not just that;
20 it's an open invitation to abuse. When Mr. Le Grant says,
21 "Well, I had to respond to this life safety condition,"
22 this is not some immutable fact; this is not gravity, this
23 is not the weather that we can't do anything about; this
24 is in response to a specific application, a decision
25 that's made by an applicant to create a condition that

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1 violates the regs, in this case by placing a hatch and
2 therefore a falling hazard -- it's a hole in the roof and
3 it's open -- immediately adjacent to the lot line. So Mr.
4 Le Grant's invented rule effectively rewards applicants
5 for placing a hazardous condition adjacent to the edge of
6 the roof, and not in another location where required
7 railings would be appropriately set back, like in the
8 middle of the roof. The Board should not condone that.
9 So just waving your hand and saying "life safety," this is
10 not something over which the applicant has no control, the
11 applicant could choose to comply with the regulation, but
12 instead they don't and DCRA's invented exception, which is
13 nowhere in the face of the regulations, violates that. So
14 that's one reason why the permit should be revoked.

15 Second, with respect to the illegal removal of
16 the cornice; so to recap here on the time line, DCRA
17 issued the original permit on March 31st of 2017 and at
18 that time Section E206 did not list cornices as one of the
19 categories that protected rooftop elements. It wasn't
20 until one month later, April 28th, when ZC Order 1411B
21 took effect and E206 thereafter protected elements "such
22 as cornices." And the impact of Section E206 is you
23 cannot remove those elements in a RF Zone absent special
24 exception relief. So, the original permit was not subject
25 to this restriction, but both revisions which were made

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1 after April 28th, so after the amendment to the regulation
2 came into effect, and therefore both of those revisions
3 were subject to the new language. And you can find that
4 explicitly under Section A301.4 -- let me just get the
5 language here -- so A301.4B says, and I'm quoting here,
6 "Any amendment of the permit shall comply with the
7 provisions of this title in effect on the date the permit
8 is amended." Now, there's some preparatory language that
9 says there are certain enumerated exceptions in Subtitle
10 A, but none of them refers either implicitly or explicitly
11 to the cornice removal provision, and therefore there is
12 no exception. So you can't just say, "Well, he was
13 vested." That's right; if they had proceeded under the
14 original permit and the original permit had been valid,
15 yes it was vested at that time. Once they change it, it's
16 no longer vested, unless there's a specific vesting
17 provision, and that is what is lacking there.

18 So you can see the cornice on the structure, I
19 included photographs of this and numerous other buildings
20 on this same block have identical cornices, that's Exhibit
21 46, Pages 6 through 8. And as Mr. Brown has been at pains
22 to emphasize all the permits entail the removal of that
23 element, of that cornice. So we can find a few questions
24 here; the first one is, one, is it in fact a cornice? So
25 let's start small, one of the arguments has been whether

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1 or not this is a rooftop element, and Mr. Le Grant wrongly
2 testified -- this was at Page 74 of the transcript -- that
3 the cornice was below the roof. In fact, that's patently
4 false and in our reply statement I think that's Case
5 Exhibit 59, where you shared a cross section, that
6 actually does sit above the roof level. So, if you're
7 looking for a technical measure of whether or not that's a
8 rooftop element, you have that. But there's so much more
9 here in the record. So DCRA determined in writing, this
10 was when they did the first revised permit, if you look at
11 Exhibits 46F, G and H -- excuse me, I think it's E, F and
12 G -- the permit reviewer notes there was some internal
13 traffic within the Office of the Zoning Administrator, and
14 all of those end up with the conclusion in the reviewer's
15 notes that this is a cornice. So DCRA made that finding
16 in writing.

17 Now, Vice Chair Hart asked DCRA at the end of
18 the September hearing to provide case examples of what it
19 considers cornices, and as we pointed out one of the
20 examples that they provided, they provided no detail; it
21 was just a bare list of permit numbers and addresses. And
22 what we illustrated in Exhibit 66 at Pages 2 and 3 is that
23 one of the cases that they identified involved a
24 projecting band that is below the top of the parapet wall.
25 It's exactly what we have in this case, but by their own

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1 concession in their supplemental filing, they think that
2 qualifies as a cornice. We also note on Page 3 of that
3 same exhibit that HPRB's own guidance on this says you can
4 have a cornice even if it's below the top of a parapet
5 wall. I think Commissioner Turnbull earlier made
6 reference to you've got the coping on top with the parapet
7 wall and this parapet wall, the thing below that, that's a
8 big projecting band, that's still a cornice, assuming that
9 it's up there at the level of the roof. But the biggest
10 giveaway here is that the property owner's own experts
11 witness testified that there's a cornice on this property,
12 and that witness, Mr. Teass, disagreed with us about which
13 part of the entablature, as he referred to it, is in fact
14 the cornice. We say it's that great big projecting part
15 that's a little bit below the top of the parapet wall, but
16 he said -- Mr. Teass testified not once, not twice, I
17 count seven different times in the transcript from
18 September where Mr. Teass says that the smaller band at
19 the very top of the parapet wall is a cornice -- and you
20 can find that on Pages 135 to 137, and then once more on
21 Page 161. So whether you believe that it's the big part
22 that we say is the cornice, or whether you think it's the
23 little part, there's a cornice on the front of this
24 building and the plans call for it to be removed, and
25 that's incompatible with the regulation.

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1 I'll just briefly, there's the fallback
2 argument, I mentioned this to Commissioner Turnbull
3 earlier, even if you don't think that this is technically
4 a cornice, you could still find that it's within the
5 protection of E206 because it's in the nature of a
6 cornice, it's very similar to a cornice, but I
7 respectfully submit the Board does not have to go there.

8 So, again, DCRA has talked about the cornice
9 removal being vested, and Mr. Le Grant testified rather
10 vaguely at the September hearing about "the totality of
11 the zoning rules." That was on Page 96. But he was
12 unable to cite any specific provision, and that's because
13 there isn't one, it does not exist. Their position is
14 nonsensical. The text of A301.4 is unambiguous; you
15 comply with the regs then in effect unless one of the
16 listed exceptions applies, and none of those exceptions in
17 A301 applies to cornice removal. So in their supplemental
18 filing the property owner raised, for the first time, to
19 claim ANC6C's claim regarding the cornice is time-barred.
20 And Mr. Brown has repeated a number of times this evening
21 that all the permits entail the full removal of the front
22 facade, but the key thing -- you got to keep your eye on
23 the ball here -- the key thing is when that first permit
24 was issued that entailed the removal of the front facade
25 and therefore the cornice, the regulations didn't protect

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1 the cornice. It's only when the permit is amended that
2 that new provision in effect, at the time of both of those
3 revisions, comes into effect. And that's why it doesn't
4 matter that they're all the same in terms of what the
5 plans do because the law changed in the meantime.

6 So, to again, back up a little bit, look at the
7 big picture, Commissioner Turnbull has pointed out, he
8 pointed out at the prior hearing, and this was on Page
9 138, that the amendment to his E206 is intended to protect
10 the character of historic buildings and protect these
11 significant architectural features. The permit here
12 detracts from that interest by illegally authorizing the
13 removal of a protected architectural element. Our third
14 argument is that there are two principle buildings on this
15 lot. So the second revised permit, like its predecessors,
16 authorizes not only the renovation of the existing row
17 dwelling but also the construction of another three-story
18 structure of essentially identical size in the rear yard.
19 I'll call those the front and rear towers. The drawings
20 for the second revised permit have that connector that
21 we've talked about, but it does not meet the requirements
22 of Section B309.1. And just to emphasize a point that was
23 made earlier, what's at issue here is not whether there's
24 a meaningful connection within the meaning of the old
25 regs; we have to look to the language of B309.1D because

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1 the rules changed, the rules are now different. So you
2 can meet that fourth prong in one of two ways; it can
3 either be a common space, the connector can be a common
4 space by users of all portions of the building, so it can
5 be a lobby, a rec room, a loading dock or service bay, or
6 in the alternative -- either one will suffice -- space
7 design use to provide free and unrestricted passage
8 between separate portions of the building which is an
9 unrestricted doorway or walkway, that's B309.1D. So the
10 connector here fails that; it does not satisfy either
11 test.

12 So, one, it's a narrow structure; it's only 3
13 foot 8 wide. It's not a rec room, loading dock or service
14 bay, and so it does not function as common space. In
15 fact, if you look at the drawing, the door opens inward.
16 Second, Subsection D2 is equally unavailing; the test
17 requires a qualifying connector provide free and
18 unrestricted passage, and this bares repeated, the
19 regulations use the word "unrestricted" twice; this was
20 really, really important in ZR16. But the first floor
21 plan here shows that what you have are doors that are
22 locked to each of the two units, so if you look at either
23 end of that breezeway, and Mr. Teass testified himself --
24 this is on Page 155 of the transcript at Line 23 -- that
25 both of those doors are to be locked. So, the consequence

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1 -- Mr. Chairman, I know I'm right at my time but if I can
2 keep going.

3 CHAIRMAN HILL: Yes. I mean, how much longer?
4 The only reason I'm stopping you -- well, there's a couple
5 of reasons -- one is we are going to ask for Findings of
6 Fact and Conclusions of Law, which is really where we the
7 Board is going to boil down the most of, I think, at least
8 helping to summarize and facilitate this, all this
9 information, and then other -- I mean, at this point where
10 everybody's going to get 15 minutes, we'll be here for an
11 hour. And so I want it to be helpful as well. So how
12 much more time you think you need?

13 MR. ECKENWILER: Probably another ten minutes.

14 MR. CUMMINS: If it helps the Board, I can
15 reduce my time.

16 CHAIRMAN HILL: Okay, he's ceding some of your
17 time. Great. Okay, there you go.

18 MR. ECKENWILER: Thank you. So, and just to be
19 clear about why it matters if this connector does not
20 satisfy the requirements of B309; the regulations don't
21 allow a second principle building, so the only way that
22 this new building in the back would be allowable if it's
23 an accessory building and as we've explained in detail in
24 Case Exhibit 46 -- I think that was our second revised
25 pre-hearing statement -- it doesn't meet the technical

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1 requirements for what makes them think an accessory
2 building is not small enough in some.

3 Now, on this issue of the breezeway and whether
4 or not it converts these two towers into one building,
5 DCRA's testimony was inconsistent. Mr. Le Grant initially
6 claimed on Page 68 that both prongs were satisfied, but he
7 later back-tracked on that. He admitted that there's no
8 unrestricted access -- that's on Page 77 -- so he said the
9 second prong doesn't work, he said he relied only on the
10 first prong, that this is something like a lobby or a rec
11 room, he says that on Page 97. Now, the owner tries to
12 make a lot of this crisscross arrangement here with these
13 underground tunnels and the parking, and the trash and so
14 on. This misses the point of the regs; this is not about
15 what's convenient and what's a clever way for you to get
16 from the front tower to your car in the back. Keep your
17 eye on the ball here, too. The issue is: are these two
18 buildings functioning as two buildings, or does this
19 breezeway so unify them -- in conformity with the
20 standards under the regs -- that it makes them a single
21 building. And it simply does not for the reason that
22 Commissioner Turnbull mentioned. If you imagine the
23 alternative in which this thing isn't there, all of the
24 same stuff -- the very nice video that I think Mr. Teass
25 prepared -- you can still do all of that stuff. The

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1 connector doesn't facilitate any of that. The only thing
2 that the connector might do, and this is something that
3 Vice Chair Hart and I had an exchange about in September,
4 and this is an example that I think Mr. Brown gave earlier
5 of: Unit 1 owner wants to walk over to Unit 2 and not get
6 rained on or snowed on and stay toasty warm to borrow a
7 cup of sugar. Well, that's great; so that's a passageway.
8 But is it an unrestricted passageway; no, it's locked at
9 both ends. So, if the theory is the function of this is
10 to help Unit 1 owner go visit Unit 2 owner, yes it keeps
11 you warm, but the test under the regs isn't if it keeps
12 you warm. It's also is it an unrestricted passage, and
13 it's not that; it is a fig leaf that's tacked on so
14 functionally you can build two row houses on one lot;
15 that's what we have here, two row houses, two principle
16 buildings, and that's not allowable.

17 So don't be deceived; you can go off and chase
18 the shiny object looking at the video which is very well
19 done, but the point is not about access to the backyard or
20 the trash or the parking; it's about how those two masses,
21 those two structures relate to each other; are they a
22 single building, and they are not under the terms of the
23 regulations.

24 And then last with respect to the illegal rear
25 addition, what we would call the pop-back, as you know

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1 E205.4 has a restriction, you can't pop back more than 10
2 feet past an adjoining, principle, residential building.
3 That's what happens here. And again, that was always the
4 plan here, but remember that prohibition came into effect
5 in April of -- excuse, the current text of it came into
6 effect on August 25th, 2017. So, in any event, the second
7 revised permit had to comply with this requirement, don't
8 go back more than 10 feet unless an exception applies, and
9 there was no exception that in fact applies. There is a
10 potentially applicable exception, so A301.14 does allow
11 for grandfathering for certain extensions more than 10
12 feet, but you got to meet two conditions for that; the
13 first is that the permit application was filed and
14 accepted as complete by DCRA on or before March 27th; and
15 second, that it was not substantially changed after
16 filing. And you have to satisfy both conditions, not just
17 one, but both. And in this case, neither one is
18 satisfied, so to begin with, the original permit was not
19 accepted on or before March 27th. At the last hearing, I
20 testified about the email from Max Tondro in which he
21 pointed out that it was not accepted as complete until
22 March 29th; that's Exhibit 46H. DCRA's supplemental
23 filing confirms the accuracy of what Mr. Tondro says in
24 that email; as we explain in our filing, that's Exhibit
25 66, Pages 1 and 2, the DCRA time line shows that the

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1 application documents, so the drawings and all that stuff
2 got uploaded on March 23rd and into the wee hours of March
3 24th. It was completed at 1:51 a.m. and 49 seconds. Two
4 seconds later, 1:51 a.m. and 51 seconds, according to
5 their own time line, the table that they provide, a new
6 task is created in ProjectDox and that's for what's
7 labeled the Pre-screen Review; that's the second row in
8 their ProjectDox time line.

9 And what that shows is the task was created
10 early in the morning when nobody was sitting around at
11 DCRA, no human being was looking at things, let alone
12 looking at them and completing a review in two seconds,
13 that that task, the pre-screen review was not completed
14 until the morning of March 29th. And that's the process
15 that Mr. Le Grant testified about; last month he said on
16 Page 72 when an application is submitted to DCRA, it goes
17 through an initial vetting, that means a human being,
18 right? That's not I uploaded some documents that say
19 whatever they say, somebody vets it; an initial vetting to
20 see if sufficient information exists in order to begin a
21 review. And that vetting by a human being took place on
22 March 29th and not before, according to DCRA's own time
23 line. And therefore it's nonsensical for them to claim
24 that the application was accepted as complete on March
25 24th before any human being had laid eyes on it, let alone

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1 accepted it as complete. So failed the first prong two
2 days too late; it wasn't accepted as complete until March
3 29th; that's after March 27th, so the first prong fails.
4 But for a second independent reason, the vesting provision
5 in A301.14 does not apply because it also requires that
6 the application not have been substantially changed after
7 filing, in other words the regulation. So if you compare
8 this to the original application, there's a series of
9 revisions that shows extensive changes since then. I'm
10 not going to walk you through all of them; we listed them
11 all in our second revised pre-hearing statement, that's
12 Exhibit 46 at Pages 14 to 21, and in our reply Exhibit 59,
13 Pages 9 through 10.

14 I will just flag one thing; Mr. Cummins
15 mentioned earlier this business about the connector. It
16 was originally not fully above-grade, and all you need to
17 do to see that is compare Exhibit 46D, Sheet 85.2 -- and
18 that's the original permit plans -- to Exhibit 46B, Bravo,
19 again the same sheet 85.2, and those are the first revised
20 drawings. And both of those have on the right, there's a
21 notation "BHMP," that's building height measuring point,
22 that's the datum. And you can see that in the original
23 drawings, a significant portion of that connector, that
24 breezeway as it was styled then, is below-grade, it's
25 underground, so it's not fully above-grade.

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1 CHAIRMAN HILL: Commissioner, how much time do
2 you still need?

3 MR. ECKENWILER: I think I got probably about
4 two minutes.

5 MR. CUMMINS: I can reserve the balance of my
6 time and I'll conform.

7 CHAIRMAN HILL: Okay, thanks.

8 MR. ECKENWILER: So Mr. Chairman, the simplest
9 illustration of the changes made are the bubbles on the
10 drawing submitted for the second revised permit, and those
11 are all the drawings that are Exhibit 59A. Mr. Le Grant
12 testified at the last hearing that those literally dozens
13 of bubbles represent changes, and you can see that
14 discussion where we went through each of the drawings,
15 that's on Pages 103 through 104 of the transcript. So
16 taken together, these numerous differences reflect changes
17 from the original permit so substantial as to disqualify
18 the second revised permit application from the benefit of
19 the A301.4 potential vesting rule. So let's just step
20 back one last time here for this fourth claim; remember
21 the reasons for this vesting provision and the criteria in
22 it; not substantially changed is there to prevent the
23 filing of a slap dash application that's riddled with
24 errors just so you can put down a placeholder to beat a
25 deadline, and that's what happened here; an application

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1 with obvious zoning defects like this breezeway that
2 wasn't fully above-grade was rammed through DCRA --
3 remember, it was accepted as complete on March 29th, they
4 issue the permit two days later. Okay, so this thing was
5 really rushed through. The applicant spent the next 16
6 months, so from that point to the issuance of the second
7 revised permit, trying unsuccessfully to fix all the
8 errors, revising that permit multiple times, and this is
9 precisely the kind of switch-a-roo the not substantially
10 changed prong is meant to address. So not only was that
11 application too late to benefit from vesting, instead it
12 was complete two days too late, it also changed too much,
13 and therefore it's subject to the 10-foot pop-back
14 restriction, and it does not comply with that. So for all
15 of those reasons, ANC6C respectfully urges the Board to
16 find that the second revised permit and all the
17 predecessors that underlie it violate the regs and/or the
18 revocation.

19 CHAIRMAN HILL: Okay, great. Mr. Cummins?

20 MR. CUMMINS: I'll be brief. I support this
21 appeal for a variety of reasons; one I'm the adjoining
22 neighbor, I'm directly impacted by this project, but also
23 in the city we have a real problem with DCRA issuing
24 permits that clearly did not meet the building code and
25 zoning regulations. I wanted to address as part of this

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1 the length of time they've had the property and not having
2 a permit approved, had they submitted permit applications
3 that met the building code requirements and zoning
4 regulations, they could have had a permit and they could
5 have built something quite massive under the rules, and
6 neighbors or ANC nobody could say a peep. But that's not
7 what they chose to do here, and I pointed out in my
8 supplemental filing the original foundational level permit
9 that they applied for says right on it they're one of
10 those four units which is not allowed. And it also says
11 they wanted to have a cellar level three stories plus a
12 mezzanine, not allowed. So again, from the very beginning
13 there was an intent here to try to build beyond what the
14 rules allowed, and those rules as you pointed out and as
15 the property owner pointed out were quite generous. But
16 granting them -- sorry, nothing to point out here -- this
17 is a revocation of a permit, it's not a special exemption
18 request or a variance request; these were issued all of
19 the permits, the original permit and the subsequent
20 revisions were issued as matter-of-right permits, and they
21 don't include inaccurate site plans, the plans submitted
22 and the plans you're reviewing don't accurately depict
23 property, and I discussed that in detail in my filings.
24 That alone, DCRA should have had -- stop right there; you
25 can't even accurately present -- again, this is building

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1 code issuance, it's a different matter before the OAH -
2 but again, just looking at these plans you have to treat
3 them as a little suspect knowing that there are
4 inaccuracies in them. That includes the latest filing of
5 the walk-through video which looks very slick, but if you
6 look very carefully what the plan is -

7 CHAIRMAN HILL: I got -- I got -- we all need
8 to take a break here. I have to take a break. I have to
9 take a break, okay? So I got to just step back here. I'm
10 watching, I listened a half an hour, or 25 minutes of
11 conclusion and I understand that you're the next door
12 neighbor, okay Mr. Cummins, and I understand that you're
13 passionate about this, but the property owner is sitting
14 over there and he's listening to you make accusations and
15 everybody's telling him like DCRA is -- you're accusing
16 DCRA of wild things, everyone is, okay? And so I just
17 want to let you know this is a conclusion of six or seven
18 hours of testimony, four or five hours that we've had to
19 read stuff as board members, okay? And this is not a
20 place where we're going to now accuse people of doing
21 things and changing things and breaking the rules and
22 conniving, so now I'm getting a little tired, okay. So
23 I'm sorry that you happened to get at this point, I
24 suppose, because I need to take a break now. I've been
25 extremely patient, the Board has been extremely patient,

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1 and Mr. Cummins I know you live right next door to the
2 property. I'm just saying like -- what I'm just trying to
3 say is let's try not to make any accusations on what any
4 intent was of anyone, just stick to the conclusions of
5 your case.

6 MR. CUMMINS: I'll try to avoid any
7 accusations, but I didn't respectfully, I didn't do
8 rebuttal. I'll just include that in the closing, and I'm
9 trying to be very brief.

10 CHAIRMAN HILL: Okay, that's fine. That's
11 okay. Let's take a five-minute break, I want to take a
12 five-minute break. We'll come back, Mr. Cummins, for your
13 conclusion. Everybody, we're going to take a ten-minute
14 break, okay?

15 (Whereupon, the above-entitled matter went off
16 the record at 5:44 p.m. and resumed at 5:57 p.m.)

17 CHAIRPERSON HILL: Okay. Let's see. We're
18 back, okay. So I want to make a couple of points if I
19 could. What the Board has an opportunity to do and what
20 we haven't done in the past, and what we don't do, is ask
21 for conclusions in writing.

22 The reason why I don't like asking for
23 conclusions in writing is because it's nice to hear them.
24 Unfortunately, there's a lot of passion connected with
25 conclusions so maybe, for those who might come back here

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1 again, we might go to conclusions in writing. I'm just
2 making a comment.

3 Mr. Cummins, it is unfortunate that I kind of
4 built this crescendo right here which is how I'm having --
5 at your particular conclusion I'm having this rethinking
6 of this. Again, it's not -- I'm just kind of point out
7 things. It's really kind of we are trying to highlight
8 things that the Board is trying to remember.

9 Unfortunately, if there's a lot of things that
10 we're trying to remember, it's just going to end up in
11 your conclusions of law and findings of facts that we
12 actually might have an opportunity to really look at the
13 things. In your conclusion it's not really so much
14 rehashing what the argument was, not that's the way the
15 commissioner did it.

16 I'm just saying if you could kind of go ahead
17 and in your conclusion kind of tell things to the Board
18 that you would like us to try to hold in our mind as we
19 kind of go into this. Just I guess I don't know -- I mean,
20 I have some thoughts at the end as to things that I would
21 like to hear from everybody in terms of their findings of
22 facts and conclusions of law which we will, I think, be
23 better able to articulate our discussion when we come to
24 deliberations.

25 Mr. Cummins, go ahead and I'm just going to

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1 listen to you and whenever you think you're done, let me
2 know.

3 MR. CUMMINS: I'll try to be very brief.
4 Again, thank you. It's been a very long day. It's not
5 the process I wanted. I objected to several procedural
6 points along the way that made this case more complicated
7 and dragged it out and postponed it, but we are where we
8 are and let's move forward.

9 To be clear, you know, a lot of the argument
10 here to kind of draw the threads and what's important,
11 there's this claim of having all these vesting rights
12 based on the issuance of the original permit B1706219.
13 That permit is the reason we're here. This appeal was to
14 get that permit revoked because it clearly did not -- does
15 not meet the zoning regulations.

16 Then instead of moving forward with that, we
17 had postponements and then DCRA has since issued revised
18 permits. Those didn't meet the zoning regulations either.
19 Part of the arguments along the way here is like, well, we
20 already had it approved under the original permit. Well,
21 that original permit should have already been thrown out
22 by now if things had gone my way in terms of hearing that
23 individually before incorporating the other permits into
24 this appeal.

25 We are where we are. Again, I think

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1 Commissioner Eckenwiler made points very accurately. I
2 did want to respond earlier and I saved it from my
3 rebuttal to the closing statement about some of the
4 testimony submitted for today, or in the hearing record.
5 The video, for example. One of the inaccuracies of the
6 video is that the doorway in the middle of the connection,
7 the lobby breezeway, in the video is represented as
8 swinging out into the courtyard.

9 In reality in the plans that are approved by
10 DCRA that swings inside the corridor. The corridor is so
11 narrow that when you open the door, you've put up a wall
12 and blocked passage. That's a minor point but I think
13 it's important to look at the plans and not necessarily
14 some of the representations since then.

15 The plans themselves are not accurate. Even
16 the site plan. There is a 400-square-foot garage that was
17 partially removed. It's not accurately depicted on the
18 site plan. The neighbor's extension was there. It was
19 not accurately depicted in the site plan in the revised
20 permits.

21 It was started before they got their permit, too. It was
22 approved and construction already started even if it
23 hadn't been fully completed. Even just simple things like
24 that.

25 The Board is looking for any excuse to give any

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1 kind of extra consideration of some sort of hardship the
2 developers had. I would urge you to reject that. They
3 could have had an issued permit that met the rules and
4 allowed them to build a very large structure. It wouldn't
5 matter what the neighbors or the ANC or anybody else
6 thought. That's not what they chose to do here.

7 They tried to build beyond the rules. Again,
8 that's clear. I referred earlier to my supplemental
9 filing. I included the cover sheet of their very first
10 permit application, the foundation-level permit, that says
11 right on it that they want to build four units which,
12 obviously, is allowed. And they want to build more
13 stories than is allowed.

14 Again, I'll save things for writing but I do
15 think it's important that the Board revoke this permit.
16 Not just because clearly it does not meet the zoning
17 regulations and that is well and good enough, but my
18 feeling is that unless you take action, then there's
19 really no hope for neighbors who expect the rules to be
20 followed. There's just lots of problems all over the
21 District. It's a matter obviously -- even in the current
22 election that's one of the issues I noticed on a flyer
23 from a candidate.

24 Again, I think it's an important matter here.
25 Obviously rule on the record. There's a lot in the

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1 record, a lot more than I could touch on in this brief
2 oral closing statement. Thank you again for hearing this
3 appeal and I urge you to support the appeal of ANC 6C and
4 order the revocation of B1706219 and the subsequent
5 revised permits, all of them.

6 CHAIRPERSON HILL: Okay. Thank you, Mr.
7 Cummins. I do want to make a comment just for the Board
8 and everything, and people that are here. Again, for
9 anybody, I've served here for a little bit of time now and
10 I don't think -- I think statements that the city --
11 people are getting away with things or the city is not
12 following the regulations I don't think that is accurate.

13 I think you have presented a case and you have
14 presented a case that the Zoning Administrator has erred
15 in his issuing of the permit. To say that we're not going
16 to follow the regulations, or that we don't follow the
17 regulations, I don't think that's true because I have been
18 here long enough to know that we do follow the
19 regulations.

20 I don't know how this is going to go at all at
21 this point. I just want to let you know that the way that
22 I will be looking at this is exactly the regulations and
23 whether or not the regulations are being adhered to. You
24 can disagree with my interpretation of those but you can't
25 deny, in my opinion, that I'm trying to make sure that the

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1 regulations are being followed. I just wanted to get that
2 on the record as well.

3 Ms. Lord-Sorensen.

4 MS. LORD-SORENSEN: Good evening, Chairman
5 Hill, and members of the Board. As you are aware, the
6 Appellant has the burden of proof in this case. As I will
7 outline shortly, Appellant has failed to meet his burden.

8 There are four issues pending before the Board.
9 (1) Whether the guardrail must comply with the one-to-one
10 setback; (2) removal of the cornice; (3) construction of
11 the rear building; and (4) construction of the rear
12 addition.

13 With respect to the guardrail, the Zoning
14 Administrator clearly testified back in September that it
15 was not subject to the one-to-one setback. The guardrail
16 was not parallel to the lot line but, rather, was
17 perpendicular to the lot line and there for life safety
18 purposes.

19 Now, with respect to the second issue which
20 deals with the cornice, the issue here was whether the
21 existing cornice is a rooftop architectural element that
22 cannot be removed from the property because it is
23 prohibited supposedly from removal by 11(e) DCMR 206.1.

24 Now, here in this particular case the permit
25 authorizing the removal of the cornice on the property was

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1 issued on March 31, 2017. Per the project docs work flow
2 that I have submitted to the Board, the permit was deemed
3 accepted on March 24, 2017.

4 On March 27, 2017, right before it was issued,
5 the Zoning Commission Order No. 1411(b) added cornice to
6 the enumerated list of protected features but it did not
7 go into effect until April of 2017, so a month after their
8 original permit was issued. Since the revised permits now
9 do not include any amendments to the cornice, then it did
10 not trigger the text amendment that went into effect in
11 April of 2017.

12 The third issue, whether the rear tower of the
13 townhouse is a second principle building on the property,
14 the Zoning Administrator testified that the front and rear
15 towers of the townhouse have a meaningful connection
16 between them which makes it a single building under 11(b)
17 DCMR 309.1.

18 We know this because back in September the
19 Zoning Administrator went through the regulation and
20 specifically explained how the connection at this
21 particular property satisfies 309.1. He explained that it
22 was fully above grade, enclosed, heated, and artificially
23 lit.

24 Now, Mr. Eckenwiler is harping on (d)(2) spaces
25 designed and used to provide free and unrestricted

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1 passage. The Zoning Administrator was clear back in
2 September that he was looking at (d)(1), the common space.
3 Specifically, it was a common space shared by the users of
4 all portions of the building.

5 Based on his reading of the regulations, he
6 found that the connection between the front and the rear
7 towers satisfy all four zoning requirements. For those
8 reasons, the Zoning Administrator correctly determined
9 that the connection between the front and rear tower
10 satisfied 309.1 and, thus, according to the regs using the
11 specific language of the regs, the two towers shall be
12 considered parts of a single building.

13 Now, the remaining issue was whether the rear
14 tower of the townhouse exceeds the maximum depth
15 permissible by the zoning regulations in effect on the
16 date of the revised permit's issuance. Now, the permit
17 authorized construction of the rear tower extending
18 further than 10 feet beyond the farthest wall of the
19 adjacent building because such construction was permitted
20 under the zoning regulations in effect at the time that
21 the permit was issued.

22 Now, 11(e) DCMR 205.4 prohibits buildings in an
23 RF1 zone from having a rear extension farther than 10 feet
24 beyond the farthest wall of an adjoining property. The
25 permit authorizing construction of the rear tower in this

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1 case was approved on March 24, 2018, again according to
2 the project docs work flow that was submitted to the
3 Board, and was subsequently issued on March 31, 2017.

4 The Zoning Commission order 1411(b), which
5 adopted the 10-foot limitation on new rear additions, did
6 not become final and was not in effect until April 28,
7 2017. Again, almost one month after the original issuance
8 of the permit. We ask that you find that the Zoning
9 Administrator did not err in the issuance of the permit
10 and that you deny the appeal.

11 CHAIRPERSON HILL: Okay.

12 Mr. Brown.

13 MR. BROWN: I have a PowerPoint presentation --

14 CHAIRPERSON HILL: Turn on your mic, Mr. Brown.

15 MR. BROWN: I'm going to talk through it
16 without stopping. I would like Mr. Teass and Mr. Bello to
17 make several points that are better coming from them if
18 that is acceptable to the Board.

19 CHAIRPERSON HILL: That's good. Was Mr. Bello
20 testifying earlier?

21 MR. BROWN: Yeah, he was an expert witness in
22 Zoning.

23 CHAIRPERSON HILL: Oh, that was back in the
24 beginning?

25 MR. BROWN: September 19th.

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1 CHAIRPERSON HILL: Okay.

2 MR. BROWN: When we had the hearing.

3 CHAIRPERSON HILL: It doesn't matter. It looks
4 like Commissioner Eckenwiler is going to object to it.

5 Is that correct, Commissioner Eckenwiler?

6 MR. ECKENWILER: Yes, Mr. Chairman. This is
7 closing. This is not more testimony.

8 MR. BROWN: That's okay.

9 CHAIRPERSON HILL: Mr. Brown, just go ahead
10 with your conclusions.

11 MR. BROWN: Yes. I want to quickly go through.
12 There have been a lot of dates but there are a handful of
13 critical dates. March 24, 2017 the original permit was
14 accepted as complete by DCRA. They provided their
15 internal records. Mr. Le Grant has testified under oath
16 the permit was accepted on that date.

17 Speculation about the internal workings of the
18 computer really is irrelevant. DCRA's records establish
19 the permit accepted and complete on March 24, 2017. Even
20 more important, the original permit was issued on March
21 31, 2017.

22 That date is important because, one, it was
23 before the cornice rule was adopted. It was before the
24 10-foot setback rule was adopted under the accepted
25 vesting practices. Once that permit was issued, the

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1 property owner had the right under 301.4 to take that work
2 to completion under that permit.

3 As we'll go through, and why I've asked Mr.
4 Teass to briefly compare the permits, nothing in the
5 permits that were revised in any way impacts what was
6 approved in the original permit. The total facade was
7 removed, quoting Mr. Eckenwiler, and he's correct in this
8 case, March 31 of 2017.

9 From that point on my client had the right to
10 tally remove that facade and that's important because
11 nothing that occurred in the first revised or second
12 revised permit made any change to that provision and he
13 should have the right to complete that work as vested.

14 The rear addition is the same case, occurring
15 before the change and he had the right to complete that
16 work to completion. Nothing in the permits that were
17 issued subsequently changed that. The fact that there
18 were internal renovations or revisions, the layout of the
19 units, the fact that the units were flipped, all within
20 the building envelope that was approved in the original
21 permit does not trigger, and nobody could reasonably
22 expect that to trigger, compliance with the subsequently
23 enacted provision.

24 In that case even the most trivial revision --
25 and most of the revisions were made were trivial. They

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1 removed this or reconfigured something. Ms. John, I
2 think, hammered right to this point that every permit
3 revision doesn't trigger compliance with the new zoning
4 regulations. None of the changes that were made in any
5 way impacted the front facade removal, the rear addition,
6 depth, and all of those should remain vested.

7 Similarly, the first permit -- and this is
8 important both for vesting purposes and timeliness of the
9 appeal purposes -- the first permit and every permit after
10 that clearly showed the allegedly violating guardrail
11 perpendicular to the side parapet wall. It was shown in
12 the plans.

13 Mr. Eckenwiler had the duty to file a timely
14 appeal on that issue and didn't. The first time he raised
15 that issue was 15 months later and 13 months after he
16 filed this appeal. The Board's jurisdiction can be
17 determined at any point. Quite frankly, if you don't have
18 jurisdiction, you can't decide the case and that is
19 certainly what the Court of Appeals has said.

20 The same is true for the removal of the front
21 facade. At the early stage the front facade was being
22 removed. At that point it was a roof-top architectural
23 element. If Mr. Eckenwiler thought that was in violation,
24 which he's indicated in various briefs, he should have
25 filed an appeal then. He didn't first raise the cornice

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1 issue, again, until 15 months later after the permit was
2 issued and his appeal is untimely and that work also is
3 vested.

4 The first revised permit was April 18, 2018.
5 It's important because the rear addition stayed the same,
6 as I said before, the front facade removal stayed the
7 same, and the guardrail was the same as originally
8 approved. The same is true for the August 2, 2018 second
9 revised permit. All those elements remain the same and
10 were previously vested.

11 The vesting issue, again, which I've talked
12 about, is critical. If you read 301.4, the most important
13 language, "Any construction authorized by a permit may be
14 carried to completion pursuant to the provisions of this
15 title in effect on the date that permit is issued."
16 Again, March 31, 2017 the rear addition was permitted and
17 that work could be completed. Also the removal of the
18 front facade was authorized at that time and could be
19 completed so those provisions are vested.

20 What I would like to do, and it's better coming
21 from Mr. Teass, in our PowerPoint we have an above and
22 below comparison of the permits focusing in on the rear
23 addition, the above-grade connection, the guardrail, and
24 the removal of the front facade. You can see that in the
25 context of the original permit and revisions that were

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1 made.

2 MR. TEASS: This is ground that we covered
3 previously.

4 MR. ECKENWILER: Mr. Chairman, I have to
5 object. This is testimony.

6 CHAIRPERSON HILL: This is testimony. So he's
7 reviewing what he had given before. Right? I can ask OAG
8 because I don't know when to draw the line on what
9 testimony is. Mr. Eckenwiler, I'm just trying to get
10 through this in the same manner that I got through yours
11 which is I listen to everything that you said. Whether
12 you were re-testifying on what you had given testimony on
13 before, I didn't interrupt you and say, "You're
14 testifying."

15 You are basically reiterating everything that
16 you said before so now they are going to reiterate
17 everything they said before. I suppose if it's a new
18 slide or not a new slide, that might be new testimony.
19 I'm just trying to get to where we can decide this. I
20 guess, Mr. Teass, if you don't use slides and you want to
21 go ahead and tell me whatever you think you want to tell
22 me, I will consider that more a conclusion.

23 MR. TEASS: Without the use of --

24 CHAIRPERSON HILL: Without the slides. Just go
25 ahead and tell us what you're trying to get across.

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1 MR. TEASS: I think really what we're trying to
2 do is address the issue of what changed in the original
3 permit in March of 2017 and what changed in April, and
4 then there was a third iteration. I think the point we
5 were trying to make in the exhibits that were submitted
6 was that at the end of the day the zoning envelope did not
7 change from 2017 to 2018.

8 I think this is confirmed by the zoning
9 administrator's interpretations. We tried to portray that
10 in the exhibits that we previously submitted. We have
11 also gone through and done an exhaustive review. Grant
12 you there were several changes that were made to the
13 interior. I would argue that none of those changes have
14 any impact to the permitted zoning envelope that was
15 approved.

16 I would furthermore go on to say that the
17 substantial connection is a necessary feature of the
18 project. It has always been above ground. There has
19 always been a roof over it. It has always been
20 conditioned. It has always been accessible by both units
21 and has always functioned according to the definitions
22 that are laid out in the zoning regulations.

23 There were design revisions undertaken on the
24 front facade. There were design revisions taken to the
25 roof deck, roof deck access. There's been an evolving

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1 standard within DCRA as to the configuration of how one
2 gets on the roof of an RF-1 building so we have attempted
3 to make sure that as that standard has evolved we have
4 been in compliance which is the result of the second
5 revision.

6 I think in terms of -- really three of the
7 issues that are raised by the Appellant; the guardrail,
8 the cornice, and the pop-back, all relate to this issue of
9 vesting which I think Mr. Brown has touched on that we
10 would have been under the original permit and the original
11 reading of the Zoning Regulation 301.4 that we would have
12 been entitled to complete the project to completion.

13 I think that, in summary, the changes that
14 we've illustrated in the exhibits that were submitted
15 today, but also as a previous exhibit to both the Board
16 and the Appellant that the changes are minor in nature.

17 CHAIRPERSON HILL: Okay.

18 Mr. Brown. Your microphone is not on.

19 MR. BROWN: Sorry. If I could, I'll spare the
20 Board the one-minute-and-five-second video again unless
21 you would like to see that with some commentary. I think
22 the video gives you a better understanding of, one, there
23 is common space there between the units that can be used
24 by both owners or people coming to visit, both owners.
25 And that there is free access between those two units.

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1 I've heard it said repeatedly that somehow the
2 fact that the door to Unit A is locked and the door to
3 Unit B is locked, that somehow that's dispositive if this
4 not being common space or unrestricted access. The
5 regulations clearly provide that is not a requirement. If
6 you think about it, put it in the context of an apartment
7 building, or even a two-unit apartment building, the fact
8 that each individual unit has doors locked shouldn't be
9 dispositive of anything.

10 The above-grade connection is common space,
11 unrestricted access for both the owners to that space, and
12 also providing access to other parts of the building which
13 is important to their use of the building. Access to the
14 street, the parking, the garbage, or each other and for
15 their guests I think is important and it's unrestricted
16 between the two properties.

17 We provided some very good, I think,
18 comparisons in the video. The other thing is, Mr.
19 Eckenwiler would like us to believe that this is something
20 that is uncommon, Rube Goldberg. I think that is being
21 unfair to the circumstances. The Board and Mr. Hill, I've
22 mentioned this before, but in the case before was a case
23 where they were seeking zoning relief, not for the above-
24 grade connection. The Board praised the courtyard and the
25 above-grade connection and the design and the family-sized

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1 units.

2 Certainly the Board would not have approved
3 that for other zoning reasons if, in fact, I think they
4 were uncomfortable with the above-grade connection which
5 was the glue that held that plan together. I have
6 provided drawings in the package about that.

7 The other thing is that -- and we've just
8 provided one example of a permit that was issued in April
9 2017 which had a very similar above-grade connection in
10 RF-1 zone connecting a front and a rear portion of the
11 building. That went through in a contemporaneous time
12 frame. Not through the Board but through DCRA such that
13 this is not an uncommon occurrence and we provided some
14 detail on that.

15 Last the facade trim. When Mr. Le Grant's
16 office approved the original permit the cornice didn't
17 exist. It was judged under the rooftop architectural
18 element and was authorized to be approved. That approval
19 is vested and maintains in place, notwithstanding the
20 protests about it.

21 I would also in the package just for some
22 context DCRA provided several examples of where cornices
23 weren't removed. I think, to be accurate, I have provided
24 for 4000 14th Street you'll see the original facade of
25 4000 14th Street.

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1 If you go to the next one, you'll see it under
2 construction. Then here the final that was taken last
3 week shows what occurred. You'll see that all those
4 elements that could have been classified as cornice have
5 all been removed in their entirety and replaced in
6 different fashions not in kind. I don't think that
7 information provides much for the Board's consideration.

8 Again, 210 P Street, N.W., original
9 notwithstanding the fact the cornices not being removed.
10 That's the final product. Then, again, 223 17th Street,
11 S.E., the original and the facade not being removed.

12 I think it's important to realize, one, the
13 facade was removed prior to the regulations and it's not a
14 cornice. I've never acknowledged it was a cornice, and
15 how it's distinct from being a cornice. Then, finally the
16 guardrail.

17 Mr. Le Grant does an incredibly difficult job
18 oftentimes without direct guidance from the regulations.
19 He has established a well thought out policy that in this
20 very specific case the guardrail running perpendicular to
21 the side parapet wall is acceptable. That guardrail is 36
22 inches high below the parapet wall and not visible and for
23 life safety purposes. Mr. Le Grant in this case has made
24 a sound policy and the Board owes him deference on that
25 matter.

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1 I would point out in general, as well as
2 specific to the guardrail issue or, for that matter, the
3 front facade, if the Board found those minor issues were,
4 in fact, violations of the zoning regulations, those
5 matters can easily be changed. The guardrail can be
6 moved. The front facade element can be retained and the
7 substance of this permit be maintained which is the rear
8 addition and the above-grade connection.

9 It goes back to people have tried to find fault
10 on the permitting in this project. My client has worked
11 very hard and at great length and expense to get through
12 the permitting process. It has not always been a friendly
13 process to him. In fact, it's been a very unfriendly
14 process. His goal and his instructions to me and to those
15 who have been involved is, "I want to comply."

16 Everything we've done in the context of this
17 appeal has been about complying. In fact, if the
18 guardrail was something that the Board thinks differently
19 from Mr. Le Grant's judgment, that can be corrected
20 easily. If the Board thinks that the front facade could
21 be maintained, it will be maintained because, again, this
22 process with my client is about compliance.

23 With that, you've heard way too much from me
24 and I'm under my time limit. Thank you.

25 CHAIRPERSON HILL: Okay, great. All right. We

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1 are going to figure out a timeline here for findings of
2 fact and conclusion of law and when we could get back
3 here. However, before we do, I would like to let the
4 remaining Board members if they have anything they would
5 like to share, please share. We won't get a chance to
6 speak with you all again. We will just deliberate.

7 I suppose after being here for however long
8 we've been here, and this is not my first appeal. I've
9 gone through this process many times, but this one
10 actually has taken a lot of time and it has been fairly --
11 not necessarily any more intense than others but it's been
12 a little intense. I just want to share that -- again, I
13 would like to have an opportunity to share a little bit
14 which is, you know, we're going to sit here and we're
15 going to deliberate what is going to happen.

16 The ANC has come forward with an appeal.
17 Appeals in general tend to be a little difficult to win
18 because it's something that you have to -- it's just a
19 higher standard usually. That's not to say that it
20 doesn't happen because I think Commissioner Eckenwiler has
21 been both on the winning and losing side before, which is
22 to say it does happen.

23 MR. ECKENWILER: Mr. Chairman, I've never gone
24 to hearing on an appeal before this.

25 CHAIRPERSON HILL: Oh, really? Okay. I

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1 thought you had but that's all right. Commissioner
2 Eckenwiler, I've seen you before. Let's put it that way,
3 right? Okay. You've both won and lost I'm sure here. My
4 point is, and I know the property owner has sat here and
5 it's not -- it's very expensive. It takes a lot of time
6 and I don't take -- I just want to again take this
7 opportunity since we have been here together for so long
8 and we won't have an opportunity to again, I want to kind
9 of share my process as I'm thinking through this.

10 I don't take it lightly at all. I don't think
11 any of our Board members do. It takes a lot of time for
12 us just to get to this point in terms of reviewing the
13 entire record so we'll just be looking at the regulations
14 and it won't be whether or not we like the project or
15 don't like the project because that is not how we do look
16 at the regulations because I don't think -- I mean, I'm
17 not getting into -- what is it? -- reading into how I
18 think people have done things or do things.

19 I think that if you're allowed to do it under
20 the regulations and you're following the regulations, you
21 should have the opportunity to do it. I think that the
22 meaningful connection is something that -- I was looking
23 with the Zoning Commission and that is something I've been
24 trying to understand while I've been here.

25 However, I do think, and I don't think there is

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1 anything wrong with this, that the meaningful connection
2 is there to make it one building or whatever it is if
3 you're following the regulation. I might not like what
4 has happened from the regulations being followed but
5 that's just the way it is. I'm not saying I'm agreeing
6 with it. I'm just letting you know that is what I'm
7 looking at.

8 As far as like the cornice and the railing, I'm
9 not -- I don't disagree those are things we need to look
10 at, the timings of the permit. For me I'm looking at the
11 meaningful connection in terms of the building primarily.
12 The intervener, you know, from what I understand, as well
13 as the ANC, you know, and everyone can take -- again, I
14 don't mean to imply anything like kind of the high road
15 which is to say we are all here just to make sure the
16 regulations are upheld.

17 I wouldn't want the building there. I would be
18 fighting because I want a building to be next to me
19 perhaps. The ANC doesn't want whatever the ANC doesn't
20 want. I don't know. The property owner wants what the
21 property owner wants because they want to develop. I
22 guess what I'm trying to say is that I believe there's all
23 -- everyone should understand the perspective that
24 everybody is coming from and I'm just trying to kind of
25 share with you how I'll be going through this when I'm

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1 going through this.

2 It is very unfortunate that somebody is going
3 to lose here because a tremendous amount of time,
4 tremendous amount of energy has gone into it, but somebody
5 is going to lose here. I'm just throwing all that out
6 there to just let everybody know.

7 Does the Board have anything they would like to
8 share at the end?

9 MEMBER WHITE: I'm just going to share that I'm
10 going to look at everything very carefully. I concur with
11 what the Chairman has said. I'm going to listen to the
12 tapes again. I'm going to give everybody the time that
13 they deserve because everybody's got a lot of vested time,
14 interest, and money in this.

15 I'm going to look at all the issues and
16 meaningful connection. But I'm also going to look at the
17 rules and the regulations and try to make a thoughtful
18 decision on this. I respect everybody's time today. This
19 was a very timely process. This is not our full-time job.
20 At the same time, I think zoning is very critical to the
21 city so I'm very respectful of the process. I promise you
22 I'll be respectful in terms of looking at all of your
23 arguments individually.

24 COMMISSIONER TURNBULL: I don't think I could
25 add much more to what both of you have said. I think you

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1 covered everything very well. There is a lot to look at.
2 We have a process that we go through and I think it's just
3 going to take some time to review everything and look
4 carefully at all sides.

5 CHAIRPERSON HILL: Okay. Let's try to get a
6 time table here. So findings of fact and conclusion of
7 law. How much time, Mr. Moy, do you think we need to put
8 -- can you help me out with the timeline?

9 MR. MOY: Yes, sir. I'm going to propose two
10 dates. The Board can let me know whether you want to add
11 more time. Typically it takes 10 to 14 days to get a
12 transcript into the record. If I go on that basis, I'm
13 expecting to have the transcript in the record by November
14 14th. If we allow two weeks for the parties to file draft
15 findings of fact and conclusions of law, that would take
16 us to their submission by November 28th. That's two
17 weeks, unless you want to give them another week.

18 CHAIRPERSON HILL: I'm going to interrupt.

19 MR. MOY: Go ahead.

20 CHAIRPERSON HILL: How about another week
21 because Thanksgiving is there.

22 MEMBER WHITE: Yes, please.

23 CHAIRPERSON HILL: Okay.

24 COMMISSIONER TURNBULL: No objection.

25 CHAIRPERSON HILL: Okay. All hail

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1 Thanksgiving. All right. That puts you when, Mr. Moy?

2 MR. MOY: Okay. That gives the submission by
3 the parties by December 5th. The week after December 5th
4 would be December 12th for decision. If the Board wants
5 more than a week to review all the evidence, that would
6 take me to the following week which then would be December
7 19th.

8 CHAIRPERSON HILL: December 19th. I want to
9 have kind of time if we wanted to consult with OAG or
10 anything like that as well. Okay. So that gives two
11 weeks after we get -- if we were to ask OAG for stuff or
12 wanted to consult with them, do you think that's enough
13 time for OAG?

14 MS. NAGELHOUT: I do.

15 CHAIRPERSON HILL: Okay. All right. Mr. Moy,
16 we're doing this then for decision when again?

17 MR. MOY: Okay, sir. Decision making would be
18 December 19th. Parties to submit draft findings of fact
19 and conclusions of law by December 5th. As I said before,
20 the transcript should be in the record by November 14th.

21 MR. ECKENWILER: Just one process question, Mr.
22 Chairman. Is there any particular format you're looking
23 for in terms of the -- I mean, I know what I can do. I
24 don't need somebody to hand it to me but if there's a
25 preference from the Board.

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1 CHAIRPERSON HILL: I don't think so.

2 MR. ECKENWILER: Okay. Great.

3 CHAIRPERSON HILL: I appreciate the question.
4 I don't believe so, no.

5 Mr. Moy, I'm just curious. The 19th, is that
6 our last hearing?

7 MR. MOY: Yes, sir. The next time the Board
8 will be together would be 2019.

9 CHAIRPERSON HILL: Okay. All right. So you
10 guys are going to be the end of the year.

11 Okay. Do you all have any questions and
12 understand the dates? Okay. All right.

13 Thank you all and I wish you all the best. Mr.
14 Moy do we have anything else?

15 MR. MOY: Surely not, sir.

16 CHAIRPERSON HILL: Thank God, then the Board
17 stands adjourned.

18 (Whereupon, the above-entitled matter went off
19 the record at 6:37 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: Board of Zoning Adjustment

Date: 10-31-18

Place: Washington, DC

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



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